EMPLOYMENT TRIBUNALS

Claimant: Mr Daniel Hamill

Respondent: Carbon Rewind Ltd

Heard at: Watford Employment Tribunal (CVP) **On:** 31 January 2025

Before: Employment Judge Young

Representation
Claimant: Litigant in person
Respondent: Jack Treston (not permitted to participate)

RULE 22 JUDGMENT

The claim for automatic unfair dismissal under section 103A Employment Rights Act 1996 is unfounded and is dismissed.

REASONS

Introduction

1. The Claimant was employed by the Respondent, a company that provides comprehensive energy efficiency solutions to households across the UK, helping reduce energy bills and lower carbon emissions as a surveyor from 13 February 2024 until 19 March 2024. Early conciliation started on 25 March 2024 and ended on 2 April 2024. The Claimant had 2 ACAS early conciliation certificates. The Claimant issued one certificate naming Mr Mike Pigeon and the other certificate naming Carbon Rewind Ltd. The claim form was presented on 25 March 2024 where only Mr Pidgeon was named as the Respondent. At a case management preliminary hearing on 21 May 2024 Mr Pidgeon was removed as a Respondent and Carbon Rewind Ltd were added as the Respondent.

Hearing

2. The Claimant attended the hearing and provided a witness statement of 2 pages and a bundle of documentation of 71 pages. The Respondent's representative, Jack Treston from Peninsula also attended the hearing as

an observer. The Respondent's representative did not ask to be heard and so I ordered that his microphone be muted.

3. After I had asked the Claimant some clarification questions, I asked the Claimant to provide further documentation in respect of the email on page 71 of the bundle from Ms Campbell dated 18 April 2024 that contained the outcome of the appeal from Peninsula and the appendices as attachments, but the outcome of the appeal and the appendices had not been provided in the bundle. The Claimant sent me the appeal outcome report and the appendices. We took a break between 11: 37-12:02 so that I could consider that documentation before returning to complete the Claimant's evidence.

4. Furthermore, before I gave judgment, I asked the Claimant if there was anything else he wanted to say and make any submissions about his best points. The Claimant stated in summary he wanted to speak about the 30 minutes recording of a telephone conversation between himself and Grace Campbell (the Respondent's HR manager) after he was sent the termination letter dated 19 March 2024. I asked the Claimant, whether he wanted me to listen to the recording. I was until that point unaware of the recording as part of the appendices sent to me by the Claimant. The Claimant responded that the recording was 30 minutes. I asked the Claimant what the relevance of the recording was, the Claimant responded that it highlighted all the issues and the serious matters taking place. The Claimant submitted that Ms Campbell accepted in that recording that some of the health and safety risks are not ok. The Claimant also submitted that in the Respondent's employee handbook it talks about whistleblowing and the procedure to be applied. The Claimant said that he did abide by the process, but the Respondent never followed their procedures, the Claimant said that the Respondent completely disregarded his information.

5. Following judgment where oral reasons were given, the Claimant requested written reasons. Reasons are included in this judgment. It was only during the given of oral judgment that the Claimant corrected the reference to PAS 2030 and PAS2035 to be BIS 2030 and BIS 2035. I have reflected this in my findings and conclusions but not the list of issues.

Claims & Issues

6. The Claimant was pursuing only one claim of automatic unfair dismissal under section 103A Employment Rights Act 1996

7. The issues in the matter were set out by Employment Judge Anderson, the case management order dated 19 November 2024 and are replicated below:

   1. Unfair dismissal

   1.1 Was the reason or principal reason for dismissal that the Claimant made a protected disclosure?

   If so, the Claimant will be regarded as unfairly dismissed.

   2. Protected disclosure

2.1 Did the Claimant make one or more qualifying disclosures as defined in section 43B of the Employment Rights Act 1996? The Tribunal will decide:

2.1.1 What did the Claimant say or write? When? To whom? The Claimant says they made disclosures on these occasions:

2.1.1.1 On 15 March 2024 the claim raised with Mike Pidgeon that:

2.1.1.1.1 he had been attached by a dog and

2.1.1.1.2 that he had witnessed an adult locking a child in a car with the same dog and had intervened.

2.1.1.2 On 15 March 2024 the Claimant raised the following concerns in email to Mike Pidgeon (numbering corresponds to the Claimant's grounds of claim):

1. My diary and area of operation,
2. Travelling to site,
3. Conducting a survey in 2hrs,
4. Uploading to EcoSurve within 24 hrs, the main point being its picture functionality,
5. Dealing with safety issues on site,
6. Responding to compliance issues,
7. Travelling to rectify the issues within a reasonable time frame,
8. Environmental issues with failed appointments,
9. Use of personal mobile calling customers.

2.1.1.3 In an email on 25 March 2024 the Claimant raised the following concerns with Mike Pidgeon:

10. Compliance responses,
    (a) Disparate language- after the incident at 43 Croft Parc took place. The use of "Failed" was inserted into the responses. Please see compliance responses for evidence.

11. Inadequate training, for a specific role, namely Surveyor. I received:
    (a) 1-day Health and Safety training in the office on Tuesday 13 Feb 24,
    (b) 1.5 weeks of on-site training,
    (i) No consistency of individuals, or direction on how to do the job. I did not receive specific and detailed training on the following:
    (c) My role and responsibilities,
    (d) Expectations,
    (e) Who my line manager was, and where it was detailed, took for me to ask, and I was told Peter Elliott, and then Ravi,
    (f) Other people's roles, and responsibilities,
    (g) Paperwork training,
    (h) EcoSurve app training,
    (i) Customer interactions,
    (i) The schemes and their key points,
    (ii) Delivery of key information to customers,

(j) System-specific training (Google),
(k) Diary management training,
(l) Working routine training, I.E
(i) 40-hours a week,
(ii) 8-hour a day,
(iii) 3 hours (average) driving, (I have evidence from the milage sheet),
(iv)1-hour lunch break,
(v) 3 to 4 surveys a day @ 2 hours each.
(m)Incident or simulated incident training.
(i) What do to in the event of.
(n) GDPR handling information- controls and controller measures.
(i) Holding customer's personal information,
(ii) Securing customer's personal information,
(o) Risk assessments,
(i) Via EcoSurve App.
(ii) Paper/online.

14. Risk assessments not being adequate for specific roles and risks such as dogs. At the start, I requested specific training and advice on my role I do not believe this was fully explained. 16. I cannot find evidence of a Whistleblowing policy

2.1.2 Did they disclose information?

2.1.3 Did they believe the disclosure of information was made in the public interest?

2.1.4 Was that belief reasonable?

2.1.5 Did they believe it tended to show that:

2.1.5.1 a person had failed, was failing or was likely to fail to comply with any legal obligation, namely PAS 2030 and PAS2035;

2.1.5.2 the health or safety of any individual had been, was being or was likely to be endangered;

2.1.5.3 the environment had been, was being or was likely to be damaged;

2.1.6 Was that belief reasonable?

2.2 If the Claimant made a qualifying disclosure, it was a protected disclosure because it was made to the Claimant's employer.

3. Remedy for unfair dismissal

3.1 Does the Claimant wish to be reinstated to their previous employment?

3.2 Does the Claimant wish to be re-engaged to comparable employment or other suitable employment?

3.3 Should the Tribunal order reinstatement? The Tribunal will consider in particular whether reinstatement is practicable and, if the Claimant caused or contributed to dismissal, whether it would be just.

3.4 Should the Tribunal order re-engagement? The Tribunal will consider in particular whether re-engagement is practicable whether it would be just.

3.5 What should the terms of the re-engagement order be?

3.6 If there is a compensatory award, how much should it be? The Tribunal will decide:

3.6.1 What financial losses has the dismissal caused the Claimant?

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

3.6.3 If not, for what period of loss should the Claimant be compensated?

3.6.4 Is there a chance that the claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?

3.6.5 If so, should the Claimant's compensation be reduced? By how much?

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

3.6.7 Did the Respondent or the Claimant unreasonably fail to comply with it?

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

3.6.9 If so, would it be just and equitable to reduce the Claimant's compensatory award? By what proportion?

3.6.10 Does the statutory cap of fifty-two weeks apply?

3.7 What basic award is payable to the Claimant, if any?

Findings of Fact

8. The findings of fact are made on a balance of probabilities. I found the Claimant to be mostly a witness of truth, and I accepted most of the Claimant's evidence except where identified in the reasons for this judgment. All reference to numbers in square brackets is a reference to the pdf numbers of the bundle without the index in the bundle.

9. The Claimant was employed as a surveyor on 13 February 2024. The Claimant was provided with a contract of employment [38-41] which stated

his role as surveyor and that his working week was 40 hours. The Claimant did not sign a opt out agreement from the working time regulations.

10. On 28 February 2024, the Claimant sent his manager Ravi a message on signal explaining his struggles with the amount of work he was being asked to undertake. The Claimant stated:

" Morning Ravi,

Apologies I'm struggling to get everything finished and uploaded via the survey app. Yesterday I left at 0640 and arrived at around 0950 Left at 1430 arrived at 1530 left at 1930 then got home at 2130. Worked until 0200 and still didn't even manage to upload the first one. I'm struggling to get through the app and driving over 5/6 hours a day." [59]

11. Ravi's response to the Claimant's message was to contact the Claimant by phone and provide support to the Claimant by way of tips to deal with using the Ecosurve app and the setting up of further training with the Claimant and his colleagues to deal with all the issues that the Claimant had raised in the message.

12. Although in the Claimant's contract of employment it states that the Respondent will pay for accommodation, the Claimant was not clear on what this meant, but after raising the issues with his work with Ravi, it was explained to the Claimant that he was permitted to use hotels in respect of site visits that were at a distance and that the Respondent would pay for the hotels. The Claimant did use the hotels, but the Claimant was still working extra hours and was unable to get all his work done in the 8 hours allocated.

13. On 13 March 2024, the Claimant visited a customer's home where he was told by the customer that her dogs "…are just not used to strangers". The Claimant leant forwards towards the dog, and it snapped. The Claimant was able to remove his right arm quickly, but the dog bit a hole through his jumper. On 14 March 2024, the Claimant wrote an email to the head of health and safety Marc Keenan and Mr Mike Pidgeon who is the managing director as well as copying other directors of the employer setting out a number of matters [47-48] as well as attaching an incident report which relayed the incident with the customer's dog on 13 March 2024 as above [49-53]. In that email the Claimant made a number of statements which he now says were protected disclosures. In particular:

14. "*Good morning,*
I am emailing you from a cafe after a customer cancled their appointment with me after not being informed of my arrivel." [47]. The Claimant believed that this was a disclosure tending to show the environment had been, was being or was likely to be damaged. The Claimant explained that when customers appointments were cancelled, the office would try and find the Claimant an appointment in the local area first or the Claimant would then just continue with his diary for that day.

15. "I was almost bitten by a dog." [47] The Claimant believed that this was a disclosure tending to show the health or safety of any individual had been, was being or was likely to be endangered. The Claimant said that there was no risk assessment done.

16. *"The customer left me unattended with a vulnerable child, and then locked the child in the car with the dogs while I was taking the picture of the property."* The Claimant believed that this was a disclosure tending to show the health or safety of any individual had been, was being or was likely to be endangered and that it was in the public interest. In response to the question of why would there be any obligation upon the Respondent in relation to this and why was this relevant to the employer, the Claimant's response was that he did not know. The Claimant said that the Respondent put him in a vulnerable position by the biting dog. I find that the Claimant put himself at risk when he was warned about the dog not being used to strangers.

17. "*In addition to this, I have some safety concerns"*.[47] The Claimant believed that this was a disclosure that tended to show that a person had failed, was failing or was likely to fail to comply with any legal obligation, namely BIS 2030 and BIS 2035; the health or safety of any individual had been, was being or was likely to be endangered; the environment had been, was being or was likely to be damaged and it was in the public interest. The Claimant stated that since that email, he found out about that the BSI rules surrounding conducting the survey and the entire process to installation.

18. "*Please could someone explan how I possibly carry out the following safely……*

    Here is an example.

    Yesterday, I attend a property at around 0930 hrs after staying in Famlouth. The house was 124m2 and had 2 extensions. All viable measures were checked. Only ESH and SVP where viable. I followed the tick sheets to the best of my ability and the survey took several hours. The property was not uploaded to Ecosurve. I waited at the porety for around 20 minutes while it was being looked at from the office side. I left for Helson drove around 30 minutes making one stop long the way. I arrived at 1450 hrs. Conducted the survey, following the incident detail in the near miss report. I left the property at around 1800 hrs. Having only completed the tick sheet, floor plan, pictures and video. I drove home and arrived at 2115 hrs had some food uploaded the documents to Ecosurve and the pictures to the shared google drive until around 0001hrs. I woke up this morning between 0530 hrs/0600 hrs. Eat, called the customer around 0700 hrs who didn't answer and set of for the 2+ hours commute to the site GILLINGHAM." [48]

19. The Claimant believed that this was a disclosure that tended to show that a person had failed, was failing or was likely to fail to comply with any legal obligation, namely BIS 2030 and BIS 2035; the health or safety of any individual had been, was being or was likely to be endangered; the environment had been, was being or was likely to be damaged and it was in the public interest.

20. *"I was 30 minutes from site when the customer called, who informed me he would not be available for me to attend his property. I question was he informed, he stated he was not." [48]* The Claimant believed that this was a disclosure that tended to show that the health or safety of any individual had been, was being or was likely to be endangered; the environment had been,

was being or was likely to be damaged and it was in the public interest. The Claimant believed that the fact that he was using fuel to attend the wasted appointment meant that he was damaging the environment.

21. *"As you are aware, one of the major issues I and other surveyors are currently facing are time to conduct the survey, travelling and uploading documentation via Ecosurve." [48]* The Claimant believed that this was a disclosure that tended to show that a person had failed, was failing or was likely to fail to comply with any legal obligation, namely BIS 2030 and BIS 2035; the health or safety of any individual had been, was being or was likely to be endangered and that it was in the public interest. The Claimant was referring to the working time regulations as he said that he was working 15 hours a day.

22. *"I honestly can not see how it is possible to do this amout of work in the given day and time frames. I would happy make myself available for someone to show me how to conduct the the above within the given time frame of 8 hours.*
In summery my issue are;
    1. *My diary and area or opperation,*
    2. *Travelling to site,*
    3. *Conducting a survey in 2hrs,*
    4. *Uploading to Ecosurve within 24 hrs main point being it's picture functionality,*
    5. *Dealing with safety issues on site,*
    6. *Responding to compliance issues,*
    7. *Travelling to rectify the issues within a reasonable time frame,*
    7. *Environmental issues with failed appointments,*
    8. *Use of personal mobile calling customers.*
    All within 8 hours a day!" [48]

23. The Claimant believed that this was a disclosure that tended to show that a person had failed, was failing or was likely to fail to comply with any legal obligation, namely BIS 2030 and BIS 2035; the health or safety of any individual had been, was being or was likely to be endangered; the environment had been, was being or was likely to be damaged and it was in the public interest. The Claimant had not signed a working time regulations 48 hours waiver. The Claimant said that he was tired and overworked. The Claimant's belief was that the Respondent needed to make decisions that sway people which affect their health. I accepted the Claimant's evidence that when he wrote the email, he had not spoken to any of his colleagues about their hours of work or what it is that they were doing at work and the tasks they were required to do. The Claimant had only spoken to his manager about his work.

24. In the incident report attached to the 14 March 2024 email, it also stated, *"I called ahead to the customer who was rude to me down the telephone when I requested if she could please have evidence of eligibility in the form of 3 bankstements and utility bill SP proced to be aggressive down the phone."* [52]. The Claimant's evidence was that he considered that the statements in the email believed that this was a breach of GDPR. The Claimant believed that this was a disclosure that tended to show that a person had failed, was failing or was likely to fail to comply with any legal obligation, namely BIS 2030 and BIS 2035.

25. After the sending of this email, the Claimant had a phone call with the managing director Mr Pidgeon at around 19:00 on 15 March 2024. In that conversation Mr Pidgeon reiterated what was stated in his signal message that he had sent to the Claimant on 14 March 2024 at 17:48 "*Hi Dan thanks for the message and email. We received an email from the customer at 43 Croft Parc and I understand that Marc is investigating the incident from a health and safety point of view. I'm sorry that you had a stressful experience at that address. In terms of your query about the workload, 3-4 surveys per day is par for the course for our surveyors and that's where we would need to get to on a consistent basis to make this work. I understand that we have cancelled tomorrow's surveys to allow you to catch up with EcoSurv uploads, let's also have a conversation tomorrow about the workload and whether we can realistically continue. I know you're giving this your best shot and we really appreciate that, but the job is challenging and not suitable for everyone"* [60]

26. However, in the phone call on 15 March 2024, Mr Pidgeon told the Claimant that his last day would be 19 March 2024. The Claimant understood from that conversation that he had been dismissed. The Claimant was reeling from the phone call, but the call did not provide any clarity about notice. Following the phone call on 15 March 2024, Ms Grace Campbell who was the Respondent's HR manager sent the Claimant an email with a dismissal letter signed by her titled "End of Employment" that stated, *"Following your conversation with Mike Pidgeon, I am writing to confirm that your last day of employment will be 19/03/2024."* I find that in the conversation with Mr Pidgeon, the Claimant was dismissed by Mr Pidgeon with the Claimant's termination date as 19 March 2024.

27. The Claimant responded by email later that day to Ms Campbell to say that he was not happy with the treatment he had received from the Respondent and there were points that he wanted to raise he also had outstanding motor mileage claim [56]. Ms Campbell responded on 19 March 2024 at 16:53 and clarified that the Claimant would be paid a week in lieu of notice and that his mileage claims would be paid [57]. The Claimant was paid both his mileage, and his week in lieu of notice.

28. The Claimant was also given the right of appeal. The Claimant appealed by letter dated 25 March 2024 [58-62]. In that letter the Claimant titled it "whistleblowing and letter of appeal," the Claimant raised what he said were protected disclosures. Some of the matters that the Claimant raised in his letter were substantially the same as the matters raised in his 14 March 2024 email. The Claimant was invited to attend an appeal by letter dated 8 April 2024 [64- 65] and the appeal was conducted by an external consultant from Peninsula. The disciplinary appeal outcome by Peninsula was sent to the Claimant on 18 April 2024 [71] with appendices.

29. The outcome report does not explicitly say what the reason for dismissal is. The Claimant's evidence is that he was told that the reason for his dismissal was capability. The Claimant explained that he was given no further detail about his capability. However, the Claimant's evidence was that the reason for his dismissal was that they did not want to deal with the issues he raised, and they were trying to hide their poor operations. The report does explain that the underperformance of the Claimant was highlighted to the Claimant

at an early stage on 3 March 2024 [6] and that on 13 March a revisit was required for a customer. [appendices 8.i]

30. The Claimant gave evidence that he felt that his employment continued until the outcome of his appeal. However, I find that the Claimant's employment did not continue until the outcome of the appeal, there was nothing in the Claimant's contract of employment to suggest that his employment continued beyond the date of dismissal and the Claimant accepted in evidence that he knew and believed that on 15 March 2024 he had been dismissed when Mr Pidgeon told him his last day was 19 March 2024.

The Relevant Law

31. Section 43A Employment Rights Act 1996 ('ERA') provides that a protected disclosure is '*a qualifying disclosure'* as defined by section 43B ERA.

32. To summarise section 43B ERA: a qualifying disclosure is (i) *a disclosure of information* that (ii) *in the reasonable belief of the worker making it, is made in the public interest* and (iii) *tends to show that one or more of six 'relevant failures' has occurred, is occurring or is likely to occur*.

33. The Claimant relies upon the relevant failures under section 43B (1) (b), (d) and (e) ERA as set out below:

"(1) In this Part a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following—…..
(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject ……
(d) that the health or safety of any individual has been, is being or is likely to be endangered,
(e) that the environment had been, was being or was likely to be damaged;

(5) In this Part "the relevant failure", in relation to a qualifying disclosure, means the matter falling within paragraphs (a) to (f) of subsection (1)."

34. In determining whether the worker has made a protected disclosure that discloses information and is made in the public interest the worker must have a reasonable belief. The test of what is a reasonable belief is both subjective and objective. Subjective because the worker has the required belief as a matter of fact and on a subjective basis and objective because if they do have that belief, that their belief is a reasonable belief to hold on an objective basis.

35. Section 43C ERA sets out that disclosures made to an employer in good faith are a qualifying disclosure.

"43C. Disclosure to employer or other responsible person
(1) A qualifying disclosure is made in accordance with this section if the worker makes the disclosure in good faith:
(a) to his employer."

What is a protected disclosure?

36. A belief which is wrong still meets the requirements of section 43B ERA, provided it is reasonably held (Babula v Waltham Forest College [2007] EWCA Civ 174, CA).

37. The definition of a qualifying disclosure requires the '*disclosure of information which, in the reasonable belief of the worker, is made in the public interest*.' Disputes that are essentially personal contractual disputes are unlikely to qualify (Millbank Financial Services Ltd v Crawford [2014] IRLR 18, EAT).

38. It is not sufficient that the Claimant has simply made '*allegations'* about the wrongdoer especially where the claimed whistleblowing occurs within the Claimant's own employment, as part of a dispute with his or her employer (Cavendish Munro Professional Risks Management v Geduld [2010] IRLR 38).

39. Qualifying disclosures must involve a disclosure of information, i.e. must convey facts, rather than merely raise an allegation. There must be the disclosure of *information*. In Williams v Michelle Brown AM [2019] UKEAT/0044/19 the EAT stated *'If the Tribunal properly concludes that the factual content of the claim disclosure cannot reasonably be construed as tending to show a criminal offence [or other relevant breach of section 43B(1)] then that conclusion will by itself be fatal to the proposition that there was a qualifying disclosure relying on section 43B(1). That will be so regardless of what the Claimant subjectively believed, and regardless of whether or the other elements are shown'*.

40. Under section 43B(1)(b) ERA there must be an actual or likely breach of the relevant obligation by the employer (Norbrook Laboratories (GB) Ltd v Shaw [2014] ICR 540, EAT). The word 'legal' must be given its natural meaning.

41. The fact that the Claimant making the disclosure thought that the employer's actions were morally wrong, professionally wrong, or contrary to its own internal rules may not be sufficient (Eiger Securities LLP v Korshunova [2017] IRLR 115, EAT). The source of the obligation should be identified and capable of certification by reference for example to statute or regulation. 'Likely' means probable or more probable than not. It is not sufficient that the Claimant reasonably believed that the relevant disclosure of information tended to show that a person 'could' fail to comply with a legal obligation, or that there was a possibility or risk of non-compliance (Kraus v Penna Plc [2004] IRLR 260).

42. The Court of Appeal provided guidance in Kilraine v London Borough of Wandsworth [2018] ICR 1850, holding that for a statement to be a qualifying disclosure, there must be sufficient factual content and specificity to show that one of the listed matters in section 43B(1) is engaged. '*If the worker subjectively believes that the information he discloses does tend to show one of the listed matters and the statement or disclosure that he makes has a sufficient factual content and specificity such that it is capable of tending*

to show that matter listed, it is likely that his belief will be a reasonable belief.

43. It is the Claimant who bears the burden of proof on establishing the relevant failure in respect of the whistleblowing legislation. (Blackbay Ventures Ltd v Gahir [2014] IRLR 416, EAT).

Automatic unfair dismissal by principal reason of protected disclosure

44. Section 103A of ERA states '*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 principle reason for the dismissal is that the employee made a protected disclosure*'.

45. The statutory question is what motivated a particular decision maker to act as they did? (Kong v Gulf International Bank UK Ltd [2022] IRLR 854). The reason or principal reason for the dismissal means the employer's reason.

46. In Babula v Waltham Forest College [2007] ICR 1026 the Court of Appeal held that '*An Employment Tribunal hearing a claim for automatic unfair dismissal has to make three key findings. The first is whether or not the employee believes that the information he is disclosing meets the criteria set out in one or more of the subsections in ERA 1996, section 43B(1)(a)-(f). The second is to decide objectively whether or not that belief is reasonable. The third is to decide whether or not the disclosure is made in good faith*.'

47. In Korashi v Abertawe Bro Morgannwg University Local Health Board [2012] IRLR 4, EAT, the EAT stated at paragraph 32 referring to the EAT judgment of Boulding v Land Securities Trillium Ltd UKEAT/0023/06 '*as to any of the alleged failures, the burden of proof is upon the Claimant to establish upon the balance of probabilities, any of the following, (a) there was in fact, and as a matter of law, a legal obligation or other relevant obligation on the employer in each of the circumstances relied on; (b) the information disclosed tends to show that a person has failed, is failing, or is likely to fail to comply with any legal obligation to which he is subject.*' The EAT continued at paragraph 61, '*Belief seems to us to be entirely centred upon a subjective consideration of what was in the mind of the discloser. That again seems to be a fairly low threshold.*'

48. A case of whistleblowing dismissal is not made out simply by a 'coincidence of timing' between the making of disclosures and termination (Parsons v Airplus International Ltd [2017] UKEAT/0111/17).

Analysis & Conclusions

49. As I have found that the Claimant was dismissed on 19 March 2024, nothing the Claimant disclosed thereafter that had not already been disclosed could have had anything to do with the Claimant's dismissal as it was disclosed after the dismissal.

50. In those circumstances, I only considered whether the matters that the Claimant raised in his email 14 March and his incident report containing the alleged disclosures.

51. In the Claimant's submissions he referred to a phone recording that was 30 minutes which was after the Claimant was dismissed and between the Claimant and Ms Campbell. The Claimant submitted that the relevance of that conversation was that he had highlighted to Ms Campbell that serious matters were taking place. However, I found that Mr Pidgeon dismissed the Claimant and not Ms Campbell. The Claimant did not say that Ms Campbell had anything to do with his dismissal or that Mr Pidgeon told her anything about the reason why he was dismissed. I therefore did not listen to the recording as I did not consider the recording to be relevant to anything I had to decide.

52. The issue at 2.1.1.2 that contains the concerns that the Claimant raised are not the same as the protected disclosures that the Claimant told me in evidence that he made. I have therefore drawn conclusions on the alleged protected disclosures that the Claimant told me that he made rather than the list of issues which does not in any event amount to a pleading.

53. I conclude that it was not a disclosure where the Claimant raised the issue of the customer being rude about being asked for bank statements in the Claimant's incident report. The statement did not contain any information as the customer had told the Claimant that she had already spoken to the Respondent. The Claimant was complaining about the behaviour of a customer, Claimant was not telling them any information, the Respondent already knew, and the Claimant knew that the Respondent already knew. The statement does not tend to show there was a breach of a legal obligation such as the GDPR. Nothing in the statement refers so are implies that there is a breach of any legal obligation. I conclude that it does not amount to a protected disclosure.

54. There is no disclosure of information when the Claimant states *"As you are aware, one of the major issues I and other surveyors are currently facing are time to conduct the survey, travelling and uploading documentation via Ecosurve."* The Claimant admitted that when he raised this issue with his line manager Ravi, his line manager gave him tips and training. The Claimant did not know what issues the other surveyors had with their work, only his manager. The Claimant did not reasonably believe the statement tended to show there was a breach of a legal obligation or the health or safety of any individual had been, was being or was likely to be endangered was in the public interest. The Claimant was expressing a concern, it did not amount to a protected disclosure.

55. Furthermore, the statement "In addition to this, I have some safety concerns." Itself does not convey any information that tends to show the health or safety of any individual had been, was being or was likely to be endangered was in the public interest but is an expression of concern, it is too vague. I also conclude that it does not amount to a protected disclosure.

56. I do consider that the statement about being bitten by a dog, and *"I honestly cannot see how it is possible to do this amout of work in the given day and time frames. I would happy make myself available for someone to show me how to conduct the the above within the given time frame of 8 hours."* And all the statements concerning the Claimant's working more time than his 40 hour work week, as well as the example paragraph in the 14 March 2024 email and the Claimant's statement that he had witnessed the customer

locking her child in the car with a dog [48] is information tending to show that the health or safety of any individual had been, was being or was likely to be endangered.

57. I also conclude that *I honestly cannot see how it is possible to do this amout of work in the given day and time frames. I would happy make myself available for someone to show me how to conduct the the above within the given time frame of 8 hours."* As well as the line "*Please could someone explan how I possibly carry out the following safely……"* and the example paragraph in the 14 March 2024 email [48] does not tend to show a breach of a legal obligation under BIS 2030 & BIS 2035. The Claimant accepted in evidence that he did not know about the BIS until after the sending of the email he did not have the reasonable belief when he sent the email.

58. However, nothing the Claimant stated in the 14 March email, or the incident report amounted to information tending to show the environment had been, was being or was likely to be damaged. In particular, where the Claimant had customer's cancel appointments at the last moment because they had not been told of his arrival or the customer was not available and so he would have a wasted journey, particularly when the Claimant's office would try and find him another appointment locally, the statement did not tend to show that the environment had been damaged or was likely to be damaged.
59. I do not doubt that the Claimant's belief that the disclosures are in the public interest is genuine. However, it was not reasonable for the Claimant to believe that the alleged matters raised in the email were protected disclosures, with one exception that I will address a bit later. In particular, where the Claimant by his own admission put himself in a position of risk when he was bitten by a dog, a risk assessment could not have made a difference in those circumstances, and it was not reasonable for the Claimant to believe that it was in the public interest. Also, in relation to the hours of work that the Claimant was doing. The Claimant admitted in evidence that he did not speak to any other surveyors whether he could carry out his work in his contractual hours, he had no idea whether the amount of work he was struggling to do was the same for anyone else in his position, he had no evidence of any such situation and so I conclude that it was not the Claimant's reasonable belief that it was in the public interest. This was more in line with a contractual dispute as referred to in Millbank Financial Services Ltd v Crawford.

60. I accept that the Claimant's disclosure that he had been left unattended with a vulnerable child and witnessed the customer locking her child in the car with a dog does disclose information that tended to show that the health and safety of a person was likely to be endangered and the Claimant had a reasonable belief that it was in the public interest.

61. The Claimant's evidence was that what the Claimant was told in the email by Mr Pidgeon was the same as what he was told on the phone in the conversation afterward where he was dismissed except that Mr Pidgeon told him in addition that his last day would be 19 March 2024. The Claimant had copied Mr Pidgeon into his email 14 March with the incident report and Mr Pidgeon did receive the disclosure in relation to the customer locking the dog and child in the car. However, the Claimant could give me no reason why this would be relevant to the employer. The Claimant was told that the reason for his dismissal was capability, but no other details were provided.

Although the Claimant said that the Respondent did not want to deal with the issues he raised and that is why he was dismissed, the Claimant accepted that when he first raised the issue of his inability to carry out his work within 8 hours per day, and his difficulties using Ecosurve he received assistance from his manager who arranged training that dealt with all the matters he raised in his email.

62. I conclude that the Respondent's response indicates a motivation to assist the Claimant in doing his role not getting rid of the Claimant for raising concerns. As the only disclosure that the Claimant made was in respect of being left with a vulnerable child and the customer locking the vulnerable child in the car with the dog, the Claimant has not proved to me that the principal reason for Mr Pidgeon dismissing him had anything to do with that disclosure. There was no reason provided why the employer would be expected to do anything about this disclosure and there was no reason provided to me why Mr Pidgeon would be motivated to dismiss the Claimant for this disclosure.

63. I considered the closeness in time of the Claimant raising his concerns and his dismissal, but I conclude that the closeness in time was not determinative where the Claimant had raised earlier issues, and they had been dealt with by his manager.

64. The Claimant mentioned the Respondent not following its own whistleblowing procedures in his submissions, but the failure to follow the whistleblowing procedures in of itself was not a consideration relevant to whether the principal reason for Mr Pidgeon to dismiss the Claimant was his protected disclosures. The Claimant did not give any evidence on whether the failure to follow the procedure indicated that Mr Pidgeon was motivated to dismiss him because of his protected disclosure and so I do not conclude that it did. The Claimant could not give a reason why the employer would be affected by this disclosure. The burden is on the Claimant to prove that the principal reason for his dismissal was his protected disclosure. The Claimant has not done this. In the circumstances the Claimant's claim is not well founded and the claim fails.

Approved by Employment Judge Young

Dated 3 February 2025

JUDGMENT & REASONS SENT TO THE PARTIES ON
21 February 2025

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FOR THE TRIBUNAL OFFICE

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing, or a written request is presented

by either party within 14 days of the sending of this written record of the decision.

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Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved, or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/