



EMPLOYMENT TRIBUNALS

Claimant: Mr S Cresswell

Respondent: (1) High Peek Two (HS2) Limited
(2) Talascend Limited
(3) Atkinsrealis UK Limited

Heard at: London South Employment Tribunal

Before: Employment Judge Dyal

JUDGMENT

UPON considering the terms of a consent order signed by all parties and
UPON considering the Agreed List of Issues that is appended hereto and
UPON the parties agreeing that:

1. The First Respondent admits that:
 - a. the Claimant made the protected disclosures set out in paragraphs 1(a)(i) to 1(a)(v) of the Agreed List of Issues; and
 - b. because the Claimant made the protected disclosures set out in paragraphs 1(a)(i) to 1(a)(v) of the Agreed List of Issues, he was subject to the detriments set out at paragraphs 5(a) and 5(b) of the Agreed List of Issues.
2. The Claimant withdraws the alleged detriment at paragraph 5(c) of the Agreed List of Issues.
3. The Claimant withdraws his claims against the Second Respondent (Talascend Limited) and the Third Respondent (AtkinsRéalis UK Limited) in their entirety.
4. The Second Respondent and the Third Respondent will not make any application for costs against the Claimant.

BY CONSENT THE TRIBUNAL'S JUDGMENT IS THAT:

5. The First Respondent is liable for the detriments at paragraphs 5(a) and 5(b) of the Agreed List of Issues.
6. The alleged detriment at paragraph 5(c) of the Agreed List of Issues is dismissed upon withdrawal.

7. The claims against the Second and Third Respondents are dismissed upon withdrawal.
8. No order as to costs against the Claimant, the Second Respondent or Third Respondent.

Employment Judge Dyal

Date **19.07.2024**

SENT TO THE PARTIES ON: **29 July 2024**

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FOR EMPLOYMENT TRIBUNALS

IN THE LONDON SOUTH EMPLOYMENT TRIBUNAL

Case No: 2300933/2023

BETWEEN:

STEPHEN CRESSWELL

Claimant

- and -

HIGH SPEED TWO (HS2) LIMITED (1)

TALASCEND LIMITED (2)

ATKINSREALIS UK LIMITED (3)

Respondents

**LIST OF ISSUES - AGREED AS BETWEEN CLAIMANT AND FIRST AND THIRD
RESPONDENTS**

Protected Disclosure

1. Did the Claimant make any qualifying disclosures as defined in section 43B of the Employment Rights Act 1996? The Tribunal will decide:
 - a. What did the Claimant say or write? To whom? The Claimant says he made the qualifying disclosures:
 - i. On 5th November 2021, in an email to Paul Seller, Graham Ramsden, Georgina O'Reilly and Shah Ahmed of the First Respondent. Having prepared scenarios that tested what happened to cost forecasting if there were changes in inputs, the Claimant shared these scenarios with the above individuals. In response, Paul Seller stated that two of the scenarios significantly increased the forecasted costs and should therefore be disregarded. The Claimant rejected this suggestion, since disregarding the two scenarios significantly increased the forecasted costs and would be actively misrepresenting the

project in order to secure ongoing funding. In particular, the Claimant stated:

"I think you should definitely consider/think about the final 2. Recent experience was the utilities point has moved outside the previously identified range. Accepting or rejecting the final two scenario depends on whether you think utilities experience was part of a systemic issue or a one off (or something in between). People who believe in RCF believe in global systemic issues. So there could be some discussion about this. The risk review is a good idea anyway, but will have to make some quite significant changes to change the forecast."

ii. On 8th March 2022, in a memo emailed to Paul Seller and Graham Ramsden on 9th March 2022. The Claimant relies on the whole memo as a protected disclosure, and the following passages in particular:

1. *"I find myself in a very uncomfortable position, having a professional view of the Phase 2A QCRA forecast that is very different to the HS2 documented position. The implications of my viewpoint would be that the Phase 2A will very likely have costs outside the funding envelope, and that HS2 is outside its stated risk appetite position to 'only tolerate low levels of risk to the achievement of programme targets'."*
2. *"The cost ranges for planned works arising from this approach are massive. The largest is for Cuttings and Embankments which is showing a potential saving of up to £209m and a potential cost increase of up to £348m – a range of £557m. In contrast the largest maximum exposure in the register is £235m and the majority of the risk items (265 out of 311) have a maximum exposure of less than £50m. I appreciate there are reasons for this incongruence, including but not limited to, different individuals being responsible for risk, opportunity and*

cost uncertainty and the compressed timescales for the analysis; however having such a massive range left without investigation is not defensible."

3. *"In my view to realise 30% savings on projected costs against such large components is highly optimistic and/or implausible absent any large foreign exchange effects and abnormal market conditions. If the Estimation Uncertainty were to be investigated I believe the 30% current upside would be reduced to 5% or 10%, or changed to an event type opportunity."*

- iii. On 25th April 2022, forwarding the memo dated 8th March to Sharon Brock of the First Respondent.
- iv. On 26th April 2022, at a meeting with Sharon Brock and Russell Askew of the First Respondent. During the meeting, the Claimant stated, inter alia:
 1. The Claimant summarised the information disclosed in the 8th March 2022 memo.
 2. The costs coming out of the baseline estimate had been understated.
 3. He believed that fraud had been committed because he understood fraud to be making false statement so as to secure a benefit.
 4. He believed he would be exited out of the organisation as a result of the 8th March 2022 memo.
- v. On 23rd September 2022, forwarding the memo dated 8th March 2022 to Alan Foster of the First Respondent.

- b. Was it a disclosure of information?
- c. Did the Claimant believe the disclosure of information was made in the public interest?
- d. Was that belief reasonable?
- e. Did he believe it tended to show:

- i. The First Respondent had failed and/or was failing and/or was likely to fail to comply with a legal obligation to which it was subject: C says that legal obligation was an obligation to provide reasonable and accurate costings, forecasts and budgets to HM Treasury.
 - ii. A criminal offence had been committed and/or was being committed and/or was likely to be committed. The Claimant says the criminal offence was fraud.
 - f. Was that belief reasonable?
2. If the Claimant made a qualifying disclosure, was it a protected disclosure because it was made to the Claimant's employer?
 3. If the Claimant made a qualifying protected disclosure as set out in paragraphs 1 and 1 above, was the Third Respondent aware of it or them?
 4. If the Third Respondent was aware of the qualifying protected disclosure(s), were they aware of them in advance of any of the purported detriments in July 2022, September 2022 and/or November 2022?

Detriment

5. Did the Respondents do the following things:
 - a. Not considering the Claimant for two Risk Assessment consultancy roles on the HS2 project in July 2022.
 - b. Terminate the Claimant's contract with effect from 30th September 2022.
 - c. Not offering the Claimant an analyst role on Phase 2A of the HS2 project in November 2022
6. By doing so, did they subject the Claimant to detriment?
7. If so, was it done on the ground that he had made the protected disclosure(s) set out above?

Jurisdiction

8. Were the detriment complaints made within the time limit in section 48 of the Employment Rights Act 1996? The Tribunal will decide:

- a. Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act/omission complained of?
- b. If not, was there a series of similar acts or failures and was the claim made to the Tribunal within three months (plus early conciliation extension) of the last one?
- c. If not, was it reasonably practicable for the claim to be made to the Tribunal within the time limit?
- d. If it was not reasonably practicable for the claim to be made to the Tribunal within the time limit, was it made within a reasonable period?

DATED the 22nd day of February 2024

