



EMPLOYMENT TRIBUNALS

Claimant: Ms. R Kaur

Respondent: Gillen De Alwis Solicitors Ltd (in Creditor's Voluntary Liquidation)

Heard at: London Central (by CVP)

On: 1,2 May 2024

Before: Employment Judge Leonard-Johnston

Representation

Claimant: In person

Respondent: Not in attendance

JUDGMENT

1. The respondent was in breach of contract by dismissing the claimant without notice. The respondent is ordered to pay to the claimant the sum of £362 being damages for the breach of contract (net).
2. The claim for automatic unfair dismissal under section 103A ERA 1996 succeeds. The respondent must pay the claimant a compensatory award of £36,062. No basic award is payable.
3. The employer's counter claim for breach of contract fails and is dismissed.

REASONS

1. Oral reasons for the decision were given at the hearing. The claimant requested written reasons at the hearing which are as follows.

Background

2. The claimant has brought both a wrongful dismissal claim and an automatic unfair dismissal claim against the respondent on the basis that she was dismissed following protected disclosures. The respondent is a small firm of solicitors who are no longer operating because they have become insolvent. The claimant represented herself.
3. The respondent did not appear at this hearing and the administrator

declined to attend. I had before me the respondent's grounds of resistance. The evidence before me consisted of a large trial bundle of 554 pages (prepared by the respondent), plus two supplementary bundles. The first supplementary bundle was 1039 pages and included contemporaneous diary notes taken by the claimant during her employment with the respondent. References below in square brackets are to electronic page numbers in the first supplementary bundle. The claimant provided a witness statement and gave oral evidence.

Legal framework

4. In relation to wrongful dismissal, the respondent will be in breach of contract if it has failed to give the claimant the notice of termination to which she was entitled under the contract. This could be because the employee has been dismissed without any notice. An employee will not be entitled to notice of termination if they have fundamentally breached the contract e.g. the contract is terminated because the employee is guilty of gross misconduct.
5. In relation to automatic unfair dismissal, section 103A Employment Rights Act 1996 (ERA) stipulates that an employee will be regarded as having been unfairly dismissed if the principal reason for that dismissal is that they have made a protected disclosure. The two-year continuous qualifying period does not apply to claims for such dismissals. In order to be a protected disclosure, the disclosure must satisfy the requirements of Part IVA of the ERA. The disclosure must be a disclosure of information. It must, in the reasonable belief of the person making the disclosure, be made in the public interest and must tend to show that one of the failures listed in s43B (1) has occurred. In this case the relevant failure is in section 43B(1)(b), namely "that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject". In addition, the disclosure must have been made in accordance with one of six specified methods of disclosure, such as to the employer or another responsible person.

Factual findings

6. The claimant was employed as a trainee solicitor with the respondent from the 8 July 2021 until her summary dismissal on 8 April 2022. Shortly before the claimant joined the firm, the respondent's employed solicitor who ran the property division sadly passed away. The property division of the respondent was short staffed; files were handled by temporary staff and staff who were not legally qualified, including an intern, with very limited supervision.
7. The claimant was offered and accepted a training contract for 2 years, until 10 July 2023. She was employed elsewhere at the time, and the respondent was so keen for her to start work that case files were handed over to her, before her weeks' notice at her previous employment had even ended, and before she had been given any equipment or any kind of induction. The claimant's training principal was specified in her contract to be Shehani De Alwis, one of the firm's founding partners and she was to be assisted by Ravinder Singh. Mr Singh had worked with

the claimant previously. He was appointed a director of the respondent on 31 March 2021 and his directorship was terminated 11 April 2022 [948] so that he was a director of the respondent for the entirety of the C's employment. Mr Singh worked as a consultant solicitor at the respondent [204] but left around the 19 July 2021, because the Respondent had failed to remunerate him for work carried out.

8. From the evidence before me it is clear that from the outset the firms' leadership had not put effective systems in place to manage the workload of the property department, to manage human resources or to supervise the members of staff who were not legally qualified. On 9 July 2021, the day after she started her training contract, Ms De Alwis gave the claimant caseload responsibility for the work of two qualified lawyers who had been employed temporarily, following an email handover.
9. Ms De Alwis failed to provide an appropriate induction to the claimant upon her first joining the firm. She sent a flurry of emails to the claimant before her employment had started, to her personal email address, and immediately handed to the claimant responsibility for the workload from two temporary case workers, who were both qualified lawyers. The claimant was trained on the company software "Leap" by a paralegal, who on numerous occasions was left unsupervised to manage the work of the property division. Files were passed to the claimant that had been dormant for some time. From the outset, the claimant was aware that the property division was not being managed or supervised appropriately. The claimant's evidence was that it *"was she and the intern we were left to our own devices at times to deal with matters often and frequent unsupervised and left to approve documents without them being checked, whilst pursuant to my contract I should be supervised by a solicitor (paragraph 14 of Claimant's witness statement)."*
10. The claimant's evidence was that it was common place for clients of the firm to complain about lack of progress on their files. There was no full-time expert property solicitor working in the firm to manage the property division.
11. Before starting her employment, the claimant had sustained a back injury. She commenced employment despite being in pain, and she communicated this to Ms De Alwis via WhatsApp. During her first week paramedics were called to her home because of the pain she was in and she took strong painkillers to travel into the office to meet Ms De Alwis and the other founding partner Niamh Matthews Murray. However, Ms De Alwis nonetheless put pressure on the claimant to complete tasks during her first week and the claimant worked over the weekend to do so. There is a contemporaneous email from the claimant to Ms De Alwis dated 19 July 2021 [206] in which the claimant states that she still has not been inducted into the firm's systems, during which she outlines her injury, and in which she confirms that in a phone call Ms De Alwis made comments that her contract would be in jeopardy if she did not get the reports on title done immediately. This was fewer than two weeks after she had started her training contract.
12. The claimant took sick leave from 19 July 2021 to 24 September 2021

because of her back injury and a throat infection. Mr Singh wrote an email to Ms De Alwis on 19 July 2021 [210] expressing concern about the threats to terminate her contract, especially because she was quite ill. He stated in that email:

“I do not feel she has been a chance to be properly inducted into the firm yet and your early expectation for her (as a trainee solicitor) to be responsible for the entire property team (where you previously had two fully qualified solicitors, Tareq and Sunali) and to work on the matters to your expected level of satisfaction is unfair.”

13. I find that Mr Singh’s categorisation of the treatment of the claimant was correct. The claimant received an inadequate induction and was expected to perform at the level of a qualified solicitor but was not receiving guidance or support, let alone adequate supervision. This was unreasonable behaviour on the part of the respondent.
14. The claimant was not paid her salary during the time she was on sick leave, even for the time she had worked. She was required to send numerous emails to get paid statutory sick pay. At that point both Ms De Alwis, Ms Murphy and Mr Singh were on annual leave and there was inadequate supervision of the firm’s cases. During this time the firm did not have anyone managing their human resources and they made mistakes in registering the Claimant with SRA and getting her paperwork in order.
15. The claimant returned to work at the end of September 2021 and the situation in the property division had not improved, it was still being run in a chaotic manner.
16. The claimant’s narrative of a poorly managed property division is supported by the respondent’s own documentation prepared for insolvency proceedings, “Financial Information to Creditors” dated 14 Dec 2023 (second supplementary bundle page 19), in which it said:

“In March 2020, the Covid19 pandemic resulted in a significant blow to the Company’s business. Following government guidance, the Company premises remained close for a long time and all staff worked from home. This proved to be challenging in monitoring and performance of the staff, training them and for the directors to source new work. The pandemic coupled with the loss of Mr Young changed the dynamics of the firm, the staff morale was low and the combined effects had a negative effect on the business from which it never fully recovered. The pandemic period had a huge impact on the health of both directors. Ms De Alwis was admitted to hospital due to the level of stress. The property department struggled due to lack of new work and the long absence of Ms De Alwis exaggerated the situation. [...]”

17. From the time she returned from sick leave until her dismissal in April 2022 the claimant was subjected to treatment by Ms De Alwis that constituted bullying and harassment, including the following behaviour as outlined in the claimant’s witness statement.

- a. She was criticised for not completing tasks that she had in fact completed, but where Ms De Alwis hadn't read the email.
 - b. She was screamed at by Ms De Alwis on the telephone on 10 February 2022, and took contemporaneous notes of this [532].
 - c. She had work taken off her and then very shortly thereafter given back to her, and was moved into different departments with no notice. The claimant was unreasonably blamed for delays on client files.
 - d. Ms De Alwis used belittling and insulting language. For example, the claimant was told on 15 October 2021, despite being a trainee that "*she doesn't know what she is doing and she doesn't have the basic knowledge*" [324].
18. Overall, the claimant found the behaviour of MS De Alwis to be erratic and rude and she felt belittled and ridiculed.
19. I find that the respondent failed to fulfil the fundamental purpose of the training contract in that it did not provide training to the claimant. The claimant was given insufficient supervision and training, was treated as if she were a qualified lawyer and criticised for not being so, and the claimant was blamed for problems which ultimately arose out of the failure of the firm's management to properly supervise and manage the practice. The respondent also breached the implied term of trust and confidence by subjecting the claimant to behaviour that constituted bullying and harassment.
20. The claimant raised her concerns about the practice numerous times. These are listed in the list of issues at numbers 12-20 (page 70 of the trial bundle).
- a. On 18 October 2021, the claimant informed Mr Singh by telephone that;
 - i. The property department lacked structure and was disorganised.
 - ii. Inadequate directions were provided by Ms De Alwis
 - iii. Files were being passed around and left stale for some time, resulting in an influx of complaints.
 - b. On 21 October 2021, the claimant called the Solicitor's Regulatory Authority (SRA) and informed them of the above.
 - c. On 21 October 2021 the claimant informed Ms Matthews Murray, by telephone, that the property department lacked structure, files were constantly changing hands, which led to the influx of complaints received.
 - d. On 25 October 2021 the claimant repeated her concerns to Ms Matthews Murray that the property department lacked structure and direction.
 - e. On 1 November 2021, the claimant informed another employee Roshan that the property department lacked structure and was disorganised.
 - f. On 11 November 2021 the claimant repeated her concerns to the SRA and that the firm was unwilling to take any actions to improve

- g. On 4 February 2022 the claimant repeated her concerns to the SRA.
- h. On 23 February 2022 the claimant informed Samantha Desforges in HR for the respondent, of the same.

21. I find that these disclosures did occur. There are the claimant's contemporaneous notes and emails in the bundle which are consistent with her evidence.
22. I find that the claimant did genuinely believe that the firm was in breach of its duties as a firm of solicitors, and that it was in the public interest for her to raise these matters with Mr Singh (Director), Ms Matthew Murrays (Director) and with the respondent's HR, as well as with the SRA. The claimant was seriously concerned about the disorganisation and lack of management, because of the negative impact that this was having on the clients of the firm who were receiving a poor service. The claimant viewed the issue as a matter of protecting consumer rights. In evidence, the claimant identified the sections of the SRA Code of Conduct for Solicitors that she thought were being breached. She named paragraphs 1.3, 1.4 and 1.5 of Part 1: Maintaining trust and acting fairly. She identified paragraphs 3.2 and 3.5 of Part 3: Service and Competence and she identified paragraphs 7.5 of Part 7: Cooperation and accountability. I accept that the claimant genuinely believed that the respondent was in breach of these parts of the SRA Code of Conduct.
23. On 25 October 2021 the claimant had a meeting with Ms Matthews Murray in which she raised the claims of bullying and harassment and the lack of structure and organisation in the department. The claimant kept a contemporaneous note of this meeting [344]. The claimant received no response to those concerns, despite raising them in subsequent meetings and by email.
24. The claimant spoke to the SRA on 11 November 2021 and received advice.
25. On 14 December 2021 the claimant reported the behaviour of Ms De Alwis to a generic internal HR email address and around that time asked the office manager to speak to someone in HR. She received no response.
26. On 4 February 2022 the claimant called the SRA who gave information to the claimant on how to make a report.
27. On 12 February 2022 the claimant saw a doctor in relation to stress and anxiety. Notes from Dr Dayananth Mathanarajah [257 – 258] show that the claimant told him that:

'I worked at a law firm on a Training Contract, it was a chaotic and toxic work environment, confirmed that I raised it with both partners who run the place and they have dismissed her concerns and have been treating her differently since then, with hostility and that she tried to contact HR but unsure if they have a HR department, and was strongly considering contacting the regulating body. She is feeling anxious and stressed in anticipation of work, and gets bullied and harassed, not sleeping well, feeling physically unwell'.

28. On 21 February 2022 the claimant reported the respondent to the SRA in writing [259].
29. On 23 February 2022 the claimant received a phone call from Samantha Desforges who had recently joined the firm in HR. The claimant explained the background and discussed a “formal grievance procedure” and the claimant made Ms Desforges aware that she was considering raising the matter with the SRA (when in fact she already had).
30. On 1 March 2022 the claimant confirmed to Ms Desforges that she wished to raise a formal grievance. The claimant was on annual leave from 7 March 2022 until 11 March 2022 and made a formal grievance whilst she was on annual leave. She was then on sick leave from 15 March 2022 until 1 April 2022. Upon her return from leave, she was moved into the Crime Department with no notice. This was in the context of having recently been moved from the Property Department to the Family Department, with no notice.
31. The claimant received no response to any of the grievances raised.
32. On 8 April 2022 the claimant was summarily dismissed without any investigatory or disciplining procedure, or any notice. The termination letter is at page [286]. The reasons given for the termination was the claimant’s behaviour, and that the claimant was in breach of her training contract. In particular that:
 - a. The claimant failed to maintain a record of training;
 - b. The claimant failed to carry out duties given by directors, supervisors or employees of the firm faithfully and diligently and follow all reasonable instruction;
 - c. The claimant failed to comply with all requirements of the SRA;
 - d. The claimant’s conduct was unacceptable;
 - e. The claimant was incapable of being trained; and
 - f. The claimant was incapable of meeting the practice skill standards.
33. The respondent states in the termination letter that an investigation was carried out but there is no evidence of this and the claimant was not notified of any investigation, or given any chance to be heard. I find that the respondent completely failed to comply with the ACAS code of conduct on disciplinary and grievance procedures. Whilst on the claimant’s own evidence Ms De Alwis mentioned numerous times in meetings and phone calls that she was dissatisfied with the claimant’s work, I was provided no evidence of this in writing until the dismissal letter.
34. On the evidence before me and on the balance of probabilities, I find that the claimant did not behave in the manner alleged in the termination letter. The respondent has failed to evidence the allegations against the claimant. Each of the points raised in the termination letter was explained by the claimant in her witness statement, particularly in paragraph 26. In particular, I find:
 - a. The claimant maintained a record of her training, both in her on diary notes and in a spreadsheet that the respondent had access to.
 - b. The claimant did not fail to carry out duties given by directors or

supervisors. Instructions given by her supervisors tended to be either unclear or contradictory, and supervisors sometimes failed to read emails they were copied into. She did not fail to attend a meeting with a client. The claimant's explanation for not attending a morning meeting on 21 October 2021 was that her laptop had frozen and in relation to a meeting on 27 October 2021 there was a technical error which preventing the claimant from joining, of which the respondent was aware.

- c. The claimant did not breach confidentiality obligations. Emailing Mr Singh, who was a director of the company and listed in her training contract as a supervisor, did not constitute a breach of confidentiality. As for the alleged breach relating to a client file relating to financial advice, I accept the claimant's version in paragraph 27 of her witness statement that she was asked to contact the financial advisor by Ms De Alwis, and I note that the email containing the alleged breach was not disclosed by the respondent, despite requested by the claimant.

35. Finally, I do not accept that the claimant was incapable of being trained or of meeting the standards required of her. The claimant was committed to her profession and is an intelligent and diligent person. The claimant showed herself in these proceedings to be capable of communicating in a clear and professional manner both orally and in writing. As I have found above, the claimant was not given proper training or supervision and was being held to an unreasonably high standard. She was subjected to bullying and harassment and yet was sufficiently committed to her profession that she endured the unreasonable behaviour of her employer. I find that any failures in the service being provided to clients during the claimant's employment was primarily down to the respondent failing to manage its practice appropriately and failing to properly train and supervise its staff. Whilst I accept that was a breakdown in the relationship between Ms De Alwis and the claimant, and I understand that it was a difficult time for the firm, I nonetheless consider that the respondent was in breach of contract in failing to adequately train the claimant. The relationship breakdown was not as a result of a lack of capability on the part of the claimant but was because of the treatment of the claimant by Ms De Alwis.

36. I find on the balance of probabilities that the claimant was not guilty of gross misconduct which would have entitled the respondent to dismiss her without notice.

37. In relation to the primary reason for the dismissal, I do not accept that the reason that the claimant's employment was terminated was because of misconduct. I place significant weight on the claimant's evidence in relation to timing. Her evidence is that the hostility from the respondent started when she started raising complaints. The claimant made it clear to the HR manager in mid-March 2021 that she considered that the practice was failing, that she was raising a grievance about it, and that the respondent had not handled her grievances (since October 2020) properly. She informed HR that she was considering reporting the respondent to the SRA. The claimant then went on sick leave until 4 April 2022. On 5 April 2022 the claimant made a SAR request. On 8 April 2022 she was dismissed. Taking all the evidence together, I find it more likely

than not that it was the claimant's disclosures that caused the respondent to terminate her contract.

38. In relation to the disclosures to the SRA, the claimant told both Mr Singh and Ms Desforges about her plans to report to the SRA because she considered the situation was so dire. The employer was on notice of at least the potential disclosure to the SRA, but on the evidence before me the claimant has not established that the respondent knew about the actual disclosure to the SRA, therefore it is not established have been in their mind as the principal reason for dismissal. The same is not true for the disclosures made to Mr Singh, Ms Matthews Murray and Ms Desforges. Both the directors and the HR manager were aware of the disclosures made by the claimant.

Conclusions

Wrongful dismissal.

39. I have found above that the respondent was not entitled to summarily dismiss the claimant without notice on the grounds of her behaviour.
40. The respondent failed to give the claimant the required notice of her termination or to pay her in lieu of notice and was accordingly in breach of contract.

Protected disclosure dismissal

41. The claimant was an employee of the respondent and therefore is within scope of protection. The disclosures listed above contained "information". In particular, the disclosures contained information about the lack of system and structure, and inadequate client service being provided in the Property Department, in addition to the breach of contract on the part of the respondent in failing to train the claimant.
42. I accept that the claimant did make those disclosures. By making the disclosures to the two directors of the firm and to HR, she made disclosures to her employer for the purposes of s43C ERA.
43. I accept that the disclosures were in the public interest. In addition to her concerns about how she was being treated, the claimant genuinely believed that the breaches of the SRA code were having a negative impact on the clients of the firm and that it was in the public interest for the firm to be held accountable. It was reasonable for her to believe that, given her experiences in the firm since she joined, having witnessed numerous client complaints. It was also reasonable for her to believe that the disclosures showed that the respondent was in breach of its duties under the SRA code. As the SRA is the regulatory body for the respondent and solicitors must comply with the code, this constitutes a legal obligation. The disclosures were made both to the employer and to the SRA, however the respondent was not aware of the disclosure actually being made to the SRA. The respondent was aware of the disclosures made to Mr Singh, Ms Matthew Murray and Ms Desforges. Because the claimant subjectively believed that the respondent was in breach of its

legal obligations, and that belief was reasonable in the circumstances, the disclosures were protected disclosures.

44. Was the principal reason for the dismissal one or more of the protected disclosures? I am conscious that the respondent did not present a defence other than to say that the dismissal was in fact for misconduct. I have already found that the claimant was not guilty of misconduct, and I place weight on the fact that the respondent, who was after all a firm of solicitors, carried out no investigation or disciplinary procedure at all from which I draw an inference that the respondent did not seriously consider this to be a misconduct case. Nor did the respondent respond in any way to the claimant's grievances. As per my findings above, particularly in relation to the timing of her dismissal, I find that the claimant has established it is more likely than not that the reason for her dismissal was the complaints she was making about the firm's management.
45. Having found that the principal reason for the dismissal was not misconduct, but was because of the claimant raising her concerns about the failings of the respondent, which were protected disclosures, I find that she was unfairly dismissed.

Remedy

46. In relation to the breach of contract the claimant is awarded the statutory notice period of one week pay, assessed as net £362.
47. For unfair dismissal the claimant is awarded a total of £36,062. This has been calculated as follows.
48. Re-engagement is not possible in this case because the respondent is in voluntary liquidation.
49. The claimant is not entitled to a basic award, applying section 119 ERA because the claimant did not have one year service.
50. In relation to the compensatory award, prescribed element. I consider it just and equitable to award the claimant loss of wages from 9 April 2021 until 10 July 2023 on the basis that she would have been made redundant fairly from that point. At that point the respondent was in financial difficulty and would not have extended the claimant's contract.
51. I find there is a causative link between the dismissal and the claimant not being in employment up to 10 July 2023. The claimant provided evidence that the stigma of being dismissed and bringing this claim directly contributed to being turned down for employment. In interviews she was asked why her training contract ended which required her to explain that she had been terminated. In combination with the depression suffered by the claimant following her dismissal which prevented her from seeking work until approximately April 2023, she was not in a position to obtain new employment.
52. In relation to the period between dismissal and July 2023, I have assessed whether the claimant acted reasonably in attempting to

mitigate her loss and consider that she did. She attempted to secure other training contracts, however the stigma attached to her dismissal prevented her from obtaining a new training contract.

53. If the claimant had been dismissed fairly in July 2023, she would have at that point been a qualified lawyer and her employment prospects and earning power would have been significantly better. She would likely have qualified as a solicitor if not for the dismissal. Accordingly, I award her 3 months loss of earnings at the salary she would have received had she not been dismissed. I consider three months to be just and equitable in consequence of the dismissal, which the claimant assessed as an annual gross salary of approximately £35,000 per year. That works out to 2265 net monthly, or £6795 for three months.
54. Accordingly, the loss of income is assessed as $362.34 \times 65.40 + 6795 = £30492$. From this amount I have deducted benefits ($2,567 + 354 + 650$) assessed as £3571. I have also deducted the notice pay awarded above at £326, leaving a total of £ 26595.
55. I have increased this amount by 25% on the basis that the respondent was in clear breach of the ACAS code on disciplinary and grievance procedures, having completely failed to deal with the claimant's grievances and carried out no investigation or disciplinary procedure in relation to the claimant's alleged misconduct. The final prescribed amount equates to £33243.
56. In relation to the non-prescribed element, I have awarded the following. I have taken into account that the claimant suffered behaviour amounting to bullying and harassment and that her dismissal had a direct impact on her mental health. I therefore award her the cost of 23 counselling sessions between dismissal and July 2023, a total of £805. I also award the claimant the expense of acupuncture sessions for 3 sessions at £60, 5 sessions at £45 totalling £225. I also award the claimant pension loss of £825.6 and the loss of statutory rights of £400, totalling £2,255. I increase the amount by 25% ACAS Code of Practice to £2 819.

Employment Judge **Leonard-Johnston**

Date 19 June 2024

JUDGMENT AND REASONS SENT TO THE PARTIES ON

27 June 2024

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FOR THE TRIBUNAL OFFICE

Case No: 2204699/2022

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