# EMPLOYMENT TRIBUNALS

**BETWEEN**

| **Claimant** | | **Respondent** |
|---|---|---|
| Mr Daniel Young | AND | Redde Northgate Plc |

**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

**HELD AT** Plymouth ON 8 and 9 July 2024

**EMPLOYMENT JUDGE** N J Roper **MEMBERS** Mrs V Blake
Ms R Clarke

**Representation:**

**For the Claimant: In Person**
**For the Respondent: Mrs J Skeating, Solicitor**

## JUDGMENT

**The unanimous judgment of the tribunal is that the claimant's claims are not well-founded and they are all hereby dismissed.**

## RESERVED REASONS

1. In this case the claimant Mr Daniel Young claims that he has been unfairly dismissed, and that the principal reason for this was because he had made a protected disclosure. He also brings claims for discrimination because of his sexual orientation, and in respect of an alleged breach of the Working Time Regulations 1998. The respondent contends that the reason for the dismissal was gross misconduct, and it denies all of the claims.
2. We have heard from the claimant. For the respondent we have heard from Mr Matthew Prout, Miss Trudie Smith, Mr Jason Baldwin, and Mr Mark Thompson. We were also asked to consider a signed statement from Mrs Jenny Midghall on behalf of the respondent. She was unable to attend because of ill health, and although we accepted her statement we can only attach limited weight to this because she was not here to be questioned on this evidence.
3. The Credibility of the Claimant:
4. For the reasons set out in detail below, we have found the claimant has acted dishonestly. With regard to the driving incident for which he was dismissed, we have unanimously found on the balance of probabilities that the claimant acted dishonestly by lying about whether

he was the driver or the passenger, and by deliberately and dishonestly tampering with the relevant documentary evidence during the course of a Police investigation. In addition, we have unanimously found that the claimant has dishonestly manufactured bogus text/mobile phone records in order to support his allegations before this tribunal, which have been shown to be untrue by the respondent's records.

5. On the other hand, we find that the respondent's witnesses were all measured and credible, and their evidence was entirely consistent with the contemporaneous documents.
6. For these reasons we have unanimously found that the claimant has acted dishonestly, and that his evidence was not credible. Whenever there was a conflict between the evidence of the claimant as compared to the evidence of the respondent, we therefore preferred the evidence of the respondent.
7. Bearing in mind all of the above, we found the following facts proven on the balance of probabilities after considering the whole of the evidence, both oral and documentary, and after listening to the factual and legal submissions made by and on behalf of the respective parties.
8. The Facts:
9. The respondent is Redde Northgate plc. It is a national company with approximately 65 sites, and it offers a variety of services including incident support, accident management, and repair services, as well as the provision of legal services. The claimant Mr Daniel Young describes himself as a gay man. He was employed by the respondent as a Service Delivery Driver from 4 April 2022 until 8 December 2023. His duties included driving vehicles to and from customers throughout Devon and Cornwall, and Avon, Somerset and Dorset. His duties also included cleaning and preparing vehicles for future bookings.
10. The claimant's contract of employment included the following provision: "You are employed to work on a shift system basis and your normal hours of work will be 42.5 hours per week Monday to Sunday according to the needs of the business. Your working pattern will be allocated on a rota basis which will change according to the needs of the business but will be communicated seven days in advance and will include weekend working, as per your contract of employment. There is a rota that is present on the board, and you know which days you are working and which days you are not as this is a rolling two-week rota. Typically your working hours will be between 0800 and 1800. However, this may vary in line with business requirements."
11. The respondent would allocate driving duties to his drivers on a daily basis, and the drivers were required to keep a log of the driving activity, indicating what vehicles were driven where, whether they were delivered, and whether the driver was driving or was a passenger. If the driver was driving, then the letter D would be entered next to the completed job, whereas if the driver had been a passenger, then the letter P would be entered. The claimant was meticulous and thorough in his entries, which he entered with a pink pen.
12. The respondent has a number of policies and procedures. Its Control of Driving Policy provides that: "… it is important that all employees are informed about the dangers of fatigue whilst driving and the importance of taking regular breaks when feeling tired. The HighwayCcode recommends a minimum break of at least 15 minutes for every two hours of driving." This Policy also provides that: "the driver should plan their journey including rest breaks". One of the respondent's customers is Auxillis, and its driving policy includes the following direction: "should you feel tired at any time it is your responsibility to take a break and ensure your manager is aware of this …"
13. On 20 October 2022 the claimant committed a statutory speeding offence. The claimant's Rental Manager is Mr Matthew Prout, from whom we have heard. The claimant reported to Mr Prout that he had committed the speeding offence and confirmed that he was the driver at the time. They discussed the issue, and Mr Prout decided that the matter need not be taken any further, and as far as the respondent was concerned, that was the end of the matter.
14. The relevant branch manager is Miss Trudie Smith, from whom we have also heard. She said that initially the claimant was an exemplary employee who kept neat and meticulous records in his driving logs, but after a number of months the claimant changed and seemed

keen to raise complaints and issues about the respondent's working practices. On 7 May 2023 the claimant raised a formal written grievance which ran to four pages with eight sections. (The claimant relies upon this written grievance as being his one protected public interest disclosure for his automatically unfair dismissal claim, and his protected act for the purposes of his victimisation claim.)

15. Section 1 of that grievance complained they did not been provided with a work uniform and that he had had to purchase his own clothes for work to meet the company specifications. Section 2 of the grievance complained that the personal protective equipment (PPE) with which he had been supplied did not last very long and had faded and that he decided to purchase his own replacement boots. He also complained that he had purchased protective goggles and hi-viz tops from his own money. Sections 3 and 7 referred to shift patterns and working hours, which are dealt with below. Section 4 complained that there was a toxic environment in the office and that morale amongst the drivers was low. Section 5 complained that the drivers were not valued, and they were told to deal with it or find alternative employment. Section 6 complained of retaliatory behaviour in that where drivers were in the "bad books" of the office supervisors, the drivers were then deliberately given less favourable work. Section 8 complained that the claimant was expected to use his own money to clean company vehicles.
16. Sections 3 and 7 referred to shift patterns and working hours. The gist of the claimant's complaint was that the system of working hours was "being manipulated whereby I am forced to do overtime that massively impacts my work life balance during the week, then when verbally contracted 9.5 hours on Saturday, sent home early so my forced overtime hours become contracted hours." He complained he was never able to finish on time because of an excessive workload. He complained that: "80% of shifts I am unable to take breaks due to wanting to be home at an earlier time" and: "what's worse is despite branch managers knowing that you've not had a break due to workload an hour's pay is still deducted for the break period."
17. The claimant also complained that: "had I taken my break on 6 May 2023 and finished at 9:30 pm the company would have been in breach of section 10 Working Times Regulations 1998." In fact, that was a Saturday evening when the claimant decided to finish early to collect his partner. He was not rostered to work the following day, which was a Sunday, and there was accordingly never going to be a breach of Regulation 10 which requires an 11 hour rest period between daily work periods.
18. The claimant was invited to a grievance meeting with the respondent's Regional Operations Manager Mr Jason Baldwin from whom we have heard. This took place on 1 June 2023. Mr Baldwin provided a detailed Outcome Letter dated 6 July 2023. The agreement was partially upheld with regard to the uniform provided, which was because of limited stock following a change of supplier. He confirmed that the relevant uniform had now been ordered for the claimant. The complaint about PPE was not upheld because the claimant had not requested any replacement PPE from his line manager Miss Trudie Smith. The complaint about there being a toxic office environment was not upheld because the claimant had not provided any specific examples. The complaint about drivers being undervalued was partially upheld in respect of one complaint that the claimant had been unable to have his own car serviced by the respondent's workshop. The allegation about retaliatory behaviour was not upheld. The seventh complaint about changing employee clock cards was not upheld and after investigation Mr Baldwin decided that the claimant had been paid appropriately for his contracted hours. The claimant's complaint about having to pay to wash the cars was upheld and the claimant was reimbursed for cleaning expenses.
19. The final complaint was the third complaint with regard to working hours and shift patterns. This was broken down into a number of sections. After detailed examination of the relevant records, Mr Baldwin concluded as follows. First, he concluded that the respondent had complied with the relevant contractual terms whereby the claimant's working pattern was notified seven days in advance. The second aspect related to a complaint that the claimant had to work five 9.5 hour shifts per week and he wanted to leave early on a Saturday if extra hours had been worked earlier in the week. Saturday hours were scheduled in

advance and the respondent expected those hours to be fulfilled regardless of other overtime completed earlier in the week. Overtime hours had been paid as agreed and that complaint was not upheld. The third complaint was that the claimant had effectively been forced to do overtime. Mr Baldwin examined a period of 14 weeks,and he set out a summary of the days and hours worked for the period. There were three occasions on which the claimant may not have fulfilled his normal contracted hours but nonetheless he been paid for this. In addition, there was no evidence to suggest that the claimant had been forced to do overtime because overtime hours were offered to drivers who are not obliged to accept them beyond their contracted hours. This aspect was not upheld. The claimant's fourth and fifth complaints were to the effect that he could not plan anything personally because he never finished on time and that he was not properly compensated for overtime, and these were both rejected. Having considered the claimant's timesheets there were numerous days when he has finished on time or thereabouts, and there was no additional overtime rate which had been agreed to apply to the claimant's employment.

20. The claimant's sixth complaint related to the specific shift on 6 May 2023 mentioned above. The claimant's complaint was partially upheld in that it was agreed that the claimant had worked a 12.5 hour shift which was in excess of his contracted shift which should have been between 8 am to 5 pm on that date. However, Mr Baldwin pointed out that the claimant had been at liberty to object to these overtime hours beyond his contracted shift.
21. The seventh and eighth complaints related to the unpaid break of one hour within each shift. This was not upheld, and Mr Baldwin reminded the claimant that employees were trusted to ensure that they took the required breaks throughout the day which are then deducted from the hours worked. When the respondent schedules the rota, it ensures that there is enough time between jobs, or when returning to branch, to afford drivers the opportunity to take the relevant breaks. There was no legal obligation for these breaks to be paid, and any excess over the contracted hours would be paid in accordance with the overtime policy.
22. The next complaint was that one of the respondent's managers responded during a heated exchange with the claimant about his work life balance: "if you don't like it there are plenty of other jobs". Mr Baldwin upheld that complaint and agreed that it was an inappropriate comment, and he agreed to speak to the relevant manager.
23. Finally, Mr Baldwin responded to the allegation that if the claimant taken a break on Saturday, 6 May 2023 the company would have been in breach of the requirement for an 11 hour rest break. This was rejected because the claimant was not scheduled to work the following day on Sunday, 7 May 2023 and therefore there was never ging to be any such breach. He did accept that the workload for that particular day was high and agreed to speak to the relevant managers to ensure that each working day for drivers could be completed within the required allocated hours.
24. The claimant accepted in his cross-examination that his grievance did not include any allegations of unlawful discrimination.
25. In addition, we find that the claimant did not provide any specific information that there had been a breach of any legal obligation, nor that the health and safety of any individual had been compromised. The claimant's grievance was effectively a complaint about his working hours and his work/life balance and what he perceived to be an excessive workload with unpaid breaks.
26. The claimant appealed against that grievance outcome, and Mr Mark Thompson, the respondent's Head of Territory (West), from whom we have heard, was appointed to deal with the grievance appeal. An appeal meeting was postponed at the claimant's request because he wished to have further documents, and then the claimant declined to pursue that appeal.
27. The claimant presented the first of three sets of proceedings to this tribunal on 25 June 2023 under reference number 1403823/2023. The claims were for unlawful deduction from wages, repayment of expenses for PPE, breach of Regulation 12 of the Working Time Regulations 1998, and for harassment on the grounds of sexual orientation.
28. The claimant has raised three examples of harassment on the grounds of his sexual orientation and findings of fact on each of these are as follows.

29. The first allegation is that on 22 February 2023 an agency driver (possibly called Rob) said to the claimant "wrong toilet, you want the next one as you probably sit down", and this was witnessed by Mr Prior who did not intervene. The claimant has adduced in support of this claim text messages which he says were sent to and from Mr Prout at the time. These stated: "sorry but I had to text, how can you stand there and listen to other drivers being homophobic and not challenge them, being told I'm going into the wrong toilet is also not fucking funny no matter how much you laugh, I felt degraded humiliated angry … Do you feel better now you've had a laugh at my expense? … Do you feel all big and hard, part of the macho male team?" The reply from Mr Prout is: "Sorry mate will talk when you are back".
30. Mr Prout vehemently denies that he witnessed the events in question as alleged, and he denies that he had this exchange of texts with the claimant. He was confident that the claimant or someone assisting him had accessed some online software to create these messages in order to make them appear to be to and from his telephone number. He therefore obtained the phone records from his own service provider which prove that these text messages were not sent to or from Mr Prout as alleged. The claimant was aware of this, but he did not produce any evidence from his own phone provider which might have established that they had indeed been sent and received as he alleges.
31. The second allegation is that the claimant suffered homophobic abuse in or around June or July 2023 when he overheard a colleague (Mr Paul Tucker who is now deceased) refer to him as a "perverted sodomite" to which Mr Prout is said to have replied: "Dan might be dysfunctional, probably a product of incest, but he works here, I can't just get rid of him for no reason". Mr Prout vehemently denies having witnessed Mr Tucker's comments, or that he made the comments attributed to him. The unchallenged evidence of Ms Trudie Smith was that the late Mr Tucker was very close to his grandson, who is gay, and that he would have been horrified to know that this allegation had been made. Mr Prout denies he made the comments, and notes that he is sensitive to diversity issues, not least because of the respondent's policies, but also because he is a coach of an under 15 football team, and has to address these issues responsibly.
32. The third allegation is that on 20 July 2023 the claimant overheard Mr Prout say: "Dan whinges like a woman" and then called him an "irritating faggot". Again, Mr Prout strongly denies having made these comments. The claimant has adduced more text messages dated 20 July 2023 which he claims to have sent to Mr Prout complaining of homophobic comments stating: "you are a fucking manager not their friends … Call me an "irritating faggot" and "whinges like a woman" then assuming I'm the female in my relation … You just need to be racist now and then you'll have the full set …" Again, Mr Prout's phone records from his provider prove these text messages were not sent to him as alleged, and the claimant has not adduced any evidence from his own provider to prove that they have been.
33. We unanimously find on the balance of probabilities that the claimant has deliberately manufactured non-existent text messages after the event to bolster his claims of harassment. They each involve Mr Prout, who strongly denies them all. Given the claimant's dishonesty in creating these false messages we prefer the respondent's version of events. We unanimously find that each of these three allegations of harassment simply did not occur.
34. This conclusion is further supported by the following events. The claimant asserts that he sent a second written grievance on 12 July 2023, which was a letter as an attachment to an email sent from his phone. This grievance complains: "I have been subject to negative comments and behaviours towards me following raising concerns, I have experienced homophobic comments and the most important ones have been made by Matt Prout …" The respondent denies ever having received this second grievance, and its IT department made a thorough check and concluded that it was never sent and never received. The evidence simply does not support the claimant's allegations that he raised this second grievance. Not only do the respondent's witnesses deny it, but the claimant took no further action after its alleged submission. He received no response to it, and he raised no questions at any time as to when he might receive a response. In addition, he did not

submit any follow-up complaint in respect of the second or third allegations of harassment, which he said occurred about that time. Despite these serious allegations they were never mentioned. Similarly, the claimant did not complain that he had not received a response to it during his subsequent disciplinary process. We unanimously find that this was another fabricated document which the claimant has created in a dishonest attempt to bolster his allegations in this claim.

35. In any event the employment relationship continued without any further incident until late September and into October 2023 when the Police made contact with the respondent in connection with the speeding incident involving the claimant which had arisen nearly one year earlier. It was not for this tribunal to establish the facts or the merits of what happened between the claimant and the Police, but a potted summary appears to be this. For some reason, having confessed to the respondent and presumably to the Police that he was the driver at the time of the speeding incident, the claimant was offered a speed awareness course which he arranged and paid for. He subsequently decided to challenge the actions of the Police because of perceived deficiencies in the reporting of the incident and/or the evidence and/or the calibration of the speeding equipment. This resulted in his prosecution for speeding, which was eventually withdrawn by the CPS. Nonetheless the claimant appears to have suggested during this process that he was not the driver at the time of the speeding incident in question, because the Police wrote to the respondent to request sight of the driver's logs in order to determine this point. The respondent cooperated with the Police, and they commenced their own investigation as to what had happened.
36. Mr Benham, the respondent's Branch Manager from Bristol, carried out a preliminary disciplinary investigation. He examined the driver's log in question, and it appeared clear to him that this had been retrospectively altered. He examined the claimant's written entry in the driver's log for the relevant vehicle at the relevant time. The entry of a capital D, to indicate driver, had been amended to P, to indicate passenger, by drawing a line under the D to make it look like a P. This was in a pink pen, as used by the claimant. Mr Benham also interviewed the claimant. During this interview the claimant variously said that he was the driver, then a passenger, then driving a different vehicle behind the vehicle in question which was being driven by an agency driver. Mr Benham recommended disciplinary investigation and he recommended: "it is very evident that Daniel Young was the driver, it appears that a direct attempt has been made by Daniel Young to avert a potential speeding fine and penalty points by changing his Work Attendance Defect Log to reflect himself as a "passenger", when in actual fact it is very clear that he was driving and the sole occupant of the vehicle at the time of the offence ... I conclude that this matter constitutes the need for a disciplinary hearing as Daniel Young I feel has a case to answer in relation to likely falsification of company documentation in order to avert a speeding offence and in turn bringing Redde Northgate into disrepute in the process, combined with the likelihood of perverting the course of justice, wasting Police and Company time."
37. The claimant was then called to a formal disciplinary hearing to determine allegations of gross misconduct which if proven were expressed to be likely to lead to his dismissal. The disciplinary hearing took place on 1 December 2023. Mr Baldwin, from whom we have heard, chaired the hearing. He decided to dismiss the claimant summarily by reason of gross misconduct. He believed that the claimant had retrospectively changed his driver's log once the criminal investigations had begun, presumably on the assumption that the Police would ask for it. In addition, he concluded that the claimant had been dishonest in repeatedly stating that he was not the driver of the vehicle in question, despite the fact that he had admitted the same to Mr Prout a year earlier.
38. The claimant admitted under cross-examination that he had acted dishonestly during the disciplinary investigation, and that dishonesty amounted to gross misconduct. He also conceded that it was reasonable of the respondent in the circumstances to believe that he had acted dishonestly.
39. Nonetheless the claimant appealed against his dismissal. The appeal was heard by Mr Thompson on 18 December 2023. The claimant raised a number of technical issues concerning what evidence was before the Police and/or before the respondent, and what was permissible to rely upon. Mr Thompson concluded that the claimant was attempting to

divert attention away from the specific allegations for which he had been dismissed. He concluded that the claimant had deliberately answered questions during the disciplinary investigation in a manner which he considered might best support his case in defence to the criminal speeding offence (because by that time the claimant had changed his plea to suggest he had not been driving the vehicle at the time). The claimant had variously claimed that "he did not believe that he was the driver" and/or that he "definitely was not the driver", despite stating to Mr Baldwin and Mr Thompson during the disciplinary process that he had never alleged that he wasn't the driver and had no need to falsify the paperwork. Mr Thompson concluded that the claimant had acted dishonestly and falsified the relevant paperwork, and he rejected the claimant's appeal. Mr Thompson confirmed his decision in a detailed email dated 26 January 2023.

40. Meanwhile on 18 November 2023 the claimant presented his second claim form under reference 1405882/2023 alleging unlawful deduction from wages. On 27 January 2024 the claimant presented his third claim form under reference 1400370/2024 alleging unfair dismissal for having made protected public interest disclosures, for unlawful deduction from wages, and for victimisation. The claims for unlawful deduction from wages were subsequently withdrawn. All three claims were consolidated under the last reference number, and as noted further below, the List of Issues to be determined at this hearing were finalised at a case management preliminary hearing on 30 April 2024.
41. Having established the above facts, we now apply the law.
42. <u>The Law:</u>
43. The first relevant statute is the Employment Rights Act 1996 ("the Act").
44. Section 94(1) of the Act provides the right for employees not to be unfairly dismissed. Section 108(1) of the Act generally requires a qualifying period of not less than two years' continuous employment before this Tribunal has jurisdiction to hear such a claim. There are a number of exceptions, which include where the dismissal arises from having a protected public interest disclosure.
45. Under section 43A of the Act a protected disclosure is a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H. 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 – (a) that a criminal offence has been committed, is being committed or is likely to be committed, (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject, (c) that a miscarriage of justice has occurred, is occurring or is likely to occur, (d) that the health or safety of any individual has been, is being or is likely to be endangered, (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.
46. Under Section 43C(1) a qualifying disclosure becomes a protected disclosure if it is made in accordance with this section if the worker makes the disclosure – (a) to his employer, or (b) where the worker reasonably believes that the relevant failure relates solely or mainly to – (i) the conduct of a person other than his employer, or (ii) any other matter for which a person other than his employer has legal responsibility, to that other person.
47. Under section 103A of the Act, an employee is to be regarded 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.
48. Under section 48(2) of the Act, it is for the employer to show the ground on which any act, or deliberate failure to act, was done.
49. This is also a claim alleging discrimination on the grounds of a protected characteristic under the provisions of the Equality Act 2010 ("the EqA"). The claimant complains that the respondent has contravened a provision of part 5 (work) of the EqA. The claimant alleges harassment and victimisation. The protected characteristic relied upon is sexual orientation, as set out in sections 4 and 12 of the EqA.
50. The definition of harassment is found in section 26 of the EqA. A person (A) harasses another (B) if A engages in unwanted conduct related to a relevant protected characteristic,

and the conduct has the purpose or effect of violating B's dignity, or creating an intimidating, hostile, degrading, and humiliating or offensive environment for B.

51. The definition of victimisation is found in section 27 of the EqA. A person (A) victimises another person (B) if A subjects B to a detriment because B does a protected act, or A believes that B has done, or may do, a protected act. The following are all examples of a protected act, namely bringing proceedings under the EqA; giving evidence or information in connection with proceedings under the EqA; doing any other thing for the purposes of or in connection with the EqA; and making an allegation (whether or not express) that A or another person has contravened the EqA. Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.
52. The provisions relating to the burden of proof are to be found in section 136 of the EqA, which provides that if there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred. However, this does not apply if A shows that A did not contravene the provision. A reference to the court includes a reference to an employment tribunal.
53. Regulations 10 and 12 of the Working Time Regulations 1998 relate to Rest Breaks. Regulation 10(1) provides: A worker is entitled to a rest period of not less than 11 consecutive hours in each 24-hour period during which he works for his employer.
54. Regulation 12(1) provides: Where a worker's daily working time is more than six hours, he is entitled to a rest break. Regulation 12(3) provides that: Subject to the provisions of any applicable collective agreement or workforce agreement, the rest break provided for in paragraph (1) is an uninterrupted period of not less than 20 minutes, and the worker is entitled to spend it away from his workstation if he has one.
55. Regulation 30 deals with Remedies. Regulation 30(1) provides that a worker may present a complaint to an employment tribunal that his employer has refused to permit him to exercise any right he has under the Regulations, including Regulation 10(1) and Regulation 12(1). Regulation 30(3) provides that where an employment tribunal finds such a complaint well-founded, the tribunal shall make a declaration to that effect, and may make an award of compensation to be paid by the employer to the worker.
56. We have also considered section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992, and in particular section 207A(2), (referred to as "s. 207A(2)") and the ACAS Code of Practice 1 on Disciplinary and Grievance Procedures 2015 ("the ACAS Code").
57. We have considered the cases of Cavendish Munro Professional Risks Management Ltd v Geduld [2010] ICR 325 EAT; Kilraine v London Borough of Wandsworth [2018] EWCA Civ 1436; Fecitt and Ors v NHS Manchester [2012] ICR 372 CA ; Kuzel v Roche Products Ltd [2008] ICR 799 CA; Blackbay Ventures Limited t/a Chemistree v Gahir UK/EAT/0449/12/JOJ. Chesterton Global Ltd (t/a Chestertons) and Anor v Nurmohamed [2017] EWCA Civ IDS 1077 p9; Underwood v Wincanton Plc EAT 0163/15 IDS 1034 p8 Parsons v Airplus International Limited EAT IDS Brief 1087; and Ibrahim v HCA International Ltd [2019] EWCA Civ 2007;
58. The Issues in this Case:
59. There was a case management preliminary hearing in this case at which the issues to be determined by this Tribunal were discussed and agreed. I set these out in a List of Issues in a Case Management Order dated 30 April 2024 ("the Order"). The claims are limited to these: (i) "automatically" unfair dismissal for having made protected public interest disclosures under section 103A of the Act; (ii) three instances of harassment related to sexual orientation under section 26 EqA; (iii) victimisation under section 27 EqA; and (iv) because of the respondent's alleged refusal to permit the claimant to take daily rest breaks contrary to Regulation 12 of the Working Time Regulations 1998. We deal with each of these claims in turn:
60. Unfair Dismissal - Section 103A of the Act:
61. The claimant relies on one protected public interest disclosure, namely his written grievance dated 7 May 2023 in which he claims to have raised three specific concerns: (i)

about unsafe drivers' hours, (ii) repeated breaches of the Working Time Regulations 1998, and (iii) that he had suffered discrimination by way of harassment related to his sexual orientation. The claimant did not have at least two years' continuous employment, and the burden of proof is therefore on the claimant to show that this Tribunal has jurisdiction, in that it is for him to prove that the reason, or if more than one, the principal reason for his dismissal was the protected disclosure relied upon.

62. The statutory framework and case law concerning protected disclosures was helpfully summarised by HHJ Eady QC in Parsons v Airplus International Limited UKEAT/0111/17 from paragraph 23: "[23] As to whether or not a disclosure is a protected disclosure, the following points can be made - This is a matter to be determined objectively; see paragraph 80 of Beatt v Croydon Health Services NHS Trust [2017] IRLR 748 CA. More than one communication might need to be considered together to answer the question whether a protected disclosure has been made; Norbrook Laboratories (GB) Ltd v Shaw [2014] ICR 540 EAT. The disclosure has to be of information, not simply the making of an accusation or statement of opinion; Cavendish Munro Professional Risks Management Ltd v Geduld [2010] ICR 325 EAT. That said, an accusation or statement of opinion may include or be made alongside a disclosure of information: the answer will be fact sensitive but the question for the ET is clear: has there been a disclosure of information; Kilraine v London Borough of Wandsworth [2016] IRLR 422 EAT.
63. [24] "As for the words "in the public interest", inserted into section 43B(1) of the ERA by the 2013 Act, this phrase was intended to reverse the effect of Parkins v Sodexho Ltd [2002] IRLR 109 EAT, in which it was held that a breach of legal obligation owed by an employer to an employee under their own contract could constitute a protected disclosure. The public interest requirement does not mean, however, that a disclosure ceases to qualify for protection simply because it may also be made in the worker's own self-interest; see Chesterton Global Ltd (t/a Chestertons) and Anor v Nurmohamed [2017] IRLR 837 CA (in which the earlier guidance to this effect by the EAT ([2015] ICR 920) was upheld).
64. In whistleblowing claims the test of whether a disclosure was made "in the public interest" is a two-stage test which must not be elided. The claimant must (a) believe at the time that he was making it that the disclosure was in the public interest, and (b) that belief must be reasonable –(see Ibrahim v HCA International Limited [2019] EWCA Civ 2007).
65. The statutory framework and case law concerning protected disclosures was also summarised by HHJ Tayler in Martin v London Borough of Southwark (1) and the Governing Body of Evelina School UKEAT/0239/20/JOJ. He referred to the dicta of HHJ Auerbach in Williams v Michelle Brown AM UKEAT/0044/19/00 at para 9: "it is worth restating, as the authorities have done many times, that this definition breaks down into a number of elements. First, there must be a disclosure of information. Secondly the worker must believe that the disclosure is made in the public interest. Thirdly, if the worker does hold such a belief, it must be reasonably held. Fourthly, the worker must believe that the disclosure tends to show one or more of the matters listed in subparagraphs (a) to (f). Fifthly, if the worker does hold such a belief, it must be reasonably held."
66. We find the claimant's grievance letter dated 7 May 2023 did not amount to a protected public interest disclosure for the following reasons. In general terms the claimant's lengthy and detailed grievance related to his own working conditions and working hours, and his complaint that the lengthy hours had an adverse effect on his work/life balance. There were also various complaints about his own uniform, his PPE, and a requirement to pay for cleaning equipment. We find that there was no disclosure of information in relation to specific working conditions or hours which was said to have been "unsafe". Secondly, with regard to the alleged repeated breaches of the Working Time Regulations 1988, there is one specific example which is that if he had not taken time off his shift on 6 May 2023 this could have involved the breach of Regulation 10 and the need for an 11 hour rest break. However, there was no information imparted that it had done, and indeed as a matter of fact it could not have done because the next day was a Sunday when the claimant was not working. He raised this matter because he was aggrieved at what he considered be deprivation of his own overtime. Furthermore, the detail of his grievance was largely complained about not taking the required contractual one hour break for which he was not

paid. There was no specific information given about repeated breaches of the requirement to have a 20 minute break after six hours as required by Regulation 12. As for the third element, the claimant has accepted under cross examination that the grievance did not include any allegations of unlawful discrimination.

67. For these reasons we find that the claimant did not make any disclosure of information which, in his reasonable belief in making the disclosure, was made in the public interest and tended to show that a person had failed, was failing or was likely to fail to comply with any legal obligation to which he is subject, or that the health or safety of any individual had been, was being or was likely to be endangered. In addition, the claimant has given no evidence as to why he reasonably believed that any of his grievance is said to have been in the public interest.
68. In the absence of a protected public interest disclosure, the claimant's claim that he was unfairly dismissed because of such a disclosure cannot succeed, and we dismiss it for that reason.
69. In any event, even if we are wrong about this, and the grievance amounts to a protected public interest disclosure, in this case we have unanimously decided that the sole reason for the claimant's dismissal was his gross misconduct. We have found that the claimant acted dishonestly by lying about which vehicle he was driving and when, and by deliberately and dishonestly tampering with the relevant documentary evidence, in order to deceive both the respondent, and, presumably, the Police. That was the conclusion reached by the respondent. We find that not only was that a reasonable conclusion to reach, but on the face of the evidence it was the only conclusion to reach. We find the claimant's grievance had nothing to do with his dismissal and that it had no material influence on the decisions made by the respondent to dismiss the claimant and subsequently to reject his appeal. The claimant has not discharged the burden of proof upon him to show that the reason, or if more one the principal reason, for his dismissal was because he had made a protected public interest disclosure. We have no hesitation in finding that his claim for unfair dismissal is not well founded, and it is hereby dismissed.
70. Harassment:
71. The claimant raises three specific allegations of harassment, as follows. First, on 22 February 2023 an agency driver (possibly called Rob) said to the claimant "wrong toilet, you want the next one as you probably sit down" and this was witnessed by Mr Prout, who did not intervene. Secondly, in or around June or July 2023, the claimant suffered homophobic abuse in that he overheard another older driver (Mr Paul Tucker who is now deceased) refer to him as a "perverted sodomite" to which Mr Prout replied: "Dan might be dysfunctional, probably a product of incest, but he works here, and I can't just get rid of him for no reason". Thirdly, on 20 July 2023 the claimant overheard Mr Prout say "Dan whinges like a woman" and then called him an "irritating faggot".
72. Turning now to the claim for harassment, A person (A) harasses another (B) if A engages in unwanted conduct related to a relevant protected characteristic, and the conduct has the purpose or effect of violating B's dignity, or creating an intimidating, hostile, degrading, and humiliating or offensive environment for B. The assessment of the purpose of the conduct at issue involves looking at the alleged discriminator's intentions. In deciding whether the conduct in question has the effect referred to, the tribunal must take into account the perception of B; the other circumstances of the case, and whether it is reasonable for the conduct have that effect (s26(4) EqA).
73. For the reasons set out in our findings of fact above, we have decided that the allegations made by the claimant are factually incorrect and simply did not happen. For this reason we conclude that the claimant's claim is not well founded, and it is hereby dismissed.
74. Victimisation:
75. The claimant relies on his written grievance dated 7 May 2023 as a protected act for the purposes of section 27 EqA because he complained of unlawful discrimination by way of harassment. The claimant relies on one act of detriment, namely the act of dismissal. The respondent concedes that by way of his dismissal the claimant was subjected to a detriment.

76. Under section 27 EqA, a person (A) victimises another person (B) if A subjects B to a detriment because B does a protected act, or A believes that B has done, or may do, a protected act. The burden of proof will shift if the worker proves that the employer has done a protected act, and that the worker has been subject to a detriment.
77. However, the claimant has conceded in cross examination that his grievance dated 7 May 2023 does not complain of unlawful discrimination. For this reason, we find that it is not a protected act for the purposes of section 27 EqA. The claimant's claim for victimisation must therefore fail because there was no protected act which has caused the detriment in question.
78. In any event, we repeat our comments above with regard to the dismissal. In this case we have unanimously decided that the sole reason for the claimant's dismissal was his gross misconduct. We have found that the claimant acted dishonestly by lying about which vehicle he was driving and when, and by deliberately and dishonestly tampering with the relevant documentary evidence, in order to deceive both the respondent, and, presumably, the Police. We have no hesitation in rejecting the claimant's assertion that his dismissal was an act of victimisation arising from his grievance. The claimant was dismissed because he had committed gross misconduct and his dismissal was in no way related to the alleged protected act relied upon.
79. We therefore find that this claim of victimisation is not well founded, and it is also hereby dismissed.
80. Working Time Regulations 1998:
81. Finally, we turn to the claimant's claim under the Working Time Regulations 1998. Regulation 30(1) provides that a worker may present a complaint to an employment tribunal that his employer has refused to permit him to exercise any right he has under the Regulations, including Regulation 10(1) and Regulation 12(1).
82. We accept that the claimant made complaints about his working hours to the respondent, but these were generally along the lines that his working hours were excessive, he objected to compulsory one-hour unpaid breaks, and he felt that the respondent's system deprived him of overtime when he worked beyond his contractual hours. In reply, the respondent says that it monitored the working hours of all drivers, and that they were required to take the necessary breaks, and that they were trusted to do so. Against this background, the claimant has provided no evidence that the respondent has ever refused to allow the claimant to take his daily 20 minute rest break after six hours, or a rest break of 11 hours within 24 hours of working. The claimant has simply not proven his claim that the respondent refused to permit him to exercise any rights under the Working Time Regulations 1998.
83. For this reason, we conclude that this claim is not well founded, and it too is hereby dismissed.
84. In conclusion therefore, all of the claimant's claims are dismissed.

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Employment Judge N J Roper
Dated 10 July 2024

Judgment sent to Parties on
24 July 2024

Jade Lobb
For the Tribunal Office