



EMPLOYMENT TRIBUNALS

Claimant: Mr N Blakeley
Respondent: Bubblegum Balloons Limited
Heard at: Reading **On:** 2, 3, 4, 5 December 2024 and
(for chambers deliberations)14
January 2025
Before: Employment Judge Gumbiti-Zimuto
Members: Mr P Hough, and Mrs B Osborne
Appearances
For the Claimant: Ms N Blakeley, solicitor (claimant's mother)
For the Respondent: Mr D Van Heck, counsel

RESERVED JUDGMENT

The claimant's complaints are not well founded and are dismissed.

REASONS

1. In a claim from presented on the 4 May 2023 the claimant made complaints of unfair dismissal, discrimination on the grounds of age, discrimination on the grounds of sex, harassment, victimisation, a claim for notice pay and holiday pay. The issues that the Tribunal has had to consider were set out in a list of issues contained in a case summary contained in the record of preliminary hearing on 14 February 2024. The respondent denies the claimant's complaints.
2. The claimant gave evidence in support of his own case, he also relied on the evidence of Nicola Blakeley and James Fairclough. The respondents relied on the evidence of Sally Clackett, Laura Slater, Megan Robertson and Elizabeth Harman. The Tribunal was also provided with three bundles marked bundles 2, 3 and 4, making up the trial bundle of 337 pages of documents. From these sources we made the following findings of fact.
3. The respondent is a retail company that specialises in helium balloons for events. The respondent employs 44 staff, the majority of whom are women. The claimant, a man 25 years of age at the start of his employment, was employed by the respondent from 2 August 2022 as a digital marketing executive. During the course of the hearing the claimant described himself as having a Aspergers diagnosis that he did not disclose to the respondent.

4. On 21 November 2022 the respondent held a Christmas party at which all the employees were invited many of the respondent's employees including the claimant were present. Part of the evening involved the presentation of prizes in various categories which were awarded based on the outcome of votes cast by the respondent's employees.
5. The claimant states that at the party, Laura Slater, a director, was on the microphone prior to giving out an award, speaking through the microphone, said *"Now it's time for the awards. Spoiler Alert – It's not going to be any of the men"*. The claimant states that *"at the time of the Director's discriminatory comment, many employees of the Respondent in the crowd looked at me and laughed. I recall turning bright red and feeling embarrassed to have been one of 3 men in the room at the time in a predominantly female workforce. I was disappointed that a Director of the Respondent company felt it necessary to publicly state I would not receive an award based on my gender and / or target me because of my gender."*
6. The respondent denies that the claimant's description of events is correct. The respondent stated that the correct version of events is as explained by Megan Robertson: *"When I read out the results for one of the award categories, I introduced it by referring to "....she...." and then went on to say "Sorry boys,...." Given that approximately 95% of the workforce is female, this was not statistically surprising. The nominations were submitted anonymously by the staff, and the person who won the award was the person who obtained the most votes. At the time I was awarding the prize, I had the name of the person who had won the prize, which is why inadvertently I said "she", as I was about to name the person, in other words giving away that the winner of that particular prize was female. There was no discrimination in any way, and Nathan did not raise any issues about this during his attendance at work up to and including 22nd February 2023."*
7. The claimant's recollection is flawed in respect of this alleged incident. The claimant refers to the incident as occurring at a New Years Eve party, the party was in fact on 21 November 2022 and was a Christmas party. The respondent's version of the events is supported by a clip of a video recording of part of the evening. The video recording also shows that the claimant was wrong in his recollection of the number of men that were present. The scene in the video does not support the claimant's account at all. The Tribunal accept the evidence of the respondent and do not consider that the claimant's recollection of events at the Christmas Party is correct.
8. The respondent has a rota which gives all staff members, including the directors, duties in respect of cleaning. The rota was instigated during COVID and assigned a task to all employees. The rota is changed each week and includes various tasks such as wiping down the kitchen, hoovering the office, general tidying and ensuring that the toilets are tidy. The claimant had been

assisting in the cleaning rota from the start of his employment and never raised any complaint until 22 February 2023. The cleaning on the rota involves, *“just surface wipe and general tidying we have cleaners who come into then premises to do the deep clean each week.”* The rota shows that men and women being required to clean toilets with i.e. wipe the surfaces/ replenish soap / toilet paper, some women being required to clean men’s toilets and some men being required to clean women’s toilets.

9. On 21 February 2023 the normal bi-weekly meeting was held by Laura Slater and the other 2 Directors at which the claimant set out his bi- weekly update. The meeting was in a closed office. During that meeting the Directors became concerned that the claimant was providing figures and statistics which were clearly not tallying with the actual figures he was reporting on. The Directors raised question which the claimant failed to provide clear answers to. During the meeting it appeared that there was a potential issue with the Google Ad revenue and related marketing spend and orders being received. Laura Slater’s view was that the claimant was either giving false information or deliberately misleading the Directors. In the meeting the actual figures were significantly underperforming the figures reported by the claimant.
10. Laura Slater believed that there was a problem with the respondent’s digital marketing spend with an apparent spike in advertising spend and a decrease in sales revenue and went on to spend the following day, 22 February 2023, working with the claimant to understand the situation with the aim to identify and correct the problems which she considered that the claimant had created. Laura Slater states that she was looking to see if the claimant understood the depth of the problem and to assist in fixing the problem. Laura Slater concluded that the claimant *“was either deliberately and repeatedly lying about the work he was doing, or he was so out of his depth that he had no idea as to the financial and commercial issues he was causing.”* On 22 February 2023 the claimant and Laura Slater worked together in the main office.
11. The claimant complains that on 21 February 2023 he was asked to sit next to the Director in the middle of the open plan office for the day. The claimant found the situation *“intimidating, aggressive and embarrassing”* because he was asked *“targeted questions for the entire day loudly in the open plan office by the Director.”* The claimant states that *“the meeting was deliberately held adjacent to my marketing team since the Director wanted to shame me in front of my close colleagues”*. The claimant complains that he was being micromanaged.
12. The Tribunal is satisfied that the respondent had genuine concerns about the claimant’s performance and sought to understand the situation. We are also satisfied that the claimant was at all times working to the best of his ability and

in good faith, any errors that may or may not have been shown were not the result of any dishonesty by the claimant.

13. On 22 February 2023 the claimant describes how he “*arrived home in a state of shock and distress*”. The claimant’s condition caused the claimant’s mother to make a telephone call to Laura Slater at 9:46pm. The ensuing conversation lasted 4 minutes and is the subject of significant dispute between the parties. The claimant’s version is as follows:

“Ms Blakeley [the claimant’s mother] explained that I would stay home tomorrow since I appeared shocked and visibly shaken, stressed and distressed ..., this was caused because I had been interrogated in the middle of the office for days in such a humiliating manner by the Director, with the Director making false accusations against me throughout. Ms Blakeley further objected to the New Years’ incident of gender discrimination and the fact the company were utilising me to clean the women’s toilets, and this was not within my job description.

The Director was incredibly argumentative, defensive and verbally aggressive with myself and Ms Blakeley, who were speaking to her three way on loud speaker. The Director told me and Ms Blakeley that I had allegedly “damaged the ROAS score and lost the company £90,000”. The Director informed me and Ms Blakeley that I should, “he can hand in his technology tomorrow, and he doesn't have to come back!” and that my employment contract “was terminated”, by saying “he doesn't have to come back”. The Director informed me and Ms Blakeley that her telephone call to the Respondent was “unprofessional” and “Nathan was a grown adult and that was an employee relationship”.

During the brief 4-minute call, I attempted to explain to the Director that “this error could have been easily corrected had the structure of the adverts had been properly explained when I started with the Respondent, however this was never done”. The Director disregarded this statement.”

14. The claimant’s mother gave a similar account supporting the claimant’s version of events.
15. The way that the telephone call is described by the respondent is set out in Laura Slater’s witness statement as follows:
30. On the evening of 22nd February 2023 I was already in my pyjamas and about to go to bed when I received an unexpected phone call from Nathan’s

mother, (Ms Nicola Blakeley) at 21:46. Ms Blakeley also confirmed that she was the Claimant's solicitor. Ms Blakeley advised that the Claimant was stressed and upset and that any issues were with the company not Nathan.

31. I explained that I had been working with Nathan due to issues with Pay-per-Click advertising however Ms Blakeley's tone became aggressive and intimidating and she raised that Nathan had to clean the women's toilets and that he had not won an award at the Christmas Party. I remained calm and stated that it was inappropriate for Nathan's Mum to be making such a call at 10pm at night, however Ms Blakeley said that if I wouldn't speak to her as Nathan's mother, then I should speak to her as Nathan's solicitor.
32. I reiterated that it was late at night and I was already in my pyjamas. Ms Blakeley shouted at me down the phone that Nathan wouldn't be attending work the following day due to stress and slammed the phone down.
33. I felt extremely threatened by Ms Blakeley's abusive and intimidating behaviour and was extremely upset by her actions as I was trying to calmly explain that Nathan did not need to attend work if he was unwell when she abruptly ended the phone call.
34. At no point did I state that Nathan was dismissed, and in any event no such decision would be taken without discussing it first with my co-directors.

16. The Tribunal have come to the conclusion that during this short conversation the respondent did not intend to dismiss the claimant and Laura Slater did not say anything in which she intended to communicate to the claimant that he was being dismissed. The conclusion of the Tribunal is that we accept the evidence of Laura Slater namely that:

"My recollection at the end of the call mother said that the claimant would not be coming into work because of stress. In response to he is not well, I said fine he does not have to come back, or her does not have to come in we need the tech."

18. Laura did not intend to communicate to the claimant that he was dismissed and she did not do so.

19. Following the telephone call the claimant states that he tried to access his work account but he was denied access. Laura Slater agreed in evidence that following her telephone call with the claimant she did block the claimant's access to the respondent's work systems.
20. The claimant's mother then wrote a letter to the respondent that is dated 22 February 2023. The letter must have been written between 11pm and midnight if it was indeed written on the 22 February 2023 as the letter refers to the claimant trying to gain access to "*the Company Gmail account*" at 11pm.
21. The respondent wrote to the claimant on 23 February 2024 and informed him that he was being suspended from work on full pay pending an investigation, it was confirmed that the respondent had "*no reason to suspect any dishonesty at present*".
22. The claimant was asked to return his work laptop which Laura Slater wished to have so that she could consult documents that the claimant had created. The claimant refused to return the laptop. The explanation that the claimant gives is that he did not wish to return the laptop because it contained information that would exonerate him of any wrongdoing and he was concerned to allow the respondent to have it might result in this information being lost. The respondent sent an employee to the claimant's home to collect the laptop but the claimant refused to engage with them and did not return the laptop.
23. The claimant did not return the laptop to the respondent until after the preliminary hearing in this matter, i.e. after 14 February 2024. Laura Slater stated that when it was returned the laptop had been reset to factory settings thus deleting any documents that had been created by the claimant. The claimant denied that he reset to factory settings.
24. As part of the investigation the respondent contacted the claimant's uncle James Fairclough. The reason he was contacted is explained by Laura Slater. In the course of her investigation it was discovered that the claimant had contacted someone called James Fairclough. This person was unknown to the respondent and a meeting had taken place between him and the claimant. Laura Slater contacted Mr Fairclough to establish who he was and why the claimant had contacted him. Mr Fairclough explained to the Tribunal that as an experienced digital marketer he had been informally coaching his nephew one weekend and that there was no commercial conflict or breach of confidentiality in this session.
25. The claimant was issued with a number of invitations to attend for investigation meetings and disciplinary meetings. Eventually the respondent went ahead with the disciplinary hearing in the claimant's absence. The result of the disciplinary hearing was that the claimant was dismissed for gross misconduct. The claimant was informed of the decision to dismiss him in a letter dated 31 March 2023 (p212).

26. The claimant was found to have provided false information in the bi-weekly meetings and also that the claimant failed to provide company property when requested to do so. The claimant was offered the right to appeal the decision to dismiss him but he did not do so.
27. The claimant contends that he was unfairly dismissed. The claimant asserts that he was dismissed on 22 February 2023. The respondent asserts that the claimant was dismissed on 31 March 2023.
28. The parties have referred us to Omar v Epping Forest District Citizen Advice [2003] EAT 132.
29. The conclusion of the Tribunal is that the claimant was not dismissed on the 22 February 2023. We take into account that words of dismissal, or words that potentially constitute words of dismissal, must be construed objectively in all the circumstances of the case in accordance with normal rules of contractual interpretation. The subjective uncommunicated intention of the speaking party are not relevant; the subjective understanding of the recipient is relevant but not determinative. What must be apparent to the reasonable bystander in the position of the recipient of the words is that: (i) the speaker used words that constitute words of immediate dismissal and, (ii) the dismissal was 'seriously meant', or 'really intended' or 'conscious and rational' (i.e. whether the speaker of the words appeared genuinely to intend to dismiss and also to be 'in their right mind' when doing so). The Tribunal will not err if it only considers the objective meaning of the words and does not go on to consider whether they were 'really intended' unless one of the parties has expressly raised a case to that effect to the Tribunal or the circumstances of the case are such that fairness requires the Tribunal to raise the issue of its own motion. The point in time at which the objective assessment must be carried out is the time at which the words are uttered. The question is whether the words reasonably appear to have been 'really intended' at the time they are said.
30. The claimant says there was a telephone conversation between himself and his mother on the one hand and miss Laura Slater on the other. The respondent states that the telephone conversation was between Laura Slater and the claimant's mother. From the claimant's evidence it is clear that he said very little if anything during this conversation. We consider that it is more likely than not that the claimant while listening in on the conversation said nothing so the impression on Laura Slater could have been that she was on the telephone in conversation with the claimant's mother and she would not have known that the claimant was also listening in.
31. The purpose of the telephone call made by the claimant's mother to Laura Slater was to let her know that the claimant was suffering from work related stress. During the telephone conversation the claimant's mother also pointed out that the claimant objected to the duty to be shared on a rota basis with other staff of cleaning the ladies toilets.

32. The claimant was aware but there were genuine concerns, whether justified or not, about his work performance. There had been raised in a meeting with all the directors on the 21 February 2023 and then subsequently in the meeting with Laura Slater on the 22 February. The meeting was a professional meeting however the claimant found the experience stressful. The claimant explains that around this time 21 / 22 February he was suffering from work related stress and this had impacted on his performance and recognises that in the meetings on the 21 and 22 February he may have provided information to the respondent which was based on incorrect figures. As a result this was something that the respondent was seeking to explore further with the claimant and in doing so the claimant was placed under additional pressure, hence he suffered work related stress.
33. It was when the claimant arrived at home and presented to his mother in a manner which caused her concern: having found out from the claimant about the issues he was suffering at work she obtained from the claimant Laura Slater's phone number and telephoned her at 9:46pm. When she received claimant's mothers telephone call Laura Slater was in her pyjamas preparing to go to sleep. The claimant stated that both he and his mother were also in their pyjamas.
34. In the claimant's statement and in his mother's statement they say that the claimant was told that his employment was being terminated. The claimant accepted that such words were not used, the claimant was not told directly that he was dismissed.
35. In this telephone conversation the claimant's mother was angry about the way that her son had been treated; she objected to him having been asked to clean the ladies toilet; that he had been humiliated at a corporate award ceremony and she was protesting the fact that her son was suffering work related stress. The nature of the respondent's concerns were expressed by Laura Slater and she made it clear that an investigation looking into what had gone wrong was to be undertaken by the respondent. In this conversation Laura Slater stated that the respondent requested the claimant's laptop as part of the respondent's inquiry. At some point in the discussion a number of things were said by Laura Slater including that the claimant did not need to come into work but he could return his equipment. The claimant says this was a dismissal. The respondent denies that the claimant was dismissed.
36. The conclusion of the Tribunal is that the claimant was not dismissed by Laura Slater during the telephone conversation. We come to this conclusion because the decision to dismiss the claimant was not one that had been made by the directors of the respondent company at that point. Very soon after the telephone conversation came to an end the claimant tried to log on to his work laptop and was denied access due to the passwords having been changed. The claimant in his evidence couldn't explain why, if he considered that he had been dismissed, he tried to log on to his work system. His explanation that he regularly logged on is not understood, if he considered he

had been dismissed why did he feel it was necessary to log on. The claimant also referred to his concerns about the respondents seeking to incriminate him in fraud by examination of his laptop and explained that was the reason why he refused to give back his laptop to the respondent when it was requested. At the point the claimant was seeking to log on he could not yet have had concerns about being incriminated in fraud because no suggestion of fraud had yet been mentioned by the respondent. When the claimant's mother ended the telephone call with Laura Slater she told her that the claimant would not be coming into work because of work related stress, if she believed the claimant had been dismissed the claimant's mother would not have said this.

37. The claimant was dismissed on the 31 March 2023.
38. The claimant states that his dismissal was unfair because of section 104 Employment Rights Act 1996 (ERA).
39. Section 104 provides that “(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- (a) brought proceedings against the employer to enforce a right of his which is a relevant statutory right, or (b) alleged that the employer had infringed a right of his which is a relevant statutory right.” It is immaterial whether or not the employee has the right, or whether or not the right has been infringed; but, for that subsection to apply, the claim to the right and that it has been infringed must be made in good faith. It is sufficient that the employee, without specifying the right, made it reasonably clear to the employer what the right claimed to have been infringed was.
40. The statutory rights that can be relied on are listed in subsection (4) of section 104.
41. The list of issues at 2.3 asks the following: Did the claimant assert a relevant statutory right? Do the following engage section 104 of the Employment Rights Act? (a) During that conversation, did the claimant and/or his mother object to the claimant being asked to clean the women’s toilets and assert that that was an act of gender discrimination? (b) Did the claimant and/or his mother also object to the very public “spoiler alert” comment on that call as gender discrimination and complain about the fact that Nathan was a young male office worker in a predominantly female workplace and this was inappropriate? (c) Did the claimant and/or his mother assert the right to claim sick leave and that right was infringed by Laura Slater saying that he didn’t have to come back if he wanted to take sick leave?
42. The matters listed in 2.3.1 to 2.3.3 of the list of issues do not engage section 104. The first two matters appear to be related to potential complaints about matters in the Equality Act 2010 (EqA) and may well engage section 27 of that Act. The matters in 2.3.3 do not engage any statutory right.

43. Additionally the claimant was dismissed not because of the matters listed in 2.3.1 to 2.3.3 but because of his conduct. The reason for his dismissal was because he was found to have provided false information in the bi-weekly meetings and also that the claimant failed to provide company property when requested to do so. This is not a case where section 98 ERA is relevant and so consideration of question of fairness for the purposes of section 98(4) ERA do not apply in this case.
44. The claimant's notice period was three months and the claimant was not paid notice. The claimant was dismissed with immediate effect on the 31 March 2023.
45. The list of issues poses the following question at 3.3: "*was the claimant guilty of gross misconduct or did he do something so serious that the Respondent was entitled to dismiss without notice?*". In respect of wrongful dismissal the question is whether the employer dismissed the claimant in breach of contract. Dismissal without notice will be such a breach unless the employer is entitled to dismiss summarily.
46. An employer may dismiss summarily if the employee is in breach of contract and that breach is repudiatory - that is where the employee "abandons and altogether refuses to perform" the contract. For example where the employee does an act of gross misconduct.
47. The claimant refused to hand back the laptop. There was no justification for this. The claimant at all times knew that the laptop was the respondent's property and that the respondent wanted the laptop to interrogate it in relation to its enquiries. The way that the claimant disregarded a clear and simple instruction from his employer was in our view a repudiatory breach of contract. This was one of the reasons why the claimant was dismissed and this amounts to gross misconduct.
48. The claimant was also dismissed for providing the respondent with incorrect information in the bi-weekly meetings. This was a contentious issue and the claimant insisted that he did not provide incorrect information. While we accept that the respondent was satisfied that the claimant did provide "*false information ... in the bi-weekly meetings*" we are not satisfied that this was in fact demonstrated by the evidence called before us.
49. The claimant complains of harassment related to sex. The issue is set out in the list of issues as follows: "*On the 21 November 2021, at the awards ceremony, at the beginning, was it announced that only women, in a large majority female organisation would receive an award and that "spoiler alert" no men would?*"
50. The claimant's recollection of what was said is not correct. We prefer the version of events given by Megan Robertson as we have set out in paragraph 6 above. We have also seen the video recording of this moment and in our view it does not support the claimant's version of events. We are satisfied that there was no other incident which was not recorded that the claimant is referring to. We consider that the way that the claimant recalls the incident is simply not accurate.

51. The correct version of events in our view are not harassment. The moment complained of was an announcement of an award during a Christmas party awards ceremony. The evening was rowdy and the people present appeared to be having fun. There is nothing offensive or oppressive or that is revealed by the video recording. We have taken into account the claimant's perception of the incident and note that the claimant's recollection of it is not accurate. Taking all the circumstances as they appear to us, we do not consider that it is reasonable for the conduct complained of, namely the announcement made by Megan Robertson using the words that included the comment "*spoiler alert*" amounted to harassment.
52. For the avoidance of doubt we find as a fact that there was no incident where Laura Slater made the comments that the claimant refers to in is evidence as out in paragraph 7 of is witness statement.
53. The claimant makes a complaint of victimisation. The claimant relies on protected acts as follows:
- 6.1.1 During that conversation of 22 February, did the claimant and/or his mother object to the claimant being asked to clean the women's toilets and assert that that was an act of gender discrimination?
 - 6.1.2 Did the claimant and/or his mother also object to the very public "spoiler alert" comment on that call as gender discrimination and complain about the fact that Nathan was a young male office worker in a predominantly female workplace and this was inappropriate?
54. The Tribunal accept that the claimant made complaints to the effect of the matters set out in the preceding paragraphs. The Tribunal does not accept that the complaint in set out in 6.1.1 is necessarily a protected act. The claimant is complaining about having to clean ladies toilet. That is not necessarily a complaint about a matter to which section 27 (2) (d) is concerned with. The complaint set out in 6.1.2 would in our view be a matter that does come within section 27 (2) (d).
55. We consider that whether or not one or both of the matters set out above are protected acts for the purposes of section 27 (1) ERA that they did not result in the detriment of which the claimant complains. The claimant complains about his dismissal as the detriment in 6.2.1. The reason for the claimant's dismissal were matters which arose before the 22 February (the alleged false information in the bi-weekly meetings) and after that date (claimant's failure to return the laptop as directed by the respondent).
56. The claimant also complains about the decision made by the communication with the claimant's uncle Mr James Fairclough. The reason that this took place is because the respondent was carrying out an investigation into matters arising from the claimant's work and they discovered unexplained communication with an unknown party. The complaints made in the conversation on 22 February were not the reason for the communication. Had the claimant provided an explanation to the respondent for the email to

Mr Fairclough the making of the call may have been unnecessary, however, the claimant was not cooperating with the respondent and hence the telephone call was made.

57. For the reasons set out above the claimant's complaints are not well founded and are dismissed.

Approved by:

Employment Judge Gumbiti-Zimuto

Date: 22 January 2025

Sent to the parties on: 28 January 2025

For the Tribunals Office

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