EMPLOYMENT TRIBUNALS

Claimant: Mr K Adjei

Respondent: Fedex Express UK Transportation Limited

INTERIM RELIEF HEARING

Heard at London South: by CVP **On:** 10 May 2024

Before: Employment Judge Truscott KC (sitting alone)

Appearances
For the claimant: In person with a Twi interpreter
For the respondent: Mr C Adjei barrister

JUDGMENT on INTERIM RELIEF APPLICATION

The application for interim relief is refused.

REASONS

Preliminary

1. This hearing was listed to determine the claimant's application for interim relief.

2. The claimant represented himself and made written and oral submissions to the Tribunal. He was assisted by a Twi interpreter. The respondent was represented by Mr C Adjei barrister who is no relation of the claimant. He made written and oral submissions. The Tribunal had available to it:

A claimant's bundle part 1 [C1] which has an index and 3 pages of narrative described as a chronology as unnumbered pages at the beginning which are set out on page 4 hereof.
A claimant's bundle part 2 [C2]
A witness statement of the claimant
An attachment to ET1
Additional emails bundle part 1
Additional emails bundle part 2
An audio tape
A skeleton argument for the claimant
A witness statement of K Bhalsod
An index to respondent's bundle
A respondent's bundle [R]

A skeleton argument for the respondent
A respondent's bundle of authorities

3. The references in the judgment are to pages in the electronic bundles.

Background

4. The claimant was employed by the respondent from 3 April 2017 to 13 June 2023. On 30 September 2017, he was appointed ESP co-ordinator [R55 para 1]. On 4 October 2017, he signed the contract appointing him as ESP co-ordinator, starting on 1 October 2017 [R 92].

5. ESP stands for Enhanced Security Programme role. This was originally a TNT cross functional process for handling and protecting high value technology shipments within Europe. TNT was acquired by the respondent on 25 May 2016. Since that date the companies have been going through an integration process. As the two companies have become more integrated, there have been several site closures and redundancies [R37 para 17].

6. The ESP operation was based in the TNT International Hub in Northampton until its closure in 2017, when the operation moved to the respondent's Dartford Hub. At this point, to replicate the ESP team at Northampton, the respondent recruited a supervisor and 2 co-ordinators. The claimant was recruited as one of the two co-ordinators [R37 para18].

7. As the integration of TNT with the respondent continued, the role of the ESP team became redundant, as it was not a role required by the respondent. The ESP supervisor, Mr Pombal applied for the Operations Supervisor position at Dartford in February 2021 and was successful. Mr Stephen Darg, the other ESP coordinator had been working within the clearance team on a temporary basis for around 2 years. Mr Darg applied for a permanent position as a Clearance Broker and was appointed to the team in July 2022. The ESP co-ordinators within Europe returned to the specialist roles that they were in before undertaking ESP work. As the ESP was no longer used within the FedEx network, the role of ESP co-ordinator was no longer required, in the UK and Europe. The claimant was the final ESP co-ordinator in the UK and Europe.

8. On 14 September 2020, Ruth Whitman emailed the claimant to tell him that there was no ESP position in Operations in the respondent's integrated organisation [C1 8h]. The claimant raised a number of grievances which were heard on 30 September 2020. One of the grievances was the claimant's allegation that he was placed in the ESP co-ordinator's role in the knowledge that he would be made redundant. This was rejected by Mr Clarke the grievance manager in a letter dated 22 October 2020 [C2 52h] on the basis that his manager was unaware that the ESP was not an integrated role.

9. In the process of integration, initially, the role of ESP co-ordinator was mapped to a handler position. However, Matthew Walsom, Station Manager at Dartford Hub considered that the role was more akin to an Operations Support Agent, which is at a higher level than a handler role. Mr Walsom was successful in

presenting a business case to the FedEx leadership team for the role to be mapped to Operations Support Agent. The claimant says he was integrated around October 2020. The respondent says he was never integrated.

10. At some early stage in his employment, the claimant complained to the information Commissioner [C16 para 5s] (potential disclosure 1). In May 2021, the claimant complained about a breach of his privacy [C1 6 para 5t] (potential disclosure 2). In August 2021, the claimant issued claim 2302322/2021 (claim 1). In October 2021, the claimant issued claim 2302647/2021 (claim 2). On 9 March 2022, the claimant issued claim 2300917/2022 (claim 3).

11. On 6 April 2022, the claimant was invited to attend a meeting with Mr Walsom and Cyndy King, HR Specialist, to start the process of integration. The meeting took place on 7 April 2022. An illustration was pre-prepared for the claimant to show him the benefits of moving into the integrated position of Operations Support Agent. The claimant did not engage with either Mr Walsom or Ms King. He refused to discuss the integrated position. Ms King tried to encourage the claimant to take the documents away to review them in his own time, but he refused. Ms King told the claimant that if he was not integrated in any role he may be considered for redundancy. The claimant complained about the meeting. The claimant's claim dated 8 August 2022 under the claim number 2302703/2022 relates to that meeting (claim 4).

12. On 16 April 2022, the claimant emailed Ms Slootmaker [C1 18-18b] making potential disclosures (3-5) and also complained to Ms King and Mr Walsom (potential disclosure 6). In April/May 2022, the claimant complained to HR [C1 5 para 5n (potential disclosure 7). In May 2022, he complained to Ms Julie Bluanch [C1 para 5 l and m] (potential disclosures 8 and 9). In August 2022, he complained to Mr Rock, Ms King and Mr Walsom and the Employment Tribunal [C1 5 para 5i, j and k] (potential disclosures 10, 11 and 12).

13. On 23 January 2023, the claimant was invited to a consultation meeting on 7 February 2023 by Kish Bhalsod, senior operations manager [R141]. A detailed letter dated 30 January 2023 was sent by email explaining that his post was not required [R 93-94]. The meeting took place on 27 February 2023 [R97-101]. In the meeting, the claimant is recorded as stating he trusts Mr Bhalsod [R101].

14. In early 2023, the claimant complained to Mr Peto [C1 4 para 5b] (potential disclosure 13), In March 2023, he complained to Ms S Foster [C14 para 5e and 10h para c] (potential disclosure 14) and in March/April 2023 he complained to Fedex Integrity [C1 5 para 5f] (potential disclosure 15).

15. On 20 March 2023, the claimant was invited to a second consultation meeting on 30 March 2023 [R103-04]. On 30 March 2023, the claimant attended the second consultation meeting [R105-114]. He accepted that there were three in his department, now he works in ESP on his own [R105].

16. A third consultation meeting was arranged for 5 April 2023 which the claimant declined to attend [R118]. This meeting was to discuss the claimant being mapped to the OSA role, apply for other roles and, if necessary, discuss redundancy. On 5 April

2023, the claimant was invited to a third consultation meeting on 13 April 2023 [R115-116] [C2-2b]. The claimant declined to attend the meetings. On 15 May 2023, the claimant was invited to a meeting on 22 May 2023 [C1 5- 5a, C1 14-14a] which he again declined. In a letter dated 13 June 2023, he was dismissed on the grounds of redundancy with pay in lieu of notice [R117-119 C1 2-2b].

17. In April 2023, the claimant complained to Ms Woodward and Mr Walsom, to Mr Bhalsod, and to HR [C1 5 paras 5g h and e] (potential disclosures 16, 17 and 18). In May 2023, he complained to Mr Hawkins, HR and Ms Woodward [C1 4 para 5c 10g para b 4 para 5d and 10g para a] (potential disclosures 19 and 20). On 13 June, he complained to the Employment Tribunal (potential disclosure 21) and on 19 June submitted his interim relief application (Claim 6).

18. The claimant raised two internal appeals. On 7 August 2023, there was the first appeal meeting before Alun Cornish [R121-124][C13-13c]. On 29 September 2023, the outcome was delivered [R125-127] [C12d-f]. On 5 October 2023, the claimant appealed Alun Cornish's decision [C10g, 13d]. On 28 October 2023, the claimant issued claim 2305979/2023 (claim 5). On 17 November 2023, the second appeal meeting before Daniel Vines took place [R129-133]. On 8 December 2023, the outcome was produced [R134-136].

The claim

19. The claim related to dismissal is to be found in a number of documents but was summarised by the claimant in the three-page chronology to the front of volume 1 of his bundle. The Tribunal also took into account the ET1 and its attachment, his witness statement, an email of 23 September 2023 from the claimant to the Tribunal [C1 28-28b] and the skeleton argument as well as the documents in the bundles and the recording.

20. The summary of the claim is:
"1. I reasonably believe I was dismissed on 13 June 2023 as a **direct result** of the fact that I asserted my Statutory Right under section 104 and/or 47 Employment Right Act (ERA) 1996; by making the following complaints (Protected Act) in good faith - to foster Health and Safety compliance at work.

2. On 20 May 2022, Ms Cyndy King (HR) sent me email, that she will make me redundant because on 7 April 2022, I said to her three (3) times during a "force labour" meeting; I will raise a complaint against them to infringe my statutory right; to force me attend a formal grievance meeting without a companion.

3. On 30 March 2023, Mr. Kish Bhalsod (dismissal manager) angrily said to me that Jose (Caucasian previous ESP colleagues) won't want to work outside UK, I should go outside UK to look for jobs if I want to be treated as Mr Jose Pombal and Mr. Stephen Darg.

4. On 17 February 2021, Mr Ryan Bennett (Deputy Manager) said to me "no one will support my personal development because I Speak Up against Matt" (Senior Operations Manager).

5. Notwithstanding the above documented facts, below are events I have asserted my right in good faith.

a. I exercised my rights in respect of H&S cases under Section 44, ERA 1996**. (Namely: I complaint to Tribunal on 13 June 2023 that my H&S is at eminent risk, I was summary dismissed the same day contrary to s105 ERA 1996)**.

b. I exercise my rights in respect of H&S cases under S44, ERA 1996 and s 26 EqA 2010**. (Namely: I complaint to Mr Peto (VP) in 2023. That Mr Bhalsod has infringed my relevant statutory right; which had impacted my health recovery).**

c. I exercise my rights in respect of Health and Safety under Section 44, ERA 1996. **(Namely: I complaint to Mr Hawkins (MD) in May 2023. That my H&S is being put at risk by Mr Bhalsod because of unreasonable stress at work).**

d. Protection for making a protected disclosure (whistleblowing) - Part IVA, ERA 1996. **(Namely: I complaint to HR about MAY 2023, that Mr Kish Bhalsod is infringing my statutory rights with unnecessary engagenent and work stress, as a result of unreasonable request and unexplainable series of stressful meeting invites).**

e. I exercise my rights in respect of Health and Safety (H&S) cases - Section 44, ERA 1996. **(Namely: I complaint to HR in about March and April 2023 that my H&S is at risk from detrimental treatment by Mr Walsom, Ms King and Mr Bennett).**

f. I exercise my rights in respect of Health and Safety cases under Section 44, ERA 1996. (**Namely: I complaint to FedEx Integrity in March- April 2023 that my safety is at risk by regular harassment. I need movement to a different department as a matter of reasonable adjustment).**

g. I exercise my rights in respect of Health and Safety cases – Section 44, ERA 1996. (**Namely: I complaint to Ms Woodward and Mr Walsom about April 2023 that my H&S is at risk, they should implement OH recommendations as a reasonable adjustment for me to manage the stressful unfair demands by Mr Bhalsod).**

h. I exercise my rights in respect of Health and Safety cases – Section 44, ERA 1996.
(**Namely: I complaint to Mr Bhalsod in April 2023 that my health is at eminent risk, because of his stressful demands and unreasonable pressures against my person, they should implement Occupation Health (OH) recommendations).**

i. Protection against unlawful deduction from wages – Section 13, ERA 1996. **(Namely: I complaint to Mr Rock (VP) in August 2022 that my rights was infringed by the failure to provide me pay improvement and yearly bonus like other employees in the workplace benefiting from Corroborative Labour Agreement (CLA) since 2020.**

j. Protection against unlawful deduction from wages – Section 13, ERA 1996. **(Namely: I complaint to Employment Tribunal in August 2022 that Ms. King and Mr Walsom refused me pay improvement contrary to CLA agreement).**

k. Right to be accompanied at a disciplinary or grievance hearing under Section 10, Employment Relations Act 1999. **(Namely: I complaint to Employment Tribunal in August 2022 that, Ms Cyndy King (HR) and Mr Matthew Walsom infringed my right by the failure to afford me the right to attend a grievance meeting with a companion on 7 April 2022 causing me to be diagnosed of panic attack).**

l. Right to be accompanied at a disciplinary or grievance hearing under Section 10, Employment Relations Act 1999. **(Namely: I complaint to Ms Julie Bluanch (MD) in May 2022 that Ms Cyndy King (HR) and Mr Matthew Walsom refused me the right to attend a grievance meeting with a companion on 7 April 2022).**

m. Protection against unlawful deduction from wages under Section 13, ERA 1996. **(Namely: I complaint to Julie (MD) in May 2022 that my rights was infringed by the failure to provide me pay improvement since CLA implementation in 2020).**

n. Protection against unlawful deduction from wages under Section 13, ERA 1996. **(Namely: I complaint to HR in April or May 2022 that I did not get pay improvement in accordance with the implementation of Collaboration Labour Agreement (CLA).**

o. Exercise my rights in respect of Health & Safety (H&S) cases under Section 44, ERA 1996. **(Namely: I raised Dangerous Goods processing and storage Safety concerns to Ms Delphine Slootmaker (MD. DG- Europe) in April 2022.)**

p. Exercise my right in respect of Health and Safety cases under Health and Safety Act 1974. **(Namely: I raised warehouse employees Health Safety and Welfare concerns to Ms Slootmaker (MD DG and Welfare EUROPE) in April 2022 to help improve warehouse safety in the location).**

q. Exercise my rights in respect of acting as an employee representative – Section 47, ERA 1996 **(Namely: I raised concerns against damaged Dangerous Goods processing and storage to Ms Delphine Slootmaker (MD for DG-Europe) in April 2022; as a FedEx Express Quality Driven Management (QDM) Expert).**

r. Right to be accompanied at a disciplinary or grievance hearing under Section 10, Employment Relations Act 1999. **(Namely: I complaint to Ms Cyndy King (HR) and Mr Matthew Walsom in April 2022 that they have infringed my right to attend a formal grievance meeting without a companion or reasonable adjustment).**

s. Protection under the Data Protection Act 2018, **(Namely: I complaint to Information Commissions Office (ICO) that my employment Data privacy has been infringed by my Mr Walsom and Mr Bennett contrary rights under that Act).**

t. Protection under the Data Protection Act 2018 (GDPR 2018). (Namely; **I complaint to FedEx Privacy about May 2021 that my employment history records has been altered contrary to my right under the Data Protection Act 2018).**

6. Until I raised concerns against regular poor Health, Safety and Welfare practices, non- compliance culture practice at FedEx Dartford Road Transport Hub; No management complaint against me nor targeted me, to supressed my personal development in the integrated FedEx Express Europe business.

7. After raising my concerns and criticising the poor non-compliance culture and anti- discriminatory law breaches; I was regular targeted and subjected to detriments from all angles; by the location senior management – Mr Matthew Walsom, Ms Cyndy King (HR) and Mr Ryan Bennett (Deputy Manager).

8. **To the extent that a false disciplinary letter was planted into my employment records at the time I have never exhibited unlawful conducts contrary to business rules at work. Mr Ryan Bennett (Deputy Manager) said to me on 17 February 2021 that, "no one will support my development because I Speak Up against Matt". And he will destroy my life if when he wants to. He seized prize items delivered to me.**

9. By virtue of the submissions listed above, I reasonably believe I was summary dismissed on 13 June 2023, by Mr Kish Bhalsod because I asserted my statory right under s104.

10. I reasonably believe the dismissal was unfair, contrary to section 105 of the Employment
Right Act 1996 (ERA). Alternatively, Section 47 Employment Right Act 1996.

11. I reasonably believe the Respondents is in breach of section 105 Employment Right Act 1996 and/or section 47 ERA 1996, and guilty for Automatic Unfair Dismissal against me. (For asserting my statutory right in good faith against location management).

Law

Interim relief

21. The claimant's application for interim relief is pursued pursuant to section 128(1)(a)(i) Employment Rights Act 1996 ('ERA') in alleging his dismissal was automatically unfair pursuant to section 103A ERA.

22. Section 128 provides:
128 Interim relief pending determination of complaint
(1) An employee who presents a complaint to an [employment tribunal]—

(a) that he has been unfairly dismissed by his employer, and
(b) that the reason (or, if more than one, the principal reason) for the dismissal is one of those specified in section 100(1)(a) and (b), [101A(d),] 102(1)[, 103 or 103A] [or in paragraph 161(2) of Schedule A1 to the Trade Union and Labour Relations (Consolidation) Act 1992],
may apply to the tribunal for interim relief.
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23. Interim relief can only be granted if the tribunal thinks that the claimant is "likely" to establish at full hearing that the protected disclosure was the reason (or principal reason) for dismissal (section 129(1)). In **Ministry of Justice v Sarfraz** [2011] IRLR 262 EAT, the Employment Appeal Tribunal pointed out that section 129(1), read in conjunction with the definition of "qualifying disclosure" contained in section 43C of the ERA 1996, means that it must be likely that a tribunal will find that:

- The claimant has made a disclosure to his employer.
- He believed that the disclosure tended to show one or more of the matters itemised at (a) to (f) under section 43B of the ERA 1996.
- The belief was reasonable.
- If made before 25 June 2013, the disclosure was made in good faith.
- The disclosure was the principal reason for the dismissal.

24. In **Bombardier Aerospace v McConnell** [2008] IRLR 51 (NICA), at paragraph 15), the Court said:

"The question remains, what does 'likely' mean in these provisions? As a matter of principle, the word is capable of a range of meanings. It may be compared with the word 'probable'. 'Probable' is a flexible word, but in law it is apt to mean 'on a balance of probabilities'; that is, 'more likely than not'. 'Likely' is an even more flexible word. Depending on its context, 'likely' may mean the same as 'probable', or something more, or something less. The alternative meaning of "likely" in the Disability Discrimination Act 1995 and the Equality Act 2010 (denoting something that "could well happen" even if the probability is less than 50/50 (**Cream Holdings Ltd v Banerjee** [2005] 1 AC 253 HL at para 12; **Boyle v SCA Packaging Ltd** [2009] ICR 1056 HL). was not applicable here (see **Dandpat** above).

The question is: what does 'likely' mean in the present context? The authorities say that it imports that the claimant needs to show that he has 'a pretty good chance' of success, and 'a pretty good chance' is something more than 'on the balance of probabilities'; something more than a 51 per cent chance. In the trade union case of **Taplin v. C Shippam Ltd** [1978] ICR 1068 EAT, the Employment Appeal Tribunal formulated the test to be applied in these terms:-
"The Tribunal should ask itself whether the applicant has established that he has a 'pretty good' chance of succeeding in the final application to the Tribunal."

25. The **Taplin** test was approved in **Raja v The Secretary of State for Justice** UKEAT/0364/09 and applied by the tribunal in **Chowdhury v Ealing Hospital NHS Trust** ET/3302168/10; 3301557/10.

26. The Employment Appeal Tribunal reaffirmed the proposition that a claimant for interim relief must demonstrate a 'pretty good chance' of success at trial, the Employment Appeal Tribunal remarked in **Dandpat v University of Bath** UKEAT/0408/09 (10 November 2009, unreported), at para 20).:

> 'We do in fact see good reasons of policy for setting the test comparatively high in the case of applications for interim relief. If relief is granted the [employer] is irretrievably prejudiced because he is obliged to treat the contract as continuing, and pay the [employee], until the conclusion of proceedings: that is not consequence that should be imposed lightly'.

An application for leave to appeal on this point to the Court of Appeal was made in **Dandpat** and was refused by Arden LJ ([2010] EWCA Civ 305, para 17).

Dismissal

Reason for dismissal

27. What is in issue is the employer's reason for dismissing the claimant. It is trite to say that the 'reason' for a dismissal is a set of facts known to the employer or a set of beliefs held by him which causes him to dismiss (**Abernethy v. Mott Hay and Anderson** [1974] ICR 323 CA per Cairns LJ; **W Devis & Sons Ltd v. Atkins** [1977] AC 931 HL). The issue is causation.

Disclosure

28. The statutory provisions are contained in the Employment Rights Act:

> **[103A Protected disclosure]**
> [An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure.]
>
> [43A Meaning of "protected disclosure"]
> [In this Act a "protected disclosure" means a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H.]
>
> [43B Disclosures qualifying for protection]
> [(1) In this Part a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure, tends to show one or more of the following—
> …(a) that a criminal offence has been committed, is being committed or is likely to be committed,
> (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,
> (c) that a miscarriage of justice has occurred, is occurring or is likely to occur,
> (d) that the health or safety of any individual has been, is being or is likely to be endangered,
> ..

(f) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.

29. In **Chesterton Global Ltd. and Anr. v Nurmohamed** [2017] IRLR 832 CA, Lord Justice Underhill said, at para 37:

"Against that background, in my view the correct approach is as follows. In a whistleblower case where the disclosure relates to a breach of the worker's own contract of employment (or some other matter under s.43B(1) where the interest in question is personal in character[5]), there may nevertheless be features of the case that make it reasonable to regard disclosure as being in the public interest as well as in the personal interest of the worker…

Although disclosures tending to show breaches of the worker's own contract are the paradigm of disclosures of a 'private' or 'personal' character, they need not be the only kind: see the Minister's reference to disclosures 'of minor breaches of health and safety legislation … of no interest to the wider public.'

Was the whistleblowing the reason for the dismissal?

30. Under section 103A, a dismissal is automatically unfair if "the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure". Whether the dismissal flows from the disclosure is a question of causation. In the case of a dismissal, the EAT in **Trustees of Mama East African Women's Group v. Dobson** UKEAT/0219/05 said:

The legal principles to be applied appear to us to be as follows:-

16. A reason for dismissal is a set of facts known to the employer or at least held by it which causes it to dismiss the employee: **Abernethy v Mott Hay and Anderson** [1974] IRLR 213 (CA).

17. This calls for examination of the decision making in the mind of the dismissing officer, see the speech of Lord Nicholls in Khan at paragraph 29 which provides as follows:

"29

3) 'by reason that'

Contrary to views sometimes stated, the third ingredient ('by reason that') does not raise a question of causation as that expression is usually understood. Causation is a slippery word, but normally it is used to describe a legal exercise. From the many events leading up to the crucial happening, the court selects one or more of them which the law regards as causative of the happening. Sometimes the court may look for the 'operative' cause, or the 'effective' cause. Sometimes it may apply a 'but for' approach. For the reasons I sought to explain in *Nagarajan v London Regional Transport* [1999] IRLR 572, 575-576, a causation exercise of this type is not required either by a 1(1)(a) or s.2. The phrases 'on racial grounds' and 'by reason that' denotes a different exercise: why did the alleged discriminator act as he did? What, consciously or unconsciously, was his reason? Unlike causation, this is a subjective test. Causation is a legal conclusion. The reason why a person acted as he did is a question of fact."

31. The Employment Appeal Tribunal in **Dobson** held that the tribunal should consider the decision-making processes of the employer, or the relevant manager.

DISCUSSION AND DECISION

32. Strictly speaking, the Tribunal should confine itself to the claims made in the ET1 claiming dismissal for making protected disclosures, any other claims or additions must be made by an application for amendment. This process has not been followed in the claims made by the claimant. For the purposes of this claim only, the Tribunal has taken a wide view of the claims from whatever source whilst still confining itself to the reason for the dismissal.
33. The claim made by the claimant and the documents provided by him to this hearing do not follow a date order sequence. In some instances, a date is not provided for the action complained of. In order to understand the reasoning of the employer for dismissal, the date order sequence was examined as the Tribunal is well aware from its experience that dismissal following a protected disclosure can often be disguised as redundancy.

34. The Tribunal noted that in the reply to his 2020 grievance [C2 58h], he complained that his employment was from the start potentially redundant. While his grievance was rejected because of the lack of knowledge of his manager, it does appear that there were no plans to integrate his post. This means that a potential redundancy situation applied to his post from the commencement of his employment in the position of ESP co-ordinator.

35. From as far back as 2019, the claimant made complaints to his employer which he describes as disclosures. The Tribunal did not consider that these impacted any decision making by the respondent going forward.

36. At C6 para 5 s and t, the claimant complains of breaches of the Data Protection Act 1988 which are not within the jurisdiction of the Tribunal but these (potential disclosures 1 and 2) were considered to ascertain whether they impacted any decision making by the respondent going forward. They did not.

37. The respondent states that the claimant was not, and has never been, in an integrated role and he consistently refused to engage in integration discussions. Up to the time his employment was terminated, he was still working under his original terms and conditions from 2017. The claimant says that he was integrated as a handler. There is no documentary support for his contention and if a handler was an integrated post, there would have been no redundancy situation.

38. As the claimant became the final person in the ESP department, the respondent applied its redundancy procedure to him. The procedure involved consultation meetings and attempts to find alternative employment and after the decision was made appeals. The respondent took a relatively long time to carry out the redundancy. It appeared that when the employer took a step in the procedure, the claimant would launch a number of complaints which mostly related to his own circumstances. Potential disclosures 3-5 were made after the meeting on 7 April 2022 to discuss integration. Potential disclosures 6-12 were also made at that time. The Tribunal considered these to be a reaction to the meeting. There was a

consultation meeting on 7 February 2023, after which the claimant made potential disclosures 13-15. After he declined to attend the meeting in May 2023, he made potential disclosures 16-21.

39. The claimant says [C1 4para 5a-t] he made 21 disclosures from 2021 to 13 June 2023. The potential disclosures relied upon by claimant range from one related to the storage of dangerous goods which would be likely to have a public interest to more often being about his own circumstances which would not.

40. The Tribunal reminded itself that to amount to a qualifying disclosure of information, there must be a disclosure with sufficient factual content and specificity to be capable of tending to show one of the matters in the sub-sections of Section 43B(1). The worker must reasonably believe that the disclosure is made in the public interest. The Tribunal first has to ask whether the worker believed that the disclosure was in the public interest and secondly whether that belief was reasonable. In considering whether it is reasonable to regard a disclosure as being in the public interest, the following factors are likely to be relevant: the numbers in the group whose interests the disclosure served; the nature of the interests affected and the extent to which they are affected by the wrongdoing disclosed; the nature of the wrongdoing disclosed; and the identity of the alleged wrongdoer.

41. The Tribunal made no findings as to whether what the claimant described as disclosures were made in the public interest but sought to identify to whom the alleged disclosures were made for any impact on the dismissal decision making process. The respondent relies on the lack of knowledge of Mr Bhalsod, the dismissing manager, of the potential disclosures but potential disclosure 17 was made to him and it seems unlikely, given the number of complaints made to a number of people that he was unaware of the actions of the claimant. Nonetheless, the Tribunal finds that any knowledge Mr Bhalsod might have had about complaints did not affect his reasoning in dismissing the claimant for redundancy.

42. The claimant emphasised, particularly in submission, that he was a health and safety representative and was dismissed for health and safety reasons. The respondent pointed out that a claim for interim relief for health and safety reasons may only be made where the allegation is that the employee has been dismissed where the complaint is that the reason for dismissal falls within subsections 100(1)(a) and (b) Employment Rights Act 1996:

> "(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for dismissal is that –
> (a) having been designated by the employer to carry out activities in connection with preventing or reducing risks to health and safety at work, the employee carried out (or proposed to carry out) any such activities,
> (b) being a representative of workers on matters of health and safety at work or member of a health safety committee –
> (i) in accordance with arrangements established under or by virtue of any enactment,
> or

(ii) by reason of being acknowledged as such by the employer, the employee performed (or proposed to perform) any functions as
such a representative or a member of such a committee."

41. The Tribunal did not have evidence that the claimant was either a representative of workers on matters of health and safety or a member of a health safety committee.

42. The Tribunal was aware that he had made a made a serious complaint in April 2022 about the storage of dangerous goods to Ms Slootmaker and considered his claim under section 43 B (1)(d) where it was not necessary for the claimant to be an elected representative. The Tribunal did not consider that his complaint under this head impacted the employer's reason for dismissal.

43. The Tribunal considers that the actions of the respondent support the position that redundancy was the reason for dismissal. Looking to the nature and timing of the disclosures and other complaints, it is not likely that either separately or together the claimant would establish that they were the reason for dismissal. Accordingly, the claim for interim relief is refused.

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Employment Judge Truscott KC
23 May 2024