Claim number: 2201731/2023

EMPLOYMENT TRIBUNALS

Claimant: Mr S Potts

Respondent: Urb-it UK Ltd

Heard at: London Central (by CVP) **On:** 15 April 2024

Before: Employment Judge Emery

REPRESENTATION:

Claimant: In person
Respondent: No appearance or representation

JUDGMENT

1. The complaint of automatic unfair dismissal is well-founded. The claimant was dismissed because:

    a. he made a protected disclosure and

    b. because he raised an issue which was potentially harmful to the health and safety of the respondent's employees and the public.

2. The claim of unlawful deduction from wages is not well founded and is dismissed.

REASONS

The respondent's status and non-attendance

1. Judgment and reasons were given at the hearing. The respondent was not present, it is in voluntary liquidation. The claimant advises that the liquidators are aware of this hearing date, he has been in touch with them, they have not

objected to the hearing taking place. The claimant has sent documents, his witness statement and bundles by email to the respondent's CEO, Mr Kevin Kviblad, most lately on 11 April 2023. I saw copies of his emails to the liquidators in which they are aware of the litigation. I accept Mr Potts account that Mr Kviblad's company email is functioning and that he has received all documents. I conclude that there is no reason why he is not present, but it is apparent he has chosen not to attend. I note also that Mr Kviblad is shown as an "Active" Director on Companies House website.

2. I conclude that it is appropriate for written reason to be sent to the respondent, to enable it to make representations as it sees fit, and to enable it to participate at the remedy stage.

The Issues

3. The respondent is a delivery company, specialising in urban deliveries by electric bike. The respondent owns the bikes and directly employs its couriers. The claimant was employed from 14 January 2021 to his dismissal on 17 November 2022 as Country Manager UK. He alleges he made whistleblowing disclosures on several occasions, including during a call on 31 October 2022 during which he resigned on 9 months' notice; he says that he was then dismissed by Mr Kviblad. The respondent says performance concerns were raised with him on 31 October 2022, he resigned during this meeting, and the respondent accepted his resignation, paying his contractual 3 months payment in lieu of notice.

4. Protected disclosures:

    a. Did the claimant disclose the following information to the respondent - s.43(B)1(d):

        i. On 15 September 2022 in a video call with his line manager Mr Kviblad relating to Health and Safety. C asserts he stated that that the respondent's hubs were at high risk of fire due to the charging process of lithium batteries in all Hubs, there was a risk to life of employees and public, that action must be taken to prevent this risk, state Directors' responsibilities, and recommend a solution.

        ii. On 28 September 2022 in a video call with Mr Kviblad, did he repeat the above.

        iii. On 7 October 2022 in a video call with Mr Kviblad, did he repeat the above.

iv. On 20 October 2022 in a video call with Mr Kviblad, did he repeat the above.

v. On 26 October 2022 in a video call with Mr Kviblad, did he repeat the above

vi. On 31 October 2022 in a video call with Mr Fredrik Warstedt (Group Chairman) did he repeat the above.

b. Did the claimant also disclose the following information to the respondent make the following disclosure - 43B (1) (b):

i. On 31 October 2022 to Mr Warstedt stating that female and black employees were being discriminated against and unfairly treated by the Company.

c. Did the claimant believe the disclosure of information was made in the public interest?

d. Was that belief reasonable?

e. Did the claimant believe it tended to show that:

i. The health and safety of any individual had been, was being or was likely to be endangered?

ii.

f. Was that belief reasonable?

5. Automatic unfair dismissal – protected disclosure

a. If the claimant made protected disclosures, was the making of this disclosure the reason (or principal reason) for his dismissal?

6. Automatic unfair dismissal – health and safety (s.100 ERA)

a. Did the claimant bring to his employer's attention by reasonable means in circumstances connected to his work where there was no health and safety rep, an issue which he reasonably believed were harmful or potentially harmful to health and safety?

b. Was the raising of this information the reason (or principal reason) for his dismissal?

7. Holiday pay: The claimant claims holiday pay, however there was no statement setting out the amounts claimed or how it was due. It appears that this claim is no longer being pursued.

8. Expenses claim: the claimant's schedule of loss says he has a claim of expenses of £794.40. There is no evidence in the bundle or the claimant's witness statement on this issue. It is therefore not a well-founded claim and is dismissed.

Witnesses and the bundle

9. There are two bundles. The first was prepared by the respondent's then solicitors, the claimant's emails suggest that this was in-hand in January 2023 when the respondent's solicitors were on the record. It therefore comprises documents the respondent had disclosed and considered relevant for the proceedings. The claimant has prepared a supplemental bundle of documents he considers relevant. Both bundles and the claimant's statement were sent to Mr Kviblad by email.

10. This judgment does not recite all the evidence I heard; instead, I confine my findings to the evidence relevant to the issues. The judgment incorporates quotes from my notes of evidence; these are not verbatim quotes but are instead a detailed summary of the answers given to questions

The relevant facts

I accept the claimant's contention that his role as the senior UK manager encompassed overall responsibility for all issues relating to health and safety. His evidence was that he considered the storage and charging of the respondent's batteries for its electric bicycles to be a risk to the employees and members of the public. The bikes are owned by the respondent, and (at the time) it employed its couriers.

11. The claimant describes his "main concern" being the respondent's hub at Centaur Street London, housed in a railway arch, he says there was risk at other premises. The Centaur Street arches are long, relatively narrow and have one entrance. At Centaur Street, the kitchen, toilet and rest area for staff are at the back of the arch.

12. The claimant's evidence was that "lots" of bikes are used daily, that the bike batteries need regular charging often overnight. The claimant says that the charging points at Centaur St were on metal units with wooden shelving half-way along the arch. The batteries were charged using 3 pin power sockets, typically on extension leads with several batteries charging on one lead. This layout

means that batteries and the charging area were between the staff area and the exit.

13. The claimant says, and I accept, that his concern was spurred by a fire on 17 August 2022 in a nearby railway arch caused by lithium batteries catching fire. His concern was that the batteries at the respondent's premises were being stored and charged in an unsafe manner, that "this was not a safe process to mitigate the risk of a fire."

14. The claimant's case is that he considered there to be a significant potential risk of fire, and that if this occurred the risk to staff and the public is high, he says that electric bike batteries are banned from London Underground for this reason. The batteries were being charged at the respondent's premises on an overloaded circuit in an area which meant there was no chance to escape if one of the batteries caught fire. His evidence is that if there is a fire at 9.00am when all couriers are in there is "no way out".

15. The claimant's witness statement describes seeking a solution with colleagues and presenting this to Mr Kviblad. He says that his team including the newly appointed Health and Safety officer "confirmed to me that there were health and safety concerns" and that two of his managers went about sourcing safe storage solutions for charging batteries; one manager subsequently texted him to ask about progress on this issue following a meeting with Mr Kviblad (210).

16. It was after a solution had been sourced that the claimant says he made his first protected disclosure, on 15 September 2022 to Mr Kviblad. His statement says that he "made it clear" to Mr Kviblad "that due to fire safety concerns, employees and the public were endangered … the company must take action … I provided clear concerns to Kevin that … hubs were at high risk of fire due to the charging process…" He says he provided the solution – firesafe boxes for the batteries - his colleagues had sourced (quote at page 186).

17. The claimant's statement says that during the next call to discuss the issue on 28 September 2022 he was told that the firebox solution could not be authorised "due to funding constraints" The claimant says that he repeated the disclosure, reiterating the fire risk, and that he and Mr Kviblad may be at risk of criminal prosecution for manslaughter as company directors. The claimant says Mr Kviblad responded that only he (the claimant) would be at risk as all other directors were Swedish citizens living in Sweden.

18. Mr Kviblad accepted at a subsequent grievance investigation meeting that "we discussed H&S" in all markets, that "we started to look at fire safety in the UK", that the respondent had appointed a health and safety manager in August 2022.

He denies that the claimant raised any whistleblowing disclosures. He accepts that he mentioned to the claimant the lack of an extradition treaty between the UK and Sweden "as a joke outside work". He said that "It was [the claimant] who raised the joke, he would get in trouble, not me". He says he raised this joke on one occasion (106 – 110). The country manager was interviewed, she said the issue of extradition was raised as a joke in front of several others, she says it was said twice.

19. I accept I have not heard from Mr Kviblad. But I wondered why the context of the admitted comment about extradition by Mr Kviblad was not explored during the grievance process. The claimant says it was said to him during a 1-1 Teams call. It appears to have been repeated to a wider group. Why would the claimant say "he would get into trouble" – what trouble, over what? The context of this comment was an obvious follow-up question to Mr Kviblad and the country manager, it was not asked.

20. The grievance is explicit: after raising health and safety issues "every time I raised my concerns I was reminded again there was no extradition order and I felt Kevin did not take this seriously". Mr Kviblad does not give any context for the 'joke'. There is a lack of curiosity of the investigator in finding out this context.

21. I conclude from this evidence that the "trouble" referenced by the claimant was the concerns he was raising about the fire and health and safety risk at the respondent's premises in the UK, in particular the issue of serious risk to life because of unsafe storage of lithium batteries when charging, and that when he raised these issues and the risk of criminal prosecution he was told by Mr Kviblad that it was him and not the Swedish directors who would get into trouble. Both to the claimant and in public meetings, Mr Kviblad did not take the claimant's concerns seriously.

22. The claimant had 1-1s on 7 and 20 October 2022 and he says he raised the issues again. On 20 October he says he was told for "at least the 4th time" that he would face "legal concerns" and Mr Kviblad would not. He also says he was threatened at this meeting.

23. As a consequence, and on reflection and discussion over that weekend, he says he decided to resign, and sent a meeting invite to Mr Kviblad – a Teams call was arranged for 26 October 2022.

24. The claimant's account of this meeting is that he raised his concerns again, "I again made it very clear … that our employees and the general public were at risk because of the concerns I had relating to lithium battery charging, which

included risk to life….". He says he also raised issues of discrimination at work – against women and black members of the team. He said that he then told Mr Kviblad he was resigning – "I am left with no other option than to resign from my role."

25. The claimant says he provided 9 months' notice, having researched the issue over the previous few days, and believing he could choose to give a longer notice period.

26. The claimant emailed Mr Warstedt on 28 October 2022 "as I felt it was in the best interests for the Chairman and the Board to understand these concerns and risks." The email refers to "a very concerning and surprising conversation with [Mr Kviblad] that has left me questioning my role…". It does not say he had resigned, and it does not mention health and safety issues, instead saying he had "delivered" the strategy and referring to his successes in role. The claimant says he wrote the email in this way as he had no prior contact with Mr Warstedt. In any event, the respondent accepts that the claimant had resigned on 26 October 2022: "In this meeting the claimant resigned verbally from his employment" (paragraph 8 Ground of Resistance).

27. The claimant's case is that during the meeting with Mr Warstedt he raised the same health and safety concerns. He followed up with an email on 9 November "During our meeting … I advised you of further concerns regarding recent actions and comments…" saying "… it was advised that you would be investigating…" and there was to be a follow-up meeting (86). This meeting did not happen. The claimant wrote again to Mr Warstedt on 21 November 2022 saying that he had raised "serious concerns" about health and safety issues and issues of racism during the 31 October meeting.

28. Mr Warstedt provided what he says were typed copies of his handwritten notes of the 31 October 2022 meeting. There is no reference to health and safety issues. Similarly, there is no reference to the claimant having already resigned, just that he may do so. There is also no reference to him carrying out an investigation, an issue both accept was discussed – email of 9 November.

29. The claimant raised a written grievance on 30 November 2022. On health and safety issues he says, "on a number of occasions I raised concerns about health and safety and that we urgently needed funds in the UK for health and safety matters which included PPE and for the safe charging of lithium batteries to reduce the risk of fire in our hubs." The grievance states, "everytime I raised my concerns I was reminded again there was no extradition order …".

30. Mr Warstedt was interviewed as part of the claimant's grievance, he says that the reference to an "investigation" by the claimant was as follows: the claimant asked him to investigate his [the claimant's] own work performance. He says that the claimant raised "racism" but then said "he would not make any such allegation … I agreed to investigate the performance part of what he was saying." He says that the claimant did not raise a whistleblowing allegation. He accepts the claimant emailed him on 21 November 2022 "asking where I was re the investigation in relation to racism and health and safety concerns." (102-4).

31. Following his meeting with Mr Warstedt on 31 October 2022 the claimant met with Mr Kviblad. He sent an email confirming his resignation "as per our meeting on Wednesday 26 October I am resigning … this is based on my recent concerns that I have had and shared with you…" (138-9). In response Mr Kviblad accepts the resignation but states that the company is "invoking" his contractual notice period of three months.

32. The respondent's case in its defence is that the claimant resigned at the meeting with Mr Kviblad on at which performance concerns were discussed with him (paragraph 7 Grounds of Resistance). There is no documentary evidence in the bundle of performance concerns. The claimant says his performance was good.

Relevant law and cases

Disclosures in the "public interest"

33. Employment Rights Act

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, is made in the public interest and tends to show one or more of the following—

…

(d) that the health or safety of any individual has been, is being or is likely to be endangered,

…

43C Disclosure to employer or other responsible person.

(1) A qualifying disclosure is made in accordance with this section if the worker makes the disclosure …

(a) to his employer …

34. *Chesterton Global Ltd v Nurmohamed [2017] ICR 731:* The public interest test is that it must be in the reasonable belief of the employee that the disclosure was made in the public interest. In a case of mixed interests, it is for the tribunal to rule as a matter of fact as to whether there was *sufficient* public interest to qualify under the legislation.

35. *Ibrahim v HCA International [2019] EWCA Civ 207*: The mental element imposes a two stage test: (i) did the clamant have a genuine belief at the time that the disclosure was in the public interest, then (ii) if so, did he or she have reasonable grounds for so believing? The fact that a motivation for making the disclosure may be different: "the necessary belief [of the employee] is simply that the disclosure was in the public interest".

36. *Parsons v Airplus International Ltd UKEAT/0111/17:* The necessary reasonable belief in that public interest may arise on later contemplation by the employee and need not have been present at the time of making the disclosure. Where an employee makes a series of allegations that in principle *could* have been protected disclosures but in fact were made as part of a dispute with the employer, the tribunal was held entitled to rule that they were made *only* in her own self-interest – the fact that an employee *could* have believed in a public interest element is not relevant.

37. *Darnton v University of Surrey* [2003] IRLR 133 *EAT* - The test is whether or not the employee had a reasonable belief at the time of making the relevant allegations that they were true. Although it was recognised that the factual accuracy of the allegations may be an important tool in determining whether or not the employee did have such a reasonable belief the assessment of the individual's state of mind must be based upon the facts as understood by him at the time.

38. *Babula v Waltham Forest College [2007] EWCA Civ 174* - "Provided his belief (which is inevitably subjective) is held by the tribunal to be objectively reasonable, neither (1) the fact that the belief turns out to be wrong — nor (2) the fact that the information which the claimant believed to be true (and may indeed be true) does not in law amount to criminal offence — is, in my judgment, sufficient of itself to render the belief unreasonable and thus deprive the whistleblower of the protection of the statute."

39. *Blackbay Ventures Ltd v Gahir [2014] IRLR 416 EAT* – the EAT provided the following guidance to tribunals:

i. Each disclosure should be separately identified by reference to date and content.
ii. Each alleged failure or likely failure to comply with a legal obligation, or matter giving rise to the health and safety of an individual having been or likely to be endangered as the case may be should be separately identified.
iii. The basis upon which each disclosure is said to be protected and qualifying should be addressed.
iv. Save in obvious cases if a breach of a legal obligation is asserted, the source of the obligation should be identified and capable of verification by reference for example to statute or regulation.
v. The Employment Tribunal should then determine whether or not the Claimant had the reasonable belief referred to in s 43B(1) of ERA 1996, … whether it was made in the public interest.
vi. Where it is alleged that the Claimant has suffered a detriment, short of dismissal it is necessary to identify the detriment in question and where relevant the date of the act or deliberate failure to act relied upon by the Claimant…
vii. The Employment Tribunal … should then determine … whether the disclosure was made in the public interest."

Dismissal

40. Employment Rights Act 1996 – Pt X Dismissal

s.94 The right

a. An employee has the right not to be unfairly dismissed by his employer

S.100 Health and safety cases.

(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 the dismissal is that—
…
(c) being an employee at a place where—

(i) there was no such representative or safety committee ….

he brought to his employer's attention, by reasonable means, circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health or safety,

s.103A Protected disclosure.

> 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 the dismissal is that the employee made a protected disclosure.

41. *Harrow London Borough v Knight [2003] IRLR 140, EAT - The* act or deliberate failure to act of the employer must be done 'on the ground that' the worker in question has made a protected disclosure. This requires an analysis of the mental processes (conscious or unconscious) which caused the employer so to act and the test is not satisfied by the simple application of a 'but for' test. The employer must prove on the balance of probabilities that the act, or deliberate failure, complained of was not on the grounds that the employee had done the protected act; meaning that the protected act did not *materially influence* (in the sense of being more than a trivial influence) the act complained of.

42. *Jesudason v Alder Hey Children's NHS Foundation Trust [2020] EWCA Civ 73* – the tribunal must consider the employer's *motivation* for taking a particular course of action after a whistleblowing allegation; an employer who is motivated to act for reasons unconnected to the allegation will not have subjected to the employee to an unlawful detriment.

43. *Fecitt v NHS Manchester [2012] ICR 372 CA - s.48c* puts the burden on the employer to show on the balance of probabilities that the act complained of was not on the grounds that the employee had done the protected act; meaning that the protected act did not materially influence (in the sense of being more than a trivial influence) the employer's treatment of the employee.

44. *Kuzel v Roche Products Ltd [2008] IRLR 530, CA* - if the employer fails to show an innocent ground or purpose, the tribunal *may* draw an adverse inference and find liability but is not legally bound to do so. *"Accordingly, if a tribunal rejects the employer's purported reason for dismissal [or detriment], it may conclude that this gives credence to the reason advanced by the employee, and it may find that the reason was the one asserted by the employee. However, it is not obliged to do so. The identification of the reason will depend on the findings of fact and inferences drawn from those facts. Depending on those findings, it remains open to it to conclude that the real reason was not one advanced by either side."*

45. *Yewdall v Secretary of State for Work and Pensions UKEAT/0071/05* – the initial burden on the claimant to show a prima facie case that they have been subjected to a detriment because of their protected act, *"… the burden of proof only passes to the employer after the employee has established a prima facie or arguable case of unfavourable treatment which requires to be explained"*.

46. *Panayiotou v Kernaghan [2014] IRLR 500* - it is a defence that the reason for the detrimental treatment was not the doing of the protected act in question, but the

unacceptable way in which it was made – an employee's dismissal in part because of an obsessive pursuit of PIDs was "in no sense whatsoever connected to the PIDs: *"There is, in principle, a distinction between the disclosure of information and the manner or way in which the information is disclosed. … Depending on the circumstances, it may be permissible to distinguish between the disclosure of the information and the manner or way in which it was disclosed. An employer may be able to say that the fact that the employee disclosed particular information played no part in a decision to subject the employee to the detriment but the offensive or abusive way in which the employee conveyed the information was considered to be unacceptable. Similarly, it is also possible, depending on the circumstances, for a distinction to be drawn between the disclosure of the information and the steps taken by the employee in relation to the information disclosed."*

Conclusions on the evidence and the law

47. The claimant argues that there were no issues of performance, that the respondent has given contradictory reasons why he left, including alleging there were 17 complaints made against him "So they were very much trying to find excuses to terminate, for the real reason – the CEO not happy with me because of my disclosures." He says that after he resigned, he heard nothing for 5 days, and then after his meeting with Mr Warstedt, "suddenly 3 hours later I am given email rejecting my resignation on notice and terminating my employment". His argument is that three months is the minimum notice he must give, "… not less than…" (35). He argues that his dismissal was a "retaliatory dismissal" because he had whistleblown.

48. He says 3 months is not enough to find a replacement, evidenced by the difficulties the respondent had in replacing him in the months that followed.

49. The claimant argues that at the grievance investigation interview, Mr Kviblad "dances around the issue of whistleblowing". When he is asked whether the claimant "… had raised concerns in relation to PPE and battery charging…", Mr Kviblad "does not answer and changes the topic, so no investigation here whatsoever."

50. It is clear from the grievance documents there were no questions in the grievance process to Mr Kviblad about whether the claimant raised health and safety issues about lithium battery storage and safe charging "to reduce the risk of fire". There is no reference in the questions to 'fire' at all, Mr Kviblad is not asked whether this was an issue which was raised by the claimant. I accept the claimants' contention that the issues he raised in his grievance were not adequately investigated, by the very fact that the relevant questions were not asked.

51. I accept also the claimant's contention "why would I mention prison?", and why would Mr Kviblad mention the lack of an extradition treaty, unless in the context of a discussion about a very serious corporate offence.

52. There is also the curious discrepancy between the respondent's position that the claimant resigned on 26 October 2022, and Mr Warstedt's contention that the claimant was considering resigning, yet wanted his own performance investigated. The claimant refutes the suggestion he was asking for his own performance to be investigated. Mr Warstedt's notes do not mention race discrimination, yet in his interview he accepts the claimant raised the issue of race, if only to say he was not pursuing this.

53. I accept that I have not heard evidence from the respondent. I find that there was a lack of contemporaneous questions of in particular Mr Kviblad in the grievance, a lack of curiosity in putting the claimants' allegations to Mr Kviblad or in seeking answers to puzzling questions. Why did Mr Kviblad mention extradition and why did the claimant mention prison to him. Why were there no questions about the claimant's concern about fire risk.

54. The inevitable result is that there is no account from the respondent, apart from a bare denial that he raised health and safety issues at all. This means one of two things – either the claimant is concocting a whole case from his grievance onwards that he repeatedly raised health and safety issues, or the respondent's bare denial he did so cannot be believed.

55. The few documents that exist support the claimant's case - he did raise the issue of prison, there was a mention about extradition, his grievance raises in detail his account of the whistleblowing concerns he raised. I accept that he raised the issue of prison in the context of explaining the sentence for corporate manslaughter; that this was in the context of his concerns about fire risk.

56. I therefore find that the claimant raised a disclosure to his employer on 5 occasions and in doing so he provided information which stated there was a serious risk of fire because of the placement and lack of safe storage of electric bike batteries at its premises, and that this had a serious risk to the health and safety of staff and the public.

57. I accept that this was a belief which was genuinely held by the claimant. He became alarmed by lithium battery fire reports in the press including of the seriousness of the fires which result including fatalities and was aware of the serious fire hazard the batteries may cause. He was alarmed by the risk to staff and public, that if would be impossible to escape a fire if it occurred when staff were present. I conclude that he believed that it was in the public interest to

raise this issue as he was genuinely concerned about what he considered to be the real risk to the health and safety of staff and the public.

58. I accept that it was reasonable for the claimant to believe that his disclosures were in the public interest. It is an established fact that faulty or damaged electric bike batteries or batteries which are improperly stored or charged *can* ignite, also that the fires which result can be explosive and present a potential serious risk to anyone trapped. The claimant in his role assessed the risk as serious. He was concerned about the seriousness of the risk to the health and safety of staff and the public. He raised the risk of criminal prosecution if there was a fire. There has been genuine public alarm about these issues and many news reports of fires and deaths and injury resulting. His management team agreed with him and immediately sought a suitable solution. It was clearly reasonable for the claimant to believe there was a risk of death or serious injury because of the respondent's battery storage methods, and that it was in the public interest for him to raise this as an issue.

59. Was the claimant dismissed as a result? The claimant argues that he resigned from his employment because of the issues he had raised – his public interest disclosures relating to the health and safety issues and the pushback he had received, including what he describes as threats to his role. The respondent says that the claimant resigned because he had been told he had performance issues.

60. The claimant's grievance states that he "verbally resigned on 26 October 2022 … I saw no other option but to resign as I could no longer be personally put at risk of imprisonment…". I concluded that the claimant resigned from his employment for the following reason: he had made public interest disclosures, and his comments were not properly considered – instead he was told that he would be legally liable if there was an issue. Whether this was meant seriously by Mr Kviblad I do not know, but its intent is immaterial in this context. The claimant was, I concluded, faced with a manager who told him "on a number of occasions" he was "not concerned" about the issue (75).

61. I concluded that the claimant resigned because he raised several whistleblowing complaints, his manager did not appear to take the issue seriously instead saying it would be the claimant who would be liable and raising 'concerns' about the claimants' performance. I accept that the claimant is entitled to treat these acts as a repudiatory breach of contract, made because he had raised whistleblowing allegations. The respondent therefore automatically constructively dismissed the claimant because he had whistleblown.

62. I concluded the same about the s.100 ERA claim. The claimant raised an issue of health and safety – an issue which as above he reasonably believed was potentially harmful to the health and safety of employees and the public. He did so by reasonable means – first he identified a problem, he and colleagues sourced a solution, and the problem and solution was presented to Mr Kviblad and then Mr Warstedt. Neither were prepared to take the claimant's concerns seriously, and instead the discussion turned to 'extradition', to 'prison'.

63. The claimants' concerns were effectively dismissed notwithstanding the seriousness of the issue being raised, to the extent the respondent denies he raised these issues. I conclude that this response constitutes a repudiatory breach of contract, and the reason for this dismissive response was because the claimant had reasonably raised concerns about the serious threat to the health and safety of the respondent's employees and the public.

64. The claimant argues that his 9 months' notice was terminated early, because of the above acts and because of his act of whistleblowing in relation to issues of race discrimination and sex discrimination in the workplace.

65. I did not reach a conclusion on whether the statements of the claimant in relation to race and sex discrimination constituted acts of whistleblowing. The reason: the detriment alleged by this act is said to be the decision to reduce notice from nine to three months. It was apparent on the documents that the respondent accepted the claimant's resignation, but it stated that he would be bound by the term in his contract of employment for notice – 3 months. I accept the rationale given on the face of these documents, that it was not for the claimant to choose a notice period, notwithstanding the "not less than" wording in his notice clause. I accept that the decision to terminate his contract on the stated contractual notice was not because the claimant had whistleblown, it was because he had given a lengthy notice period.

Remedy hearing

66. A remedy hearing listing will be sent to the parties shortly, listed for **3 hours**.

67. The respondent may participate in the issue of remedy. The claimant claims the balance of the notice period he gave – 9 months' salary less the 3 months payment in lieu he has received. The respondent says he received an additional £10,000 the claimant must give credit for. The respondent may make submissions on these and other remedy issues if it chooses.

Employment Judge Emery
26 June 2024

Judgment sent to the parties on:

4 July 2024
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For the Tribunal:

……

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