



EMPLOYMENT TRIBUNALS

Claimant: Ms Yvette Simons

Respondent: London Borough of Merton

Heard at: London South Employment Tribunal

On: 20, 21, 22 and 23 May 2024

Before: Employment Judge Burge
Mr Singh
Mr Wilby

Appearances

For the Claimant: Mr Welch, Counsel
For the Respondent: Mr Davies, Counsel

JUDGMENT

The unanimous judgment of the Tribunal is as follows:

1. The following complaints of being subjected to detriment for making a protected disclosure are well-founded and succeed:
 - a. The Respondent's delay in lifting the Claimant's suspension from 28 September 2020 to 30 December 2020; and
 - b. The Respondent's delay in finalising the safeguarding report.
2. The remaining complaints of being subjected to detriment for making a protected disclosure are not well-founded and are dismissed.

Employment Judge Burge
23 May 2024

Note

Reasons for the judgment were given orally at the hearing. Written reasons will not be provided unless a party asked for them at the hearing or a party makes a written request within 14 days of the sending of this written record of the decision.

Public access to employment tribunal decisions

Judgments (apart from judgments under rule 52) and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

Appendix - The Issues

1. Time Limits

- 1.1 Given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before 10 December 2020 may not have been brought in time.
- 1.2 Was the claim made within the time limit in section 48 of the Employment Rights Act 1996? The Tribunal will decide:
 - 1.2.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act complained of?
 - 1.2.2 If not, was there a series of similar acts or failures and was the claim made to the Tribunal within three months (plus early conciliation extension) of the last one?
 - 1.2.3 If not, was it reasonably practicable for the claim to be made to the Tribunal within the time limit?
 - 1.2.4 If it was not reasonably practicable for the claim to be made to the Tribunal within the time limit, was it made within a reasonable period?

2. Protected disclosure

- 2.1 Did the claimant make one or more qualifying disclosures as defined in section 43B of the Employment Rights Act 1996? The Tribunal will decide:

- 2.1.1 What did the claimant say or write? When? To whom? The claimant says s/he made disclosures on these occasions:

- 2.1.1.1 the disclosure to Bosa on or around 2 May 2020 that there was a duplicate MARS sheet and the service user was, potentially, being given a double dose of medication – section 43B(1)(d) - the words used were:-

On the 2 May 2020 approximately 2:30pm during handover I informed Charles Buyonda that it appears that there has been a duplicated MAR sheet for MW possibly for 3 weeks of double dose of the medication.

I further added that I had counted the remaining Lorazepam and have also noted the dates the medication was received compared to what was left over.

I informed Charles that I have thoroughly re-read the consultancy outpatient letters to confirm the current dose.

At around 3pm myself and Charles telephoned Bosa. Charles told Bosa there had been an error and then I spoke to Bosa confirming that I noticed the duplicated MARS sheet and that I need to fill in an incident and accident form. Bosa stated he would look into it once he came on shift the following day. (sic)

2.1.1.2 the oral disclosure to Bosa that the duplicate MARS sheet had gone missing on 4 May 2021 section 43B(1)(b);- the words used were:-

On the 4 May 2020 I noticed that the duplicated MAR sheet was missing. I mentioned this to Bosa who stated that there were a lot of people including night staff. (sic)

2.1.1.3 the oral disclosure to the Council's safeguarding team on 6 May 2020 regarding the duplicate MARS sheet – section 43B(1)(d); the words used were:-

On the 6 May 2020 I telephoned the Merton Safeguarding team informing them that there had been a medication error meaning the service user was potentially being given a double dose of medication for at least 3 weeks and that I had raised the matter with Bosa on 2/5/2020 and that the MAR sheet is now missing.

I further provided my name, place of work and my mobile phone which was required and the service users details. (sic)

R admits C made a protected disclosure under section 43B(1)(d) ERA during one of the telephone conversations on 6 May 2020.

2.1.1.4 the disclosures to the Care Quality Commission on or around 13 July 2020 (see below) and 11 August 2020 – section 43B(1)(b) and (d); the 13 July 2020 disclosure was oral and was as follows:-

On the 13 July 2020 I made a phone call to CQC and spoke with Lee Wilis following his email.

I informed him that there has been a medication error for at least three weeks in my place of work and that the Mar sheet has since gone missing after I reported to a senior then the safeguarding team. I have been harassed, bullied, and intimidated as a result of my disclosure. I gave LW details of the location of The Gables. LW then informed me that he Could not find “The Gables “on the CQC system it seems The Gables is not registered or known to CQC he stated.

I mentioned that there is no safeguarding or medication training given to new staff and there is no appropriate policies and procedures on site or incident and accident forms, LW stated but that this is the local authority? And he sounded surprised that this was the case.

I told LW that Service users and their families are not informed of any medication incidents. Lee Willis then asked why had he not had any complaints from any other staff members?

To which I responded that we are instructed to inform the seniors of any incident or accident and The Gables rely on bank, temporary staff and they fear that should they raise any concerns they run a risk of losing their job or not being called for further shifts. (sic)

R admits C made a protected disclosure under sections 43B(1)(b)&(d) ERA during the telephone conversation with Lee Willis on 13 July 2020.

The 11 August 2020 disclosure was made on-line.

- 2.1.2 Did s/he disclose information?
- 2.1.3 Did s/he believe the disclosure of information was made in the public interest?
- 2.1.4 Was that belief reasonable?
- 2.1.5 Did s/he believe it tended to show that:
 - 2.1.5.1 a person had failed, was failing or was likely to fail to comply with any legal obligation; and/or
 - 2.1.5.2 the health or safety of any individual had been, was being or was likely to be endangered?

2.1.6 Was that belief reasonable?

- 2.2 If the claimant made a qualifying disclosure, it was a protected disclosure because it was made to the claimant's employer. *or*
- 2.3 If the claimant made a qualifying disclosure to the Care Quality Commission, was it made:
 - 2.3.1 to the regulator and is that a prescribed person within the meaning of section 43F Employment Rights Act.

If so, it was a protected disclosure.

3. **Detriment (Employment Rights Act 1996 section 48)**

- 3.1 Did the respondent do the following things:
 - 3.1.1 Undue scrutiny from Bosa and Evas in relation to service users' money, in particular on or around June 2020 Bosa instructed C that she was not to handle service users' money and Evas asked C to confirm whether she took money out of a service user's flat.

- 3.1.2 Excessive supervision/scrutiny when she went to Morrisons as described in paragraphs 16 to 18 of the Grounds of Claim;
- 3.1.3 In or around June 2020, Evas' instructions for ordering the PC, in particular Evas told C she should order the PC in C's own name which the Claimant believes was aimed at setting her up by making it appear as though the Claimant was stealing the PC from the service user.
- 3.1.4 The medication error being raised again with her in a manner which amounted to an interrogation, in particular on or around 16 June 2020 Bosa and Evas asked the Claimant to come to the upstairs office where over the course of about an hour they repeatedly asked C why she reported the MARS sheet to the Safeguarding Team.
- 3.1.5 Her suspension on 15 July and the manner (an abrupt telephone call) in which it was carried out.
- 3.1.6 INSERT
- 3.1.7 Angela Wardell investigating her grievance.
- 3.1.8 The delay in the grievance of 4-5 months.
- 3.1.9 Angela Wardell not providing the Claimant with the grievance investigation documents relied on by the Respondent to reach the grievance outcome of 10 November 2020 or notes from the 3 August meeting.
- 3.1.10 The safeguarding investigation relating to the PC ordered from Amazon in June 2020 not starting until August 2020 and then not following any form of procedure in that a safeguarding matter be raised immediately with CQC however Evas waited between 19 June 2020 and 7 August 2020.
- 3.1.11 The outcome of the safeguarding investigations relating to both the PC and trip to Morrison not been given to her until 19 February 2021 despite them signalling a return to work was ok in December 2020.
- 3.1.12 Not providing a written outcome in respect of the safeguarding procedure relating to both the PC and trip to Morrison.
- 3.1.13 Being suspended from 15 July 2020 to 22 February 2021.

3.1.14 Being asked to move to a new place of work, the decision having been made by Angela Wardell and communicated by Andy Ottaway-Searle.

3.1.15 Angela Wardell not proactively ensuring a return to work;

3.1.16 The probationary period being extended beyond the initial 6 months without reason.

3.2 By doing so, did it subject the claimant to detriment?

3.3 If so, was it done on the ground that she made a protected disclosure?

4. Remedy for Protected Disclosure Detriment

4.1 What financial losses has the detrimental treatment caused the claimant?

4.2 Has the claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?

4.3 If not, for what period of loss should the claimant be compensated?

4.4 What injury to feelings has the detrimental treatment caused the claimant and how much compensation should be awarded for that?

4.5 Is it just and equitable to award the claimant other compensation?

4.6 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

4.7 Did the respondent or the claimant unreasonably fail to comply with it?

4.8 If so is it just and equitable to increase or decrease any award payable to the claimant? By what proportion, up to 25%?

4.9 Did the claimant cause or contribute to the detrimental treatment by their own actions and if so would it be just and equitable to reduce the claimant's compensation? By what proportion?