EMPLOYMENT TRIBUNALS

Heard at:	London South	**On:**	13 November 2024
Claimant:	Mr J Smith		
Respondent:	South Thames Colleges Group		
Before:	Employment Judge Ramsden		
	Mrs J Clewlow		
	Ms N O'Hare		
Representation:			
Claimant	In person		
Respondent	Mr C Crow, Counsel		

RESERVED JUDGMENT

Background facts

1. On 5 January 2015 the Claimant commenced work for the Respondent, as a Workshop Assistant. The Claimant initially worked solely in Carpentry, but in the summer of 2015 he started to assist with the Multicraft workshop as well as doing mainly Carpentry-related work.

2. The Claimant first made three qualifying disclosures:

   a) The first in 2016;

   b) The second from 2018 onwards; and

   c) The third in September or October 2021.

3. The Claimant had a period of sickness absence which began in July 2020, and his return to health coincided with the pandemic. Given his vulnerably to a serious reaction to Covid 19, the Claimant's return was delayed until late May/early June 2021.

4. On 13 September 2021, Steve Miller, who was the deputy head of the Construction team in which the Claimant worked, told the Claimant that he was no longer performing the role of Workshop Support for Carpentry, and that the new agency worker was going to cover those duties in his place. Instead, the Claimant was to be assigned to Brickwork and Plumbing. The Claimant was unhappy about this, and so he contacted his trade union, which advised that he raise a grievance. The Claimant's remuneration did not change when his duties were altered.

5. On 14 September 2021 the Claimant raised a Stage 1 informal grievance with John Duffy, Senior Technician.

6. In September and October 2021, various incidents occurred which resulted in the Respondent commencing a disciplinary process which ultimately resulted in his dismissal.

7. On 23 September 2021, the Claimant filed a written grievance (a Stage 2 grievance under the Respondent's Grievance Policy) about his reassignment from Carpentry to Brickwork and Plumbing.

8. The Claimant withdrew his grievance on 30 September 2021 because of "*the possibility of further change*". The Claimant never reinstated his grievance or raised another.

9. The Claimant was dismissed summarily by the Respondent on 31 March 2022 for gross misconduct.

10. Early conciliation commenced on 11 April and ended on 22 May, both of 2022.

11. The Claimant presented his Claim Form on 3 August 2022, bringing complaints of unfair dismissal and protected disclosure detriment, both pursuant to the Employment Rights Act 1996 (the **1996 Act**).

12. At a Preliminary Hearing for Case Management before EJ Leith the Claimant's complaints were listed and a list of issues in this claim compiled.

13. A Final Hearing took place to determine liability only over four days beginning on 19 March 2022, with this Tribunal Panel. As part of that hearing the Respondent made submissions to the effect that the Tribunal did not have jurisdiction to determine the Claimant's protected disclosure detriment complaint as it had been presented out of time. The Employment Judge asked the Claimant questions about the reasons for the timing of the presentation of his Claim Form when the Claimant was giving his evidence, and the Claimant's position was that:

    a) He was told by the Respondent that they would sort his timetable out (i.e., remove the detriment), and the Claimant had faith that that would happen until the end of December 2021;

    b) In the period early January 2022 to the date he was dismissed, 31 March 2022, the Claimant:

(i) did not know about the time limits that applied to his protected disclosure detriment complaint; and

(ii) had a period of sickness absence due to a torn knee muscle;

c) After he was dismissed by the Respondent the Claimant telephoned ACAS, and early conciliation began (11 April 2022); and

d) He presented his Claim Form on 3 August 2022.

14. The Tribunal reserved its judgment.

15. Judgment *on liability* was reached on 16 May 2024, and sent out by the Tribunal to the parties on 10 June 2024. That judgment determined that the Claimant's unfair dismissal complaint was not successful, but his complaint for protected disclosure detriment was. Erroneously, that judgment failed to deal with the question of whether the Tribunal had jurisdiction to determine the protected disclosure detriment complaint.

16. The Respondent did not make an application for reconsideration of the Tribunal's liability judgment, and a hearing at which remedy is to be determined was listed for today.

17. The day before the remedy hearing the Respondent realised that the Tribunal's liability judgment had failed to deal with the question of its jurisdiction to determine the protected disclosure detriment complaint. It wrote to the Tribunal pointing out that the Tribunal had neglected to do so, and applied for the Tribunal to reconsider its judgment so as to determine that issue.

The issues

18. The complaints and issues in the case were discussed and listed at the Preliminary Hearing before EJ Leith on 21 June 2023, and parts of that list of issues relevant to time limits and remedy for protected disclosure detriment are reproduced below.

19. In addition, the Tribunal needed to consider whether the "slip rule" should be used, or reconsideration should be undertaken by the Tribunal, so as to address the question of whether the Claimant's protected disclosure detriment complaint was presented in time that had been ventilated in the liability hearing.

1. Time limits

1.1 Given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before 24 March 2022 may not have been brought in time.

1.2 Was the protected disclosure detriment claim made within the time limit in section 48 of the Employment Rights Act 1996? The Tribunal will decide:

1.2.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act complained of?

1.2.2 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?

1.2.3 If not, was it reasonably practicable for the claim to be made to the Tribunal within the time limit?

1.2.4 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?

8. Remedy

Detriment

8.1 What financial losses has the detrimental treatment caused the claimant?

8.2 Has the claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?

8.3 If not, for what period of loss should the claimant be compensated?

8.4 What injury to feelings has the detrimental treatment caused the claimant and how much compensation should be awarded for that?

8.5 Is it just and equitable to award the claimant other compensation?

8.6 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

8.7 Did the respondent or the claimant unreasonably fail to comply with it?

8.8 If so, is it just and equitable to increase or decrease any award payable to the claimant? By what proportion, up to 25%?

8.9 Did the claimant cause or contribute to the detrimental treatment by their own actions and if so, would it be just and equitable to reduce the claimant's compensation? By what proportion?

8.10 Was the protected disclosure made in good faith?

8.11 If not, is it just and equitable to reduce the claimant's compensation? By what proportion, up to 25%?

The hearing

20. The Respondent was represented in the hearing by Mr Crow, Counsel (who had represented the Respondent in the liability hearing). The Claimant represented himself.

21. The parties had agreed a remedy hearing bundle of 102 pages. The Respondent provided a bundle of authorities running to 77 pages. The Claimant had produced a one-page witness statement in preparation for this hearing, and the Respondent prepared a skeleton argument pertaining to remedy only running to 4 pages.

Law

The Tribunal's failure to consider the applicable time limits at the liability hearing

22. Rule 69 of the Employment Tribunals Rules of Procedure 2013 (the **ET Rules**) includes the following:

"*An Employment Judge may at any time correct any clerical mistake or other accidental slip or omission in any order, judgment or other document produced by a Tribunal.*"

This is colloquially known as "the Slip Rule".

23. Rule 70 of the ET Rules is the first rule relating to reconsideration of judgments, and that states:

"*A Tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) or on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration, the decision ("the original decision") may be confirmed, varied or revoked. If it is revoked it may be taken again.*"

24. Rule 71 sets out how a party may apply to the tribunal for a reconsideration of a judgment:

"*Except where it is made in the course of a hearing, an application for reconsideration shall be presented in writing (and copied to all the other parties) within 14 days of the date on which the written record, or other written communication, of the original decision was sent to the parties or within 14 days of the date that the written reasons were sent (if later) and shall set out why reconsideration of the original decision is necessary.*"

25. Rule 5 is a general rule that applies to time limits in the other ET Rules:

"*The Tribunal may, on its own initiative or on the application of a party, extend or shorten any time limit specified in these Rules or in any decision, whether or not (in the case of an extension) it has expired.*"

26. In the case of *Banerjee v Royal Bank of Canada* UKEAT/189/19, one of the issues in dispute before the EAT was the propriety of the size of the ACAS uplift that the tribunal had applied to the claimant's unfair dismissal compensatory award. Liability had been determined in a first hearing where the tribunal also made a determination in relation to the issue of ACAS uplift. At the subsequent remedies hearing the respondent made submissions that the tribunal should reconsider that uplift of its own initiative under Rule 70 of the ET Rules. The EAT found that the tribunal's ability to use "*its own initiative*" to reconsider its decision was not vitiated by the respondent's submissions that it was appropriate for the tribunal to take that initiative. However, reconsideration by the tribunal "*on its own initiative*" is a separate process to a situation where the tribunal is asked by a party to reconsider its decision, to which time limits, and the potential to seek an

extension to those time limits under Rule 5, apply. Lord Summers in the EAT observed that

"*a request or application from outside the tribunal should be treated as excluding a tribunal reconsidering 'on its own initiative'.*"

Time limits for protected disclosure detriment complaints

27. Section 48(3) of the 1996 Act governs the bringing of complaints under section 47B for protected disclosure detriment, and that section stipulates:

"*An employment tribunal shall not consider a complaint under this section unless it is presented-*

(a) before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates…, or

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months."

28. Section 48(4A) provides that:

"*Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (3)(a).*"

29. As subsection (3) clearly shows, time limits are not a mere formality – the tribunal does not have jurisdiction to hear a complaint unless the condition(s) in either subsection (3)(a) or (b) is (are) satisfied.

Presentation within a longer period

30. Where the three month time limit (as extended by early conciliation if appropriate) has expired, in order for the Tribunal to hear the complaint it must be satisfied **both** that:

a) it was not reasonably practicable for the Claimant to bring their claim within the time limit; and

b) it was presented within such further period as the tribunal considers reasonable.

31. The starting assumption is that, in passing the 1996 Act in the terms it did, Parliament has set an expectation that the primary time limit is the period within which, in the ordinary course of events, it *is* reasonably practicable for would-be litigants to meet. There is also a strong public interest in claims being brought promptly.

32. The burden of proof is on the claimant to show the reason or reasons which rendered it not reasonably practicable to meet the limitation period (*Porter v Bandridge Ltd [1978] IRLR 271*).

Internal procedure pending

33. There has been considerable case law on whether waiting for the completion of an internal appeal procedure against the employer's decision to dismiss renders it "*not reasonably practicable*" to bring a claim before that process is complete. The theme of those cases is that waiting to exhaust the employer's internal appeal process on its own is not enough (*Palmer and anor v Southend-on-Sea Borough Council* [1984] ICR 372) – something more will be needed. In the case of *John Lewis Partnership v Charman* EAT 0079/11, the EAT found that 'something more' to be the claimant's youth and inexperience, his dependence on his parents' advice and his ignorance of his legal rights. In light of those particular circumstances the EAT concluded it was not reasonably practicable for the claimant to present his claim in the primary time limit period.

Ignorance of rights

34. Where the claimant is ignorant as to his rights, the Court of Appeal decision in *Dedman v British Building and Engineering Appliances Ltd* [1974] ICR 53, as considered in *Porter*, indicates that the tribunal is to ask whether the claimant's ignorance was reasonable in the circumstances.

Presentation within reasonable further period

35. The second condition, that the tribunal be satisfied that the claim was "*presented within such further period as the tribunal considers reasonable*", does not require the tribunal to be satisfied that it was presented as soon as reasonably practicable after the expiry of the time limit (*University Hospitals Bristol NHS Foundation Trust v Williams* EAT 0291/12).

36. What amounts to the "*further period as the tribunal considers reasonable*" is a question of fact on the circumstances of the case, and involves consideration of both:

    a) the factors causing the delay; and

    b) the period that should reasonably be allowed in those circumstances,

    in the context of the primary time limit set by Parliament and the strong public interest of claims being brought promptly (*Cullinane v Balfour Beatty Engineering Services Ltd* EAT 0537/10). The impact on the employer may also be relevant, for example in cases where the delay is substantial and that may prejudice the employer's ability to resist it (*Biggs v Somerset County Council* [1996] ICR 364).

<u>Protected disclosure detriment: remedy</u>

37. Section 49 of the 1996 Act provides that:

    "*(1) Where an employment tribunal finds a complaint [the cross-references include complaints of protected disclosure detriment] well-founded, the tribunal—*

    (a) ***shall*** *make a declaration to that effect, and*

(b) ***may*** *make an award of compensation to be paid by the employer to the complainant in respect of the act or failure to act to which the complaint relates*" (emphasis added).

38. In the case of protected disclosure detriment, pursuant to section 49(3):

"*the amount of the compensation awarded shall be such as the tribunal considers just and equitable in all the circumstances having regard to—*

(a) the infringement to which the complaint relates, and

(b) any loss which is attributable to the act, or failure to act, which infringed the complainant's right."

39. The EAT has determined that it is appropriate to adopt the same approach to compensation in protected disclosure detriment complaints as it is for discrimination complaints (*Virgo Fidelis Senior School v Boyle* [2004] ICR 1210).

40. This means that there are three potential heads of remedy for protected disclosure:

a) Loss;

b) Injury to feelings (which may include aggravated damages where appropriate); and

c) Personal injury.

41. Section 49(3)(a) obliges the tribunal to have regard to "*the infringement to which the complaint relates*", but the aim is to compensate not to punish. Having regard to the infringement means having regard to the nature of the complaint when assessing the resultant loss, for example, because the more serious the infringement, the more likely it is that the claimant's feelings have been injured (*Virgo*).

42. The task for the Tribunal, if an award of compensation is appropriate, is to assess the degree to which the claimant's feelings have been injured by the unlawful discrimination or victimisation.

43. As described in the classic case of *Vento v Chief Constable of West Yorkshire Police (No. 2)* [2002] EWCA Civ 1871:

"*An injury to feelings award encompasses subjective feelings of upset, frustration, worry, anxiety, mental distress, fear, grief, anguish, humiliation, unhappiness, stress and depression.*"

44. The focus is on the actual injury suffered by the claimant and not the gravity of the acts of the respondent (see *Komeng v Creative Support Ltd* UKEAT/0275/18/JOJ).

45. The questions for a tribunal are:

a) Has the claimant proven with evidence that they have suffered an injury to feelings?

b) Was the protected disclosure detriment the cause of that injury?

c) What level of award appropriately compensates the injury, without punishing the respondent? An award should not be so low that it diminishes the respect for the policy of protecting against whistleblowing, but feelings of indignation at the respondent's conduct should not be allowed to inflate the award.

46. "*When assessing compensation, [Tribunals] should keep a sense of due proportion. This involves looking at the individual components of any award and then looking at the total to make sure that the total seems a sensible.*"

(*Prison Service v Johnson* [1997] IRLR 162 and *Ministry of Defence v Cannock* [1994] IRLR 509).

47. Some guidance as to degree of injury relative to the range of degrees of injury sadly seen by the Employment Tribunal is provided by the Presidential Guidance entitled "*Employment Tribunal awards for injury to feelings and psychiatric injury following* De Souza v Vinci Constructions (UK) Ltd *[2017] EWCA Civ 879*" from 5 September 2017, as supplemented by annual addenda thereafter. The upshot of those documents is that they set out "bands" of injury to feelings, and value ranges of compensation attaching to those bands. For a Claim Form presented on 3 August 2022, the bands are:

a) The lower band (less serious cases): £990 to £9,900;

b) The middle band (cases that do not merit an award in the upper band): £9,900 to £29,600;

c) The upper band (most serious cases): £29,600 to £49,300; and

d) Exceptional cases: sums exceeding £49,300.

48. Where there is more than one cause for an injury to the claimant's feelings, not all of which the respondent needs to answer in compensation (for example, where a claimant's feelings were injured by a fair dismissal for which no compensation should be paid as well as a protected disclosure detriment which may attract an award of compensation), the tribunal must ask itself:

a) Whether the respondent's breach of duty had materially contributed to the harm; and

b) If so, what portion of that harm is attributable to the respondent's breach

(*Thaine v London School of Economics* [2010] ICR 1422).

49. The exercise of apportionment may not always be straightforward, and in such cases the tribunal should identify a rational basis on which the *harm suffered* (not the contribution) can be apportioned between a part caused by the employer's wrong and a part which is not so caused (*BAE Systems (Operations) Ltd v Konczak* [2017] IRLR 893). If the injury is truly indivisible, the claimant should be compensated for the whole injury.

50. Compensation for detriment on the grounds of having made a protected disclosure may be adjusted in three ways:

    a) Where the disclosure was not made in good faith and it is just and equitable in all the circumstances to do so, the tribunal *may* reduce any award it makes to the claimant by no more than 25% (section 49(6A));

    b) Where the claimant caused or contributed to the respondent's act or failure to act, the tribunal *shall* reduce the amount of compensation by such proportion as it considers just and equitable (section 49(5)); and/or

    c) Where there has been a failure to follow the ACAS Code (section 207A and Schedule A2 of the Trade Union and Labour Relations (Consolidation) Act 1992).

Application to the claims here

The Tribunal's failure to consider the applicable time limits at the liability hearing

51. It is regrettable that the Tribunal failed to deal with the jurisdictional question of whether the protected disclosure detriment complaint was presented within time at the liability hearing. This was not a mistake suitable for correction by use of the "slip rule" in Rule 69, as it involves substantive determination of an issue which goes to the Tribunal's jurisdiction. It was a matter on which the Respondent had made submissions and the Claimant gave evidence.

52. It is also regrettable that the Respondent did not pick up on this error and make an application for reconsideration within the 14 day period envisaged by Rule 71.

53. This is a clear case where the Respondent's application for an extension of time under Rule 5 to the period in Rule 71 in which it may make an application for reconsideration is appropriate. It is plainly in the interests of justice that the Tribunal's jurisdiction to determine the complaint is out on sound footing, and so the Respondent's application is granted.

54. In the alternative, the Tribunal considers that this case is distinguishable from that the concern expressed in *Banerjee* that a tribunal cannot reconsider "*of its own initiative*" when an application has been made by a party on the same subject. This case is distinguishable because the matter in question goes to the Tribunal's jurisdiction, and therefore needs to be determined, as it was not determined at the liability hearing.

Time limits

Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act complained of? (Issue 1.2.1)

55. It is clear that the claim was not made within that time period. The act complained of was the alteration of the Claimant's duties, which occurred on 13 September 2021. Early conciliation did not occur until 11 April 2022, so it does not affect the

time period within which section 48 expected he would present his claim. The latest date he had, on the face of it, to present his complaint was 12 December 2021. He in fact presented his Claim Form on 3 August 2022, so more than seven months later.

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? (Issue 1.2.2)

56. No, it was a one-off act of detriment.

If not, was it reasonably practicable for the claim to be made to the Tribunal within the time limit? (Issue 1.2.3)

57. The primary limit, unaffected by ACAS Early Conciliation (as that post-dated this period) ran from 13 September to 12 December 2021. The Tribunal is of the view that it was not reasonably practicable for the Claimant's complaint to be presented in that time period for the following reasons:

    a) The Claimant's clear evidence was that he had expressed his unhappiness at the alteration to his timetable, and he was given assurance by management that it was going to be sorted out. The Respondent denies that any such reassurance was given, but support for this comes from the terms under which the Claimant withdrew his grievance on 30 September 2021, where he withdrew it because of "*the possibility of further change*". We find that the Claimant did believe that there was the possibility that this could be resolved by discussion throughout this first period.

    b) While the case of *Palmer* stands as authority for the fact that seeking to resolve the matter by an internal procedure is insufficient on its own to support a finding that it was not reasonably practicable to present a claim, the case of *Chapman* shows that, a pending internal procedure together with 'something more' may make it not reasonably practicable.

    c) In this case, the Claimant also said that:

        (i) he was ignorant of his right to bring a claim for protected disclosure at that time, and that his ignorance was not corrected until he telephoned ACAS after he was dismissed on 31 March 2022;

        (ii) he had torn a muscle in his knee and was in significant pain; and

        (iii) he was responding to the misconduct allegations that ultimately formed the basis for his dismissal.

    The Claimant's ignorance of his rights needs to be reasonable ignorance for it to contribute to a conclusion that it was not reasonably practicable for him to present his claim in this period (*Dedman*). The Claimant was receiving some union assistance at the time, but it was also a time when his knee was injured and he was responding to the misconduct allegations.

The Tribunal considers the Claimant's ignorance of his rights in this period to be reasonable in the context of those competing demands on his time and focus. The Tribunal considers that these three features are sufficient to provide the 'something more' that meant it was not reasonably practicable for the Claimant to present his protected disclosure detriment in this period.

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? (Issue 1.2.4)

58. The Tribunal considers that the Claimant did present his claim within a further reasonable period after the end of the primary time limit.

59. The Tribunal has determined that there are three distinct periods of time to which different analyses apply:

    a) The period following the end of the primary time on 12 December to 31 December 2021;

    b) The period 1 January 2022 to 1 April 2022; and

    c) 2 April 2022 to 3 August 2022.

60. In relation to the first period (12 to 31 December 2021): we consider it was reasonable for the Claimant not to present his complaint of protected disclosure detriment to the Tribunal for the same reasons as to why it was not reasonably practicable to present that complaint within the primary time limit. The same reasons operated until 31 December 2022.

61. In relation to the second period (1 January to 1 April 2022):

    a) The Claimant's evidence was that he had given up hope of discussion with line management yielding sufficient changes to his timetable to resolve his concerns, but the misconduct procedure was ongoing, and he was confident that that process would vindicate his position.

    b) The dominant reason he gave for not presenting a claim form at this time was his ignorance of his legal rights and of the time limits that applied to them. Similarly to the analysis above, this ignorance will only render it reasonable for the Claimant not to have presented his claim in this period if it was reasonable for the Claimant to remain ignorant. In the context of the Claimant being embroiled in the disciplinary process that ultimately resulted in his dismissal, together with his ongoing health problems, we consider the Claimant's ignorance of his rights at this time to be reasonable. The Claimant regarded the alteration of his duties as an attempt to encourage him to resign from his employment, and he considered the allegations of misconduct to be unfounded and part of that same campaign on the part of the Respondent to get rid of him. While we have found the Claimant's dismissal to be fair, that does not mean that this was not the Claimant's state of mind at the time. He did not distinguish his

protected disclosure complaint from the disciplinary process that was ongoing. In that situation, while internet searches would have informed him about time limits applicable for presenting claims to the Employment Tribunal, he was not at that time contemplating a claim because he was still resisting what he saw as part of the same process – the disciplinary process.

c) In these circumstances we consider the Claimant's ignorance of his rights – and the time limits applicable to their exercise – reasonable. We find it was not reasonable for the Claimant to present his protected disclosure detriment complaint in this period.

62. As regards the third period (2 April to 3 August 2022):

a) The Claimant telephoned and spoke to ACAS shortly after his dismissal on 31 March 2022, and ACAS advised him about time limits for presenting a claim.

b) However, the Claimant again did not regard his protected disclosure detriment and his unfair dismissal complaints as distinct – he saw them as all part of the same conduct on the part of the Respondent - and the primary time limit for the latter was only just beginning to run. The Claimant presented his Claim Form within the primary time limit for the dismissal-related complaint when, after a period of Early Conciliation between 11 April and 22 May 2022, he filed his Claim Form on 3 August 2022. The fact that this complaint was 'in time' and the Claimant did not present a separate Claim Form complaining only of protected disclosure detriment earlier supports his contention that, following his discussion with ACAS, he believed he was presenting his claim in time when he filed his ET1 on 3 August 2022. This is consistent with his oral evidence to the Tribunal that understood he had complied with the time limit requirements.

c) The Claimant became aware of time limits when he spoke to ACAS shortly after his dismissal on 31 March 2022, but he reasonably misunderstood their application to facts which he saw as all part of the same treatment which culminated in his dismissal. We therefore consider that he presented his Claim Form within a further reasonable period, being the period from when he learned of the time limits for presenting a claim to when he did present that claim.

63. Consequently we find that the Tribunal has jurisdiction to determine his protected disclosure detriment complaint.

Remedy

What financial losses has the detrimental treatment caused the claimant? (Issue 8.1)

64. The Claimant confirmed that his salary after his duties were altered in September 2021 remained the same. He suffered no financial losses as a result of the protected disclosure detriment.

Has the claimant taken reasonable steps to replace their lost earnings, for example by looking for another job? (Issue 8.2) If not, for what period of loss should the claimant be compensated? (Issue 8.3)

65. These issues are not applicable as the Claimant suffered no financial losses as a result of the protected disclosure detriment.

What injury to feelings has the detrimental treatment caused the claimant and how much compensation should be awarded for that? (Issue 8.4)

66. The Claimant's oral evidence to the Tribunal was that, specifically in relation to the change in his duties (i.e., the detrimental treatment on the ground that he had made protected disclosures), he felt "*really anxious, depressed*", "*apprehensive – I didn't know what was going on*", "*annoyed that no one had spoken to me*", *"worried about the future*", "*angry*", and "*mistreated*", and that he was "*treated like a leper*" or "*an outcast*", made to feel "*really uncomfortable, and not liked, and being picked on*".

67. Mr Crow for the Respondent expressed the view that this level of injury should properly be judged to fall within the "less serious" Vento band.

68. The Tribunal agrees. The injury to Mr Smith is real, and justice requires that it is met by compensation, but relative to the degrees of injury seen by the Employment Tribunal, it falls within the "less serious" band. The Claimant was able to continue to work, and while he was undoubtedly hurt and distressed by what happened to him in the period September 2021 to April 2022 – which period included the disciplinary process and his dismissal – the Tribunal considers that the Claimant was describing the injury to his feelings at the time when he presented his grievance pertaining to the change in his job duties, which pre-dated the misconduct allegations being raised and acted upon by the Respondent.

69. While Mr Crow has taken the Tribunal to case law applying to situations where there is more than one cause for an injury (*Thaine*, *Konczak*), in fact the Tribunal considered the evidence of the Claimant to be confined to the Respondent's change in his duties and its lack of consultation and communication around that change. By way of example, the Claimant talked about the fact that no one would talk to him about his reduction in Carpentry work at Christmas drinks. By Christmas, the misconduct allegations had been raised. The Claimant was clear

to delineate the hurt he felt from the protected disclosure detriment to the other disputes he had with the Respondent at that time.

70. As for the appropriate placement within that "less serious" band, we took account of Mr Crow's arguments, and we agree that the middle of that band reflects the level of injury suffered by the Claimant.

71. The numerical figures that attach to the band depend on the date on which the Claim Form was presented. In this case, as it was presented after April 2022 but before April 2023, the Fifth Addendum to the Presential Guidance on Employment Tribunal awards for injury to feelings and psychiatric injury applies, and the band begins at £990 and ends at £9,900. The midpoint of that band is £5,500. We consider that an appropriate sum to reflect the Claimant's injury – to compensate but not to punish, and to not be so low that it diminishes the importance of protecting against detriments meted out on the ground of having made protected disclosures.

Is it just and equitable to award the claimant other compensation? (Issue 8.5)

72. No – we think compensation of £5,500 is a just and equitable amount in total.

Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply? (Issue 8.6)

73. The Claimant had raised a grievance in September 2021, but he withdrew that grievance. No further grievance was raised by the Claimant, and nor was his original grievance reinvigorated, so the ACAS Code did not apply.

Did the respondent or the claimant unreasonably fail to comply with it? (Issue 8.7)

74. There was no extant grievance, and so there was no failure to comply with the ACAS Code.

If so, is it just and equitable to increase or decrease any award payable to the claimant? By what proportion, up to 25%? (Issue 8.8)

75. This issue is not applicable given there was no failure to comply with the ACAS Code.

Did the claimant cause or contribute to the detrimental treatment by their own actions and if so, would it be just and equitable to reduce the claimant's compensation? By what proportion? (Issue 8.9)

76. The Tribunal finds that he did not (and there was no argument from the Respondent that he did).

Was the protected disclosure made in good faith? (Issue 8.10)

77. The Respondent did not raise this as an issue in this hearing, and the Tribunal finds that all three of the Claimant's protected disclosures were made in good faith.

If not, is it just and equitable to reduce the claimant's compensation? By what proportion, up to 25%? (Issue 8.11)

78. This issue is not applicable given there was no absence of good faith pertaining to any of the Claimant's protected disclosures.

Conclusions

79. The unanimous judgment of the Tribunal is that:

a) The Claimant's complaint of detriment on the ground that he had made one or more protected disclosures was presented in time; and

b) The Respondent is Ordered to pay compensation to the Claimant for the injury to his feelings caused by the detriment to which it subjected him on the ground that he had made one or more protected disclosures in the sum of £5,500 gross.

Employment Judge Ramsden

Date 14 November 2024