EMPLOYMENT TRIBUNALS

Claimant: Mr K Burke

Respondent: Alan Baxter Limited

Heard at: London Central (CVP)

On: 18 June 2024

Before: Employment Judge Khan

Representation
Claimant: In person
Respondent: O Isaacs, counsel

JUDGMENT

The application for interim relief is refused.

REASONS

1. I gave judgment orally at this hearing when the claimant requested written reasons. These are provided below.

2. By a claim form presented on 22 May 2024, the claimant brings a complaint of automatic unfair dismissal by reason of making a protected disclosure. The claim form included an application for interim relief. This application was made within the statutory time limit of seven days within the date the dismissal took effect.

The relevant legal principles

Interim relief applications

3. Section 128(1)(b) of the Employment Rights Act 1996 ("ERA") provides that an employee who brings a claim that he has been dismissed by reason of making a protected disclosure may make an application to the tribunal for interim relief.

4. Where such an application is made, section 129(1) provides that:

> *where, on hearing an employee's application for interim relief, it appears to the tribunal that it is likely that on determining the complaint to which the application relates the tribunal will find—*
> *(a) that the reason (or if more than one the principal reason) for the dismissal is one of those specified in ... section 103A [the making of a protected disclosure]*

the tribunal is to order reinstatement or re-engagement or otherwise make an order for continuation of the employee's contract until the final hearing.

5. In this context, "likely" requires the claimant to show that there is a "pretty good" chance that the claim will succeed at trial (see *Taplin v C. Shippam Ltd* [1978] ICR 1068); it connotes a "significantly higher degree of likelihood" than "more likely than not" (see *Ministry of Justice v Sarfraz* [2011] IRLR 562).

6. As was underlined by the EAT in *Dandpat v University of Bath* [2009] UKEAT/0408/09/LA:

> *"there were good reasons of policy for setting the test comparatively high… if relief is granted the respondent is irretrievably prejudiced because he is obliged to treat the contract as continuing, and pay the claimant, until the conclusion of proceedings: that is not a consequence that should be imposed lightly".*

7. Under rule 95 of the Employment Tribunals Rules of Procedure 2013, where a tribunal hears an application for interim relief it shall not hear oral evidence unless it directs otherwise.

8. In determining such an application, a tribunal is not required to make findings or reach a final judgment on any point, see *Parsons v Airplus International Ltd* UKEAT/0023/16/JOJ, at para 8**:**

> *"On hearing an application under section 128 the Employment Judge is required to make a summary assessment on the basis of the material then before her of whether the Claimant has a pretty good chance of succeeding on the relevant claim. The Judge is not required (and would be wrong to attempt) to make a summary determination of the claim itself. In giving reasons for her decision, it is sufficient for the Judge to indicate the "essential gist of her reasoning": this is because the Judge is not making a final judgment and her decision will inevitably be based to an extent on impression and therefore not susceptible to detailed reasoning; and because, as far as possible, it is better not [to] say anything which might pre-judge the final determination on the merits."*

<u>Protected disclosures</u>

9. For there to be a protected disclosure, a worker must make a qualifying disclosure, as defined by section 43B ERA, and do so in accordance with sections 43C – 43H, where relevant.

10. Section 43B(1) provides that a qualifying disclosure means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following six prescribed categories of wrongdoing:

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

11. Section 43L(3) provides that where the information is already known to the recipient, the reference to the disclosure of information shall be treated as a reference to bringing the information to the attention of the recipient.

12. As has been restated in *Williams v Michelle Brown* UKEAT/0044/19/OO, a qualifying disclosure must have the following elements:

(1) It is a disclosure of information (taking account of section 43L(3), if relevant). This requires the communication to be of sufficient factual content or specificity to be capable of tending to show a relevant failure; whether this standard is met is a matter of evaluative judgment for a tribunal in light of all the facts of the case (see *Kilraine v Wandsworth LBC* [2018] ICR 1850).
(2) The worker has a reasonable belief that this information tends to show a relevant failure. This has both a subjective and objective element so that the worker must have a subjective belief and this belief must be reasonably held (see *Kilraine*). In considering this the tribunal must take account of the individual characteristics of the worker (see *Korashi v Abertawe Bro Morgannwg Local Health Board* [2012] IRLR 4). In making an assessment as to the reasonableness of the worker's belief that a legal obligation has not been complied with a tribunal must firstly identify the source of the legal obligation that the worker believes has been breached (see *Eiger Securities LLP v Korshunova* [2017] IRLR 115).
(3) The worker also has a reasonable belief that the disclosure is made in the public interest. A tribunal must first ask whether the worker believed that the disclosure was in the public interest, at the time that it was made, and if so, whether that belief was reasonably held (see *Chesterton Global Ltd v Nurmohamed* [2017] IRLR 837). There is no legal definition of "public interest" in this context. The question is one to be answered by the tribunal on a consideration of all the circumstances of the particular case. Relevant factors could include: 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 (see *Chesterton*). Public interest need not be the only motivation for making the disclosure. Further guidance has more recently been given by the EAT in *Dobbie v Paula Felton t/a Feltons Solicitors* UKEAT/0130/20/OO (at paras 27 and 28).

13. Whether the information amounts to a disclosure and whether the worker had a reasonable belief that this information tended to show a relevant failure must be considered separately by a tribunal but these issues are likely to be closely aligned (see *Kilraine*). If a statement has sufficient factual content and specificity such that it is capable of tending to show a relevant failure then it is likely that the worker's subjective belief in the same will be reasonable. The reverse is equally applicable. However, it may also be necessary for a tribunal to consider the wider context in which the information has been disclosed.

14. A qualifying disclosure is protected if it is made to the employer (section 43C).

Automatically unfair dismissal (protected disclosures)

15. The burden is on the claimant to show that the reason or principal reason for dismissal was that he made a protected disclosure (see *Ross v Eddie Stobart Ltd* UKEAT/0068/13/RN).

16. The focus of the tribunal's enquiry must be the factors which operated on the employer's mind so as to cause him to dismiss the employee. In *Abernethy v Mott, Hay and Anderson* [1974] ICR 323, Cairns LJ said this (at p. 330 B-C):

> *"A reason for the dismissal of an employee is a set of facts known to the employer, or it may be of beliefs held by him, which cause him to dismiss the employee."*

This guidance was approved by Underhill LJ in *Beatt v Croydon Health Services NHS Trust* [2017] IRLR 748:

> *"As I observed in Hazel v Manchester College [2014] EWCA Civ 72, [2014] ICR 989, (see para. 23, at p. 1000 F-H), Cairns LJ's precise wording was directed to the particular issue before the Court, and it may not be perfectly apt in every case; but the essential point is that the 'reason' for a dismissal connotes the factor or factors operating on the mind of the decision-maker which cause them to take the decision – or, as it sometimes put, what 'motivates' them to do so…"*

The issues

17. To succeed in his application, the claimant must demonstrate that he has a pretty good chance of establishing the following at a final hearing:

    a. He made one or more qualifying disclosure as defined by section 43B ERA which requires the claimant to show that: (i) he made a disclosure of information; (ii) he had a belief that this information tended to show a relevant category of wrongdoing; and (iii) that belief was reasonably held; (iii) he had a belief that the disclosure was made in the public interest; and (iv) that belief was reasonably held.
    b. He made this qualifying disclosure to a relevant person. This is agreed.
    c. The reason or main reason for his dismissal was that he made one or more protected disclosure.

The procedure

18. No oral evidence was heard.

19. The claimant relied on two statements from Ian Gale, Handyman.

20. The respondent relied on statements from: Katherine Montague, HR Consultant; and William Gardiner, Consulting Engineer.

21. There was a hearing bundle of 413 pages.

22. I considered the respondent's written submissions and the oral submissions made by the parties.

23. I remained cognisant throughout the hearing that the claimant was a litigant in person and that he has Dyslexia. I ensured that the claimant was able to access the hearing bundle and that he had time to find the pages in the bundle to which I was referred. I interrupted Mr Isaac's submissions to enable the claimant to respond to these submissions in stages rather than having to deal with the submissions in one go.

24. References below to [25], and [X/25] are to the bundle and witness statements, respectively.

Analysis and conclusions

25. None of what follows amounts to a finding of fact which binds any subsequent tribunal that is required to decide the claim.

26. The disclosures enumerated below follow the same order set out in the claimant's grounds of complaint.

The claimant's role

27. The claimant was employed by the respondent for over 22 years from 8 November 2001 to 16 May 2024. He was employed initially as a Handyman and was promoted to Buildings Manager in 2015. He worked on a full-time basis of 37.5 hours each week. He was based at the respondent's offices in Cowcross Street, central London. He was line-managed by Andy Morton, HR Director.

28. The claimant was not given a formal job description. His duties were discussed at annual personal reviews. When the claimant took on his new role in 2015, he oversaw a team of four, which included an electrician, plumber and carpenter. This changed when the claimant returned to work in April 2021 post-Covid and furlough. He was initially the only member of the Buildings Team. There is an important factual dispute about what duties the claimant's role entailed during the period when the claimant alleges that he made protected disclosures.

First disclosure

29. The claimant asked Mr Morton on several occasions in April 2021 "when

would I be getting assistance" as there were a number of tasks that he would be unable to carry out alone.

30. The claimant claims that he was disclosing information about a breach of health and safety legislation in relation to risk assessments and lone working. There is a lack of specificity in relation to this disclosure so that I concluded that it was not pretty likely that the claimant would establish that this amounted to a disclosure of information. Nor, for the same reason, was it pretty likely that the claimant would be able to show that any subjective belief that he had that this was a disclosure of information which tended to show that the respondent had breached, was breaching or was likely to breach a legal obligation, and that this was made in the public interest, were beliefs which were reasonably held.

Second disclosure

31. The claimant injured his right leg on 21 April 2021 when he unloaded a delivery of heavy doors and crates, without assistance. The claimant reported this in the respondent's accident report book, the next day, as follows [276]:

> "As I turned with a trolley of empty crates I had just loaded on to the trolley itself I went to push off my right foot was stuck in the joint of cobbles and I felt my knee go it felt like it popped out of its place".

32. The claimant claims that he was disclosing information about a breach of health and safety legislation in relation to risk assessments and lone working. However, there is no reference to lone working or the lack of risk assessments in this report. For the same reasons given in relation to the first disclosure (see paragraph 55), I concluded that there was not a pretty good chance that the claimant would show that this was a protected disclosure.

33. Ian Gale, a general handyman, joined the Buildings Team later that year.

34. The claimant was on sick leave for around 5 months from December 2021.

35. Paul Waite was employed as a Facilities Manager in March 2022.

Third disclosure

36. At a Buildings Team Meeting on 28 September 2022, the claimant complained about the lack of risk assessments [28-30]. The claimant says that he was concerned when Mr Morton implied during this meeting that this was part of his role. He also says that Mr Waite advised that risk assessment should not be undertaken by the person performing the tasks in question and that it was agreed that Mr Morton and Mr Waite would be responsible for completing them. The claimant was sent a draft minute of this meeting which recorded, materially:

> "It was also agreed that we need risk assessments for major projects and tasks where there might be a H & S issue. It was agreed that PW [Mr Waite] would lead the H & S issues and risk assessments, but that KBu [the claimant] would need to input into the methodology and materials to be

used.

It was also agreed that risk assessments should be produced a week ahead of any task requiring them and that KBu/IG [Mr Gale] should refer any H & S issues to PW."

The claimant commented on the draft minutes [24] in which he noted the following:

"**5. Communication**

- …With regards to H&S, each job sheet should have an indication where a risk assessment has been carried out (where appropriate), this still isn't in place, and it clearly states in official guidance that risk assessments should only be signed by management or the workplace safety officer – it is not therefore appropriate for either KBu or IG to sign off?

7. Health & Safety

- As mentioned above, accordance with H&S law, it isn't appropriate for KBu to have input into risk assessments etc, these either need to be conducted and signed off by management or a dedicated H&S officer."

37. Although the claimant claims that he raised additional concerns about unsafe lone working, staffing and the lack of training, these were not referred to in the draft minutes and nor did the claimant refer to these issues in the comments he sent to his manager. The claimant's focus was on risk assessments. In this respect the claimant was complaining that: job sheets did not indicate whether a risk assessment had been carried out which was not compliant with health and safety legislation; the official guidance stated that risk assessments should be signed off by a manager or workplace safety officer; and it was not therefore appropriate for him or Mr Gale to be required to have input into risk assessments or to sign off on them.

38. In the circumstances in which neither the claimant nor Mr Gale were being required to sign off on risk assessments, there was an agreement that in respect of future work that they should refer any health and safety issues to Mr Waite, and the claimant was complaining that it was inappropriate for him to have input into risk assessments by reference to an unspecified health and safety provision, I concluded that it was not pretty likely that the claimant would be able to show that he had a reasonable belief that this information tended to show that the respondent had breached, was breaching or was likely to breach of a legal obligation relating to risk assessments.

39. Mr Waite left the business in May 2023.

Fourth disclosure

40. It is agreed that at a personal review meeting on 31 January 2024, the claimant raised a number of health and safety matters. The claimant relies on the following information which he sent to Mr Morton in connection with this meeting [44]:

"**Roles and Responsibilities**

- Yesterday there was an assumption that it was my responsibility to ensure that fire drills were meant to be carried out to national guidelines – was surprised to learn this as any role in this regard has never been communicated to me, nor have I ever received any official training in this regard…

Health & Safety Concerns

- I have raised issues regarding H&S on numerous occasions, and I am very uncomfortable carrying out certain tasks.
- For example there are numerous tasks undertaken by me that have not been properly risk assessed, I am not qualified to carry out risk assessments (as previously highlighted) and it would be impossible for me to do, whilst also undertaking daily duties, when is this going to be addressed? Can you give me assurances i.e. a specific date/time in the future when this will be resolved?"

41. The claimant claims that he was disclosing information about a breach of health and safety law in relation to fire drills and risk assessments. As there is a factual dispute about whether carrying out fire drills was a part of the claimant's duties, and whether the claimant received any relevant training, I concluded that it was not pretty likely that the claimant would be able to show that he had a reasonable belief that he was disclosing information that the respondent was breaching a related health and safety provision. Before such an assessment can be made it will be necessary for a tribunal to make a factual determination in relation to the scope and extent of the claimant's duties at the relevant time, as well as any relevant training he completed. I also concluded, in relation to risk assessments, that the claimant's generalised complaint made without reference to any specific information meant that it was not a pretty likely that the claimant would establish that he had a reasonable belief that he had disclosed information about a breach of a related legal obligation.

Fifth disclosure

42. On 14 February 2024 the claimant emailed Mr Morton [66]:

> "…you mentioned dismantling the mobile tower outside in the courtyard could you please check with CF [Chris Fussell] if he is ok with this as I'm not sure of his capabilities regarding building tasks."

The claimant also alleges that he raised the same issue with Mr Morton verbally earlier that day when he told him that he was uncomfortable with Mr Fussell carrying out this task.

43. The claimant claims that he was disclosing information about a breach of health and safety law in relation to the requirement to ensure that staff are suitably trained for the work they are required to carry out. I concluded that it was not pretty likely that the claimant would show that he had a reasonable belief that this information tended to show that there had been a breach of a legal obligation. This was because the claimant was not saying that Mr Fussell lacked the requisite training to complete this task but rather, he was querying whether his colleague was capable and, on his case, he also told Mr Morton that this made him uncomfortable that Mr Fussell was being required to complete this work. It is also relevant that the claimant was

making this disclosure in the circumstances in which he had not requested a risk assessment nor directed Mr Fussell, whom it is agreed was a junior colleague, to refrain from carrying out this task which omissions are potentially inconsistent with the holding of a belief that he was reporting a health and safety breach. Whether or not the claimant held such a subjective belief and whether any such belief was reasonable will be a matter for the fact-finding tribunal to decide, if necessary.

Sixth and seventh disclosures

44. The claimant submitted a formal grievance on 11 March 2024 [50] when he complained:

> "It was with great alarm that I discovered that I am listed as Company's "Safety Officer", AND the "Deputy Fire Warden and Incident Control" within the Staff Handbook and the Company's Fire Emergency Plan…importantly and having sought advice, to place me in these positions without my permission or indeed the necessary training and updated certification could be seen to be a breach of health and safety at work legislation…[and] a breach of the company's health and safety obligations to the public at large."

In respect of the respondent's obligation to the public, the claimant explained that there is a gallery area in the building that is used by public each week sometimes in excess of 200 people. He referred to a Gallery Events roster for the week commencing 25 March 2024 [294].

45. The claimant claims that he was disclosing information that the respondent was in breach of health and safety law in relation to ensuring that staff are suitably trained for roles they are expected to carry out and also in relation to fire safety. Because of the factual issue in dispute regarding the scope of the claimant's role, I concluded that I could not make a summary assessment that it was pretty likely that the claimant would be able to establish that he had a reasonable belief that the information he disclosed tended to show a breach of a legal obligation.

46. The grievance meeting was on 20 March 2024 [105-109]. The record of this meeting records the following health and safety concern which the claimant raised [107-108]:

> "…On 5 February 2024, he was asked to move garden and other waste to the area at the base of the building's fire escape. The area is already full of rubbish which is particularly obstructing the fire escape and thus a fire hazard. KBu raised concerns about this, but received no response."

The claimant followed this up, on 25 March 2024, when he provided hard copies of a worksheet which confirmed that Mr Morton had issued this instruction [71] and copies of photographs [73-75] which showed bags of garden refuse left directly underneath the fire escape stairs, to William Filmer-Sankey, a director, who heard the claimant's grievance.

47. The claimant claims that he was disclosing information that the respondent had breached health and safety law in relation to fire safety and the evacuation of the building. The respondent conceded, for the purposes of this application, that it was pretty likely that the claimant would establish that

this amounted to a protected disclosure.

Ninth disclosure

48. The record of the grievance meeting on 20 March 2024 also recorded that the claimant raised the following alleged GDPR breaches [108]:

> "KBu noted that he had been in touch with the Information Commissioner's Office, who had confirmed the 'clear desk' policy but advise that he raise the issues with ABL first.
> KBu has photographed examples of personal information relating to him, which he found left out on AM and AS's [Adam Sewell] desks. Examples were his Personal Review Form and AS's comments on a draft Note from AM to KBu.
> He is also aware that his personal data has been shared with a third party (Katherine Montague).
> Finally, he has evidence that AM and Kelly Coxall (KCx), AM's PA, have been using the CCTV to monitor his activities, in potential breach of the Privacy and Human Rights Act."

49. The claimant was therefore complaining that: his managers had breached the GDPR by leaving personal data on their desks; his personal data had been disclosed to a third party; and he was being monitored by CCTV. In respect of the first issue, there is a factual dispute about how and in what way this information was retained by the claimant which means that I cannot conclude that it is pretty likely that the claimant will show that this was a qualifying disclosure. In respect of the second and third issues, as the claimant was not cognisant of the circumstances in which his data had been shared with Ms Montague and as the claimant did not have evidence that he was being monitored via the CCTV, I concluded that it was not pretty likely that the claimant would be able to establish that he had a reasonable belief that this information tended to show that the respondent had breached the GDPR or his legal rights to privacy or his human rights (presumably his right to private life, under Article 8).

50. According to the claim, the claimant was suspended from 28 March to 4 April 2024.

51. The grievance outcome was confirmed on 12 April 2024.

52. The claimant appealed this decision on 18 April 2024.

53. The claimant submitted a second grievance on 19 April 2024.

54. The claimant claims that following his exchange with Katherine Montague, HR Consultant, later on the same day, he was signed off work with work-related stress from 22 April to 6 May 2024.

55. By this date, according to her witness statement [KM/17-18], Ms Montague, had been appointed to investigate the claimant's conduct which arose in part from some of the information which had the claimant had disclosed to support his grievances. The alleged conduct included that:

    a. The claimant had obtained private and confidential documents in an

unauthorised manner.

b. The circumstances in which photos had been taken of Mr Fussell on the scaffolding tower and of the dismantled tower and a BBQ being left close to the fire exit.
c. The claimant had removed or destroyed historic files relating to emergency lighting and legionnaire tests.

Ms Montague commenced her investigation on 19 April 2024 when she spoke to several of the claimant's colleagues and she attempted to speak to the claimant (the facts of this exchange are disputed). An investigation report was completed on 30 April 2024 in which Ms Montague found that there was a disciplinary case to answer and she recommended that disciplinary action was taken against the claimant [KM/23].

Eighth disclosure

56. The claimant relies on a document he sent to Ms Montague and Michael Coombs, a director and co-owner, on 9 May 2024 [209]:

> "Further evidence regarding ongoing H&S breaches will be found on the Company's CCTV: pm 9th and 10th April, IG was working at height, in a public area, with incorrect signage and no protected barriers in place…"

This is consistent with the contents of Mr Gale's second witness statement (dated 5 June 2024).

57. For the purposes of this hearing, the respondent conceded that it was pretty likely that the claimant would be able to show that this amounted to a protected disclosure.

58. The grievance appeal outcome was confirmed on 15 May 2024. This also dealt with the claimant's second grievance.

Dismissal

59. The claimant attended a disciplinary hearing on 13 May 2024 (the claimant had been invited initially, on 1 May 2024, to attend a disciplinary hearing on 7 May 2024). The outcome, confirmed by a letter dated 16 May 2024, was that the claimant was dismissed with immediate effect by reason of gross misconduct. The claimant submitted an appeal on 23 May 2024 and an appeal hearing is due to take place on 25 June 2024.

60. In the grounds of claim, the claimant summarised the bases on which he claims that he was dismissed by reason that he made a protected disclosure:

a. In 23 years' employment with the respondent (I have calculated that the claimant was employed for over 22 years which remains a substantial period of service) he had a perfect disciplinary record, he had received positive feedback for his work and contribution, a discretionary bonus in January 2024 and a pay rise in March 2024; no conduct or performance issues had been brought against him until after he had made protected disclosures.
b. The response to his grievances was hostile and aggressive, and

despite rejecting his grievances, the respondent used some of his supporting evidence to uphold the disciplinary action against him.

c. The respondent appeared to be desperate to get rid of him as evidenced by: its decision to schedule a disciplinary hearing whilst the claimant was on sick leave and before his grievance appeal had been concluded; and by the fact that it took over a month to conclude his grievance whereas it took three days to make the decision to dismiss him.
d. The respondent had misrepresented him as being a Safety Officer with the object of obtaining buildings and trade insurance which amounted to insurance fraud (the claimant agreed, following an observation I made, that this was unlikely to be a relevant factor in relation to the respondent's decision to dismiss him).
e. His trade union representative described the disciplinary action as a "witch hunt".
f. The allegations of gross misconduct were unfounded.

61. This last point is of central importance to the claim and to this application.

62. The decision to dismiss the claimant was taken by William Gardiner, Consulting Engineer. According to his witness statement [WG/12-20], Mr Gardiner dismissed the claimant on the basis of the following conduct:

a. The claimant had been systematically reviewing and photographing confidential information for some time.
b. The claimant had risked the health and safety of Mr Fussell in directing him to climb onto the tower which lacked a guardrail and had taken a photo of a dangerous situation he had knowingly created. This was deemed to be serious enough to amount to gross misconduct.
c. The claimant had been involved in the unsafe storage of the dismantled tower (and BBQ) by the fire exit.
d. It was likely that the claimant had destroyed and/or removed emergency lighting records.
e. The claimant had been grossly careless in taking 8 months to produce a report in relation to emergency lighting in the circumstances in which he had identified that 70% of the emergency lights had failed.
f. It was likely that the claimant had thrown away legionnaires testing records.
g. The claimant had not been carrying out his usual duties during the previous month or more (which the claimant had not denied).
h. The claimant had been late for work every day for around 8 weeks.

63. It is evident that some of the conduct on which the respondent relied to dismiss the claimant related to material which the claimant had provided to support his grievances and also to the claimant's actions, whether disputed or accepted, which related to some of his disclosures; and that the disciplinary process therefore followed, and to an extent arose from, the grievance process. However, if Mr Gardiner's evidence is accepted by a fact-finding tribunal, then it is likely that the respondent will be able to establish that the reason for the claimant's dismissal was his conduct and not because he made any protected disclosures. This underlines that there

is a fundamental dispute concerning the claimant's conduct and the evidence on which the respondent relied to conclude that it warranted the sanction of dismissal which is a matter for a fact-finding tribunal. I therefore concluded that there was not a pretty good chance that the claimant would be able to establish that the reason or main reason for his dismissal was that he made the protected disclosures on 20 and 25 March 2024 i.e. part of the combined sixth and seventh disclosure, and the ninth disclosure (even were the claimant able to show that Mr Gardiner was cognisant of these disclosures, which the respondent disputes and which is another matter that requires a factual determination).

64. For completeness, I observe that it follows that the same conclusion would apply in respect of the other disclosures on which the claimant relies i.e. regardless of my summary assessment on whether the claimant will establish that he made these protected disclosures there remains a fundamental dispute of fact in respect of the claimant's conduct which is a matter for a fact-finding tribunal.

Case Management Orders

65. As to the future conduct of the claim, I made the following orders:

    a. The date by which the respondent is required to serve a response is extended to 16 July 2024.
    b. There shall be a preliminary hearing for case management on 18 September 2024 from 10am. It has been given a time allocation of 3 hours. It will be conducted remotely by video. This will be confirmed by a separate notice of hearing to be sent to the parties.

Employment Judge Khan

19.06.2024

JUDGMENT & REASONS SENT TO THE PARTIES ON

26 June 2024

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FOR EMPLOYMENT TRIBUNALS