EMPLOYMENT TRIBUNALS

Claimant: Mr David Raw

Respondent: Force Contracting Services Ltd

Heard at: Nottingham

On: 10 April 2025

Before: Employment Judge L Brown

Representation

Claimant: In person

Respondent: Mr Bevan, Solicitor.

JUDGMENT

1. The Claimant's application for interim relief is refused.

REASONS

Introduction

1. By way of an ET1 claim form presented on 27 March 2025 the Claimant claims that he was automatically unfairly dismissed by the Respondent for making protected disclosures contrary to section 103A of the Employment Rights Act.

2. This application for interim relief was presented within seven days of the effective date of termination which was 21 March 2024.

3. It was received by the Respondents on the 2 April 2024 by way of letter but the letter did not come to the attention of their HR Director until the 7 April 2024 due to her annual leave but the Respondents took no issue with this and

accepted this application had been delivered seven days before the hearing today.

4. The issue I had to determine in relation to this application was whether it appears to me to be likely, or that at a final hearing that on determining this claim there was a *'pretty good chance'* that a tribunal will be satisfied that:

   3.1 There were protected disclosures; and

   3.2 They were the reason or the principal reason for the Claimant's dismissal.

5. I made clear at the outset that I would not hear any oral evidence as this was not a fact finding hearing but I would decide the application on the basis of the written documents to which I was specifically referred and also the submissions of the parties.

6. I was provided with a bundle of 54 pages from the Respondent, together with a large pile of unnumbered documents from the Claimant. I was also sent some extra documents by the Claimant throughout the hearing by way of them being emailed to the Tribunal.

7. The Respondent's ET3 had not yet been filed by the date of today's hearing but I was assisted by their written submissions

The Law

Protected Disclosures

8. The Employment Rights Act 1996 provides:

   S. 43B(1) Disclosures qualifying for protection.

   (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,

   …

(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).
…

S. 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 —

(a) to his employer, …

9. In ***Williams v Michelle Brown AM*** **UKEAT0044/19/00**, HHJ Auerbach set out the test for identifying whether a qualifying disclosure has been made:

"It is worth restating, as the authorities have done many times, that this definition breaks down into a number of elements. (1) First, there must be a disclosure of information. (2)Secondly, the worker must believe that the disclosure is made in the public interest. (3)Thirdly, if the worker does hold such a belief, it must be reasonably held. (4)Fourthly, the worker must believe that the disclosure tends to show one or more of the matters listed in sub-paragraphs (a) to (f). (5)Fifthly, if the worker does hold such a belief, it must be reasonably held.

Unless all five conditions are satisfied there will be not be a qualifying disclosure. [9 and 10]

10. There must be a disclosure of information. In ***Cavendish Munro Professional Risks Management Ltd v Geduld*** **[2010] IRLR 38**, the EAT held that to be protected, a disclosure must involve giving information and must contain facts, and not simply voice a concern or raise an allegation:

"The ordinary meaning of giving "information" is conveying facts. In the course of the hearing before us, a hypothetical was advanced regarding communicating information about the state of a hospital. Communicating "information" would be "The wards have not been cleaned for the past two weeks. Yesterday, sharps were left lying around". Contrasted with that would be a statement that "You are not complying with Health and Safety requirements". In our view this would be an allegation not information." [24]

11. However, in ***Kilraine v London Borough of Wandsworth*** **[2018] ICR 1850** the Court of Appeal held that:

"…the concept of "information" as used in section 43B(1) is capable of covering statements which might also be characterised as allegations. Langstaff J made the same point in the judgment below [2016] IRLR 422, para 30, set out above, and I would respectfully endorse what he says there. Section 43B(1) should not be glossed to introduce into it a rigid dichotomy between "information" on the one hand and "allegations" on the other. …

On the other hand, although sometimes a statement which can be characterised as an allegation will also constitute "information" and amount to a qualifying disclosure within section 43B(1) , not every statement involving an allegation will do so. Whether a particular allegation amounts to a qualifying disclosure under section 43B(1) will depend on whether it falls within the language used in that provision." [30 and 31].

…

"The question in each case in relation to section 43B(1) (as it stood prior to amendment in 2013) is whether a particular statement or disclosure is a "disclosure of information which, in the reasonable belief of the worker making the disclosure, tends to show one or more of the [matters set out in paragraphs (a) to (f)]". Grammatically, the word "information" has to be read with the qualifying phrase, "which tends to show [etc]" (as, for example, in the present case, information which tends to show "that a person has failed or is likely to fail to comply with any legal obligation to which he is subject"). In order for a statement or disclosure to be a qualifying disclosure according to this language, it has to have a sufficient factual content and specificity such as is capable of tending to show one of the matters listed in subsection (1). The statements in the solicitors' letter in the Cavendish Munro case did not meet that standard.

Whether an identified statement or disclosure in any particular case does meet that standard will be a matter for evaluative judgment by a tribunal in the light of all the facts of the case. It is a question which is likely to be closely aligned with the other requirement set out in section 43B(1), namely that the worker making the disclosure should have the reasonable belief that the information he discloses does tend to show one of the listed matters. As explained by Underhill LJ in Chesterton Global Ltd v Nurmohamed [2018] ICR 731 , para 8, this has both a subjective and an objective element. If the worker subjectively believes that the information he discloses does tend to show one of the listed matters and the statement or disclosure he makes has a sufficient factual content and specificity such that it is capable of tending to show that listed matter, it is likely that his belief will be a reasonable belief." [35 and 36].

…

"It is true that whether a particular disclosure satisfies the test in section 43B(1) should be assessed in the light of the particular context in which it is made. If, to adapt the example given in the Cavendish Munro case [2010] ICR 325, para 24, the worker brings his manager down to a particular ward in a hospital, gestures to sharps left lying around and says "You are not complying with health and safety requirements", the statement would derive force from the context in which it was made and taken in combination with that context would constitute a qualifying disclosure. The oral statement then would plainly be made with reference to the factual matters being indicated by the worker at the time that it was made. If such a disclosure was to be relied upon for the purposes of a whistleblowing claim under the protected disclosures regime in Part IVA of the 1996 Act, the meaning of the statement to be derived from its context should be explained in the claim form and in the evidence of the Claimant so that it is

clear on what basis the worker alleges that he has a claim under that regime. The employer would then have a fair opportunity to dispute the context relied upon, or whether the oral statement could really be said to incorporate by reference any part of the factual background in this manner" [41].

12. It is possible for several communications together to cumulatively amount to a qualifying disclosure even where each communication is not a qualifying disclosure on its own - ***Simpson v Cantor Fitzgerald Europe*** **[2020] EWCA Civ 1601.** Here the Court of Appeal agreed with the approach of the EAT in ***Norbrook Laboratories (GB) Ltd v Shaw*** **UKEAT/0150/13** where it was held that three emails taken together amounted to a qualifying disclosure even where the last email did not have the same recipients as the first two, as the former emails had been embedded in the final email. It will be a question of fact for the tribunal at the final hearing to decide whether two or more communications read together may be aggregated to constitute a qualifying disclosure on a cumulative basis.

13. As regards the Claimant's belief about the information disclosed, the question is whether the Claimant believed **at the time** of the alleged disclosure that the disclosed information tended to show one or more of the matters specified in section 43B(1). Beliefs the Claimant has come to hold **after** the alleged disclosure are irrelevant. Whether at the time of the alleged disclosure the Claimant held the belief that the information tended to show one or more of the matters specified in s.43B(1) and, if so, which of those matters, is a subjective question to be decided on the evidence as to the Claimant's beliefs. It is important for a tribunal to identify which of the specified matters are relevant, as this will affect the reasonableness question.

14. Whereas the test for reasonable belief is a low threshold, it must still be based upon some evidence. Unfounded suspicions, rumours and uncorroborated allegations are insufficient to establish reasonable belief.

15. The belief must be as to what the information **tends** to show, which is a lower hurdle than having to believe that it **does** show one or more of the specified matters. There is no rule that there must be a reference in the disclosure to a specific legal obligation or a statement of the relevant obligations nor is there a requirement that an implied reference to legal obligations must be obvious. However, the fact that the disclosure itself does not need to contain an express or even an obvious implied reference to a legal obligation does not dilute the requirement that the Claimant must prove that she had in mind a legal obligation of sufficient specificity at the time he made the disclosure - ***Twist DX and others v Armes and others*** **UKEAT/0030/30/JOJ**.

16. In ***Darnton v University of Surrey*** **[2003] IRLR 133** it was held by HHJ Serota that:

"In our opinion, it is essential to keep the words of the statute firmly in mind; a qualifying disclosure is defined, as we have noted on a number of occasions, as meaning any disclosure of information which in the reasonable belief of the

worker making the disclosure tends to show a relevant failure. It is not helpful if these simple words become encrusted with a great deal of authority…" [28] and

"We agree with the learned authors that, for there to be a qualifying disclosure, it must have been reasonable for the worker to believe that the factual basis of what was disclosed was true and that it tends to show a relevant failure, even if the worker was wrong, but reasonably mistaken." [32].

17. The issue of reasonable belief was considered by the EAT in ***Korashi v Abertawe Bro Morgannwg University Local Health Board*** **[2012] IRLR 4** where the following example was provided by way of illustration:

"To take a simple example: a healthy young man who is taken into hospital for an orthopaedic athletic injury should not die on the operating table. A whistleblower who says that that tends to show a breach of duty is required to demonstrate that such belief is reasonable. On the other hand, a surgeon who knows the risk of such procedure and possibly the results of meta-analysis of such procedure is in a good position to evaluate whether there has been such a breach. While it might be reasonable for our lay observer to believe that such death from a simple procedure was the product of a breach of duty, an experienced surgeon might take an entirely different view of what was reasonable given what further information he or she knows about what happened at the table. So in our judgment what is reasonable in s.43B involves of course an objective standard – that is the whole point of the use of the adjective reasonable – and its application to the personal circumstances of the discloser. It works both ways. Our lay observer must expect to be tested on the reasonableness of his belief that some surgical procedure has gone wrong is a breach of duty. Our consultant surgeon is entitled to respect for his view, knowing what he does from his experience and training, but is expected to look at all the material including the records before making such a disclosure. To bring this back to our own case, many whistleblowers are insiders. That means that they are so much more informed about the goings-on of the organisation of which they make complaint than outsiders, and that that insight entitles their views to respect. Since the test is their 'reasonable' belief, that belief must be subject to what a person in their position would reasonably believe to be wrong-doing." [62]

18. As regards the public interest, the Court of Appeal in ***Chesterton Global Ltd v Nurmohamed*** **[2017] EWCA Civ 979**, identified the following principles:

    i. There is a subjective element - the Tribunal must ask, did the worker believe, at the time he was making it, that the making of the disclosure was in the public interest?

    ii. There is then an objective element - was that belief reasonable? That exercise requires that the Tribunal recognise that there may be more than one reasonable view as to whether a particular disclosure was in the public interest.

iii. The necessary belief is simply that the disclosure is in the public interest. The particular reasons why the worker believes that to be so are not of the essence. As per Underhill LJ:

"That means that a disclosure does not cease to qualify simply because the worker seeks, as not uncommonly happens, to justify it after the event by reference to specific matters which the tribunal finds were not in his head at the time he made it. Of course, if he cannot give credible reasons for why he thought at the time that the disclosure was in the public interest, that may cast doubt on whether he really thought so at all; but the significance is evidential not substantive. Likewise, in principle a tribunal might find that the particular reasons why the worker believed the disclosure to be in the public interest did not reasonably justify his belief, but nevertheless find it to have been reasonable for different reasons which he had not articulated to himself at the time: all that matters is that his (subjective) belief was (objectively) reasonable." [29]

iv. The reference to public interest involves a distinction between disclosures which serve only the private or personal interest of the worker making the disclosure, and those that serve a wider interest.

v. It is still possible that the disclosure of a breach of a claimant's own contract may satisfy the public interest test, if a sufficiently large number of other employees share the same interest. In such a case it will be necessary to consider the nature of the wrongdoing and the interests affected, and also the identity of the alleged wrongdoer. These are also referred to as the four factors in ***Chesterton***.

19. It is not for the tribunal to determine if the disclosure was in the public interest. Rather the question is:

i. whether the worker considered the disclosure to be in the public interest;
ii. whether the worker believed the disclosure served that interest; and
iii. whether that belief was reasonably held.

Breach of a legal obligation

20. As regards legal obligation, in ***Boulding v Land Securities Trillium (Media Services)* Ltd (2006) UKEAT/0023/06** HHJ McMullen QC held the following:

"The legal principles appear to us to be as follow. The approach in ALM v Bladon is one to be followed in whistle-blowing cases. That is, there is a certain generosity in the construction of the statute and in the treatment of the facts. Whistle-blowing is a form of discrimination claim (see Lucas v Chichester UKEAT/0713/04). As to any of the alleged failures, the burden of the 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 (or other relevant person) 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.

"Likely" is concisely summarised in the headnote to Kraus v Penna plc [2004] IRLR 260, EAT Cox J and members:

"In this respect 'likely/ requires more than a possibility or risk that the employer (or other person) might fail to comply with a relevant obligation. The information disclosed should, in the reasonable belief of the worker at the time it is disclosed, tend to show that it is probable, or more probable than not that the employer (or other person) will fail to comply with the relevant legal obligation. If the Claimant's belief is limited to the possibility or risk of a breach of relevant legislation, this would not meet the statutory test of likely to fail to comply."" [24 and 25].

21. In ***Eiger Securities LLP v Korshunova*** **[2017] ICR 561**, Slade J held:

"In order to fall within ERA s.43B(1)(b)… the ET should have identified the source of the legal obligations to which the Claimant believed Mr Ashton or the Respondent were subject and how they had failed to comply with it. The identification of the obligation does not have to be detailed or precise but it must be more than a belief that certain actions are wrong. Actions may be considered to be wrong because they are immoral, undesirable or in breach of guidance without being in breach of a legal obligation…

The decision of the ET as to the nature of the legal obligation the Claimant believed to have been breached is a necessary precursor to the decision as to the reasonableness of the Claimant's belief that a legal obligation has not been complied with" [46 and 47].

22. Accordingly, whilst the identification of the legal obligation does not need to be precise or detailed, it has to be more than a belief that what was being done was wrong.

Endangerment of health and safety

23. As regards endangerment of health and safety, the term "health and safety" is a generally well understood phrase and it will usually be clear whether the subject matter of a disclosure could fall within its scope. It was confirmed in the case of ***Hibbins v Hesters Way Neighbourhood Project*** **[2009] ICR 319**, that the health and safety matter does not necessarily have to fall under the direct control of the employer in order for protection to apply.

24. A disclosure of this nature will require sufficient detail of the perceived risk to health and safety. In ***Fincham v HM Prison Service*** **EAT 0925/01** the worker was subjected to a campaign of racial harassment and informed the employer

that "I feel under constant pressure and stress awaiting the next incident." The Employment Appeal Tribunal concluded that this was sufficient to amount to a qualifying disclosure:

"We found it impossible to see how a statement that says in terms "I am under pressure and stress" is anything other than a statement that her health and safety is being or at least is likely to be endangered. It seems to us, therefore, that it is not a matter which can take its gloss from the particular context in which the statement is made. It may well be that it was relatively minor matter drawn to the attention of the employers in the course of a much more significant letter. We know not. But nonetheless it does seem to us that this was a disclosure tending to show that her own health and safety was likely to endangered..." [30]

Automatic Unfair Dismissal

25. Section 103A of the Employment Rights Act 1996 provides:

Protected disclosure.
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 made a protected disclosure.

26. The statutory question is what motivated a particular decision maker to act as they did – ***Kong v Gulf International Bank (UK) Ltd (Protect (the Whistleblowing Charity) intervening)*** **[2022] IRLR 854** [59]**.**

27. The reason or principal reason for the dismissal means the employer's reason. This can be the reason of the dismissing officer, but it may be necessary to look beyond that decision. In ***Royal Mail v Jhuti*** **[2019] UKSC 55** (at paragraph 60), the Supreme Court held that where the reason for dismissal is hidden from the decision maker behind an invented reason, it is for the tribunal to look behind the invention rather than to allow it to infect its decision, and provided the invented reason belongs to a person placed in the hierarchy of responsibility above the employee, there is no difficultly attributing that person's state of mind to the employer, rather than that of the decision maker.

28. As regards the burden of proof, in ***Kuzel v Roche Products Limited*** **[2008] IRLR 530**, the Court held:

"The tribunal must then decide what was the reason or principal reason for the dismissal of the Claimant on the basis that it was for the employer to show what the reason was. If the employer does not show to the satisfaction of the tribunal that the reason was what he asserted it was, it is open to the tribunal to find that the reason was what the employee asserted it was. But it is not correct to say, either as a matter of law or logic, that the tribunal must find that, if the reason was not that asserted by the employer, then it must have been for the reason asserted by the employee. That may often be the outcome in practice, but it is not necessarily so.

As it is a matter of fact, the identification of the reason or principal reason turns on direct evidence and permissible inferences from it. It may be open to the tribunal to find that, on a consideration of all the evidence in the particular case, the true reason for dismissal was not that advanced by either side. In brief, an employer may fail in its case of fair dismissal for an admissible reason, but that does not mean that the employer fails in disputing the case advanced by the employee on the basis of an automatically unfair dismissal on the basis of a different reason." [59 and 60].

29. A case of whistleblowing dismissal is not made out simply by a "coincidence of timing" between the making of disclosures and the termination of employment - ***Parsons v Airplus International Ltd*** **[2017] UKEAT/0111/17** [43].

Interim Relief

30. By section 128(1) Employment Rights Act 1996, an employee who presents a complaint of automatic unfair dismissal pursuant to section 103A may apply to the tribunal for interim relief.

31. Section 129 sets out the procedure to be adopted by the tribunal before considering making such an order.

32. Interim relief can be ordered where the tribunal finds that it is likely that a final hearing will decide that the reason (or principal reason) for dismissal was the employee having made protected disclosures. The test for interim relief applications was initially set out in the decision in the case of ***Taplin v Shippam Ltd*** **[1978] ICR 1068 EAT** which at paragraph 23 defined the word "likely" as a "pretty good chance of success".

33. In ***Ministry of Justice v Sarfraz*** **[2011] IRLR 562** it was held at paragraph 16 that the word likely "*does not mean simply "more likely than not" — that is at least 51 per cent — but connotes a significantly higher degree of likelihood*." i.e. '*something nearer to certainty than mere probability'.* Underhill P stated in ***Sarfraz*** that although Mr Justice Slynn in ***Taplin*** declined to express that higher degree in percentage terms*, 'since numbers can convey a spurious impression of precision in what is inevitably an exercise depending on the tribunal's impression'.*

34. In ***Dandpat v The University of Bath and Ors*** **UKEAT/0408/09** the EAT observed that the meaning of the word likely is context specific and it sought to distinguish the meaning of that word in interim relief hearings from its use when, for example, determining whether someone is disabled. It was held at paragraph 20:

"We do in fact see good reasons of policy for setting the test comparatively high, in the way in which this Tribunal did, in the case of applications for interim relief. If relief is granted the Respondent is irretrievably prejudiced because he is obliged to treat the contract as continuing, and pay the Claimant, until the

conclusion of proceedings: that is not consequence that should be imposed lightly."

35. Accordingly the standard of proof required is greater than the balance of probability test to be applied at the main hearing.

36. As was noted in ***Simply Smile Manor House and others v Ter-Berg*** **[2020] IRLR 97**, the likely to succeed test applies to all elements of the claim.

37. The burden of proof therefore rests with the Claimant to persuade me that it is likely that the tribunal at a final hearing will find that she made the disclosures to her employer; that she reasonably believed that they tended to show one or more of the matters within s. 43B(1) ERA 1996; she reasonably believed that the disclosures were made in the public interest; and the disclosures was or were the principal cause of her dismissal. The EAT in ***Sarfraz*** referred to a fifth matter, which was the previous requirement for the disclosure to have been made in good faith, however this has since been removed by s. 18 Enterprise and Regulatory Reform Act 2013 and is now relevant only to the matter of compensation.

38. When making a decision on an interim relief application I do not make any formal findings of fact which are intended to be binding at any later stage of the proceedings. I am assessing, amongst other things, the likelihood of disputed facts being proven in the Claimant's favour at the final hearing. There is only limited material available to a judge on an interim relief application but my decision has to be based on whatever material is available.

39. The EAT in ***London City Airport Ltd v Chacko 2013 IRLR 610, EAT***, explained that this test requires the tribunal to carry out an *'expeditious summary assessment'* as to how the matter appears on the material available, doing the best it can with the untested evidence advanced by each party. This, it observed, necessarily involves a far less detailed scrutiny of the parties' cases than will ultimately be undertaken at the full hearing.

Factual Background

40. On the 11 February 2025 an incident took place which could be described as an altercation between the Claimant and another employee, a Buyer for the company, Gareth Tennyson ['GT']. It was said the Claimant pushed his desk aggressively towards him when a disagreement took place over the temperature of the room, and that he used racially abusive language in that the Respondent says he called him a *'fucking African,* 'amongst other things. The Claimant says he used the word *'Afrique'* and '*Aprica'* and denied saying it in his presence but after he left the room whereas GT said he said it to him during the altercation.

41. The Claimant says that GT invited him outside for a fight. He also said another employee had to restrain GT from presumably attacking the Claimant. The

accounts of what happened differed between the Respondent and the Claimant and I make no findings on what did or did not occur. The Claimant was dismissed whereas GT received a warning and had his probation extended.

42. Following the incident the Claimant went off sick and while he was off sick he sent a grievance on the 26 February 2025 which was referred to in his ET1 form (albeit erroneously referred to as the 25 February 2026). This referred to matters the Claimant was unhappy about in relation to the employee GT and the incident that day.

43. In particular that grievance which I refer to as ***'Alleged Disclosure 1'*** says:-

' I have an issue with returning to work in what was the previous working conditions. If I were to elaborate; as a person that can struggle with anxiety on a normal day, and given the values and intricacies involved in performing my role as a quantity surveyor, feeling physically threatened by Gareth Tennyson (Buyer) in the office, after both the altercation that has been documented, and his general anger management/passive aggressive nature. I would feel physically vulnerable and at risk if I were to return to work, in the same office as him. In all honesty I do not think I would feel comfortable working on the same site/in the same building as him.'

44. Asking myself firstly if this was likely to be viewed as an allegation or disclosure of information, and having regard to **Fincham** where a worker informed the employer that *"I feel under constant pressure and stress awaiting the next incident,"* and where the Employment Appeal Tribunal concluded that this was sufficient to amount to disclosure of information I therefore found that in this regard the Claimant has a pretty good chance of establishing that it was a disclosure of information made by him in the Disclosure 1 as he discloses information about GT and the risk his behaviour posed to him.

45. As to whether he made this alleged disclosure in the public interest I find that he had a pretty good chance of establishing it was made in the public interest when he referred to '*I have an issue with returning to work in what was the previous working conditions.'* His working conditions were, he alleged, the same as others in his office in terms of the allegations about GT and his behaviour, and in his statement that was made for the investigation he referred to how JT spoke to another colleague Kyle, and so I concluded that Disclosure 1 had to be read in the context of the initial statement he made, and therefore in my judgment he had a pretty good chance of meeting the public interest test on Disclosure 1.

46. I also found he has a pretty good chance also of establishing that he held the belief reasonably i.e., that it was in the public interest as swearing to him and speaking in that way to him allegedly and also to others would potentially be in the public interest of other employees in the office.

47. I also found that he had a pretty good chance of establishing that this belief it was in the public interest was reasonably held due to the type of behaviour he

complained about and the fact GT was given a warning for his behaviour and had his probation extended by the Respondents.

48. As to the Disclosure 1 potentially falling within the category of his health and safety being endangered I found he had a pretty good chance of this being established also.

49. I also found that he had a pretty good chance of establishing that this belief that it endangered his health and safety was reasonably held.

50. However, overall, whilst I found that he had a pretty good chance of establishing that this Disclosure 1 was a protected disclosure I did conclude that he had a pretty good chance of establishing that Disclosure 1 caused the Respondent to investigate the incident, discipline him and then dismiss him.

51. The Respondents submitted that they started the investigation the day after the incident on the 12 February 2025 when they emailed him and asked him for a statement. The fact that they did not formalise their processes until he returned from sick leave on the 3 March 2025 they said was not to the point – the decision to investigate the incident was they said taken immediately on the 12 February and he did not raise Disclosure 1 until 14 days later on the 26 February 2025.

52. The Claimant said the initial email [Page 9] did not mention any disciplinary action but talked of '*working together'* going forward. However I noted that it did also say '*To confirm the purpose of Mondays meeting ….was to discuss the events that unfolded yesterday in the office, and to find a way to move forward.'* The Claimant said it did not mention disciplinary procedures and it was only when an email was sent by him on the 27.2.25 and the reply then acknowledged the grievance and mention was made for the first time of a formal meeting, when they ask him to meet with them to him at Head Office on the 3 March 2025, and he said that was proof they were only taking formal action after he made Disclosure 1. However I noted that this email also still used the same language *of 'to discuss the incident that occurred on the 11 February 2025* as was used in the earlier email [page 9].

53. The submissions of the Claimant did not establish that he had a pretty good chance of establishing causation on Disclosure 1 – i.e. that what happened to him after making Disclosure 1, i.e. the investigation, the disciplinary procedure and the dismissal were caused by Alleged Disclosure 1 and was part of the reason or principal reason for his dismissal.

54. Based on the submissions and the documents before me the Claimants case that Disclosure 1 caused his dismissal, or was a principal reason for it, was, whilst at least arguable when one considered the other employee who was also disciplined was not dismissed, it was in my judgment no more than arguable and was not a claim that had *' a pretty good chance of succeeding,'* based on Alleged Disclosure 1.

55. In his claim form the Claimant also made reference to a meeting on the 3 March 2025 where he says he repeated his concerns set out in Disclosure 1 about his workplace and the behaviour of GT. The meeting was referred to in his claim form and he said that *'I mooted that I was not sure that I felt comfortable returning to the workplace where someone had tried to attack me and requested that I be granted home working until my grievance had been dealt with*,' and I refer to this as **Alleged Disclosure 2.**

56. This **Alleged Disclosure 2** in the meeting on the 3 March 2025 was referred to in minutes of a meeting that day where it records that he complains of threatening behaviour of GT. Reference is made to '*verbal abuse'* to him and others, i.e. bad language by GT and they offer to relocate GT upstairs as C says he is not comfortable around him. It records that he is invited to return but he said he would still *'not feel safe'.* At page 28 of the bundle are notes of that meeting and he says variously that he felt – *'unsafe in the workplace following the incident dated 11/02/2025 and GTs general anger management/passive aggressive nature'* and referred to *'..the general use of language and behaviour unacceptable and at times has amounted to verbal abuse.'*

57. I found that he had a pretty good chance of establishing that this was a disclosure of information and not a mere allegation. He set out the facts and what it was he was complaining about and it is clear he is referring to GT.

58. I also found that he had a pretty good chance of establishing that he made the disclosure in the public interest, as others also worked there, and his original statement in the investigation referenced how he spoke to another colleague, and clearly this statement in the meeting related to his original statement made about GT's behaviour not just to him but to Kyle too.

59. I found that in relation to this belief that he had a pretty good chance of establishing that he held it reasonably.

60. I found that he had a pretty good chance of establishing that he believed the disclosure related to the endangerment of his health and safety as he showed clear concerns about verbal abuse in the workplace and displays of anger by this colleague.

61. I found that he had a pretty good chance of establishing that he reasonably held this belief.

62. However whilst I found that he had a pretty good chance of establishing that this was a protected disclosure, I did not find that he had a pretty good chance of establishing causation as by this time the disciplinary hearing had been set up and he made this disclosure during the meeting on the 3 March 2025 when they invited him to attend a future disciplinary meeting. I heard nothing that led me to conclude that there was compelling evidence that by now their desire to discipline him was influenced by Alleged Disclosure 2 made on the 3 March 2022.

63. I therefore do not find that Disclosure 2 showed that he had a pretty good chance of success of the Claimant establishing that it was a reason or principal reason for his dismissal that ensued.

64. At the end of the meeting on the 3 March 2025 the Claimant also submitted that he then made allegations of fraud which I now refer to as Alleged **Disclosure 3.** This was referred to in the Claim form as follows:

During the meeting on the 3rd March I made my employer formally aware that I had reasonable suspicion to believe that the company was, with another contractor engaging in fraudulent activity via fraudulent compensation events in return for luxury goods or items to the clients taste.

65. He referred me also to an email he sent following the meeting that said as follows in relation to the minutes of the meeting:-

'DR said that culturally he did not know if the firm was a good fit for himself, as the company pro-actively facilitated unethical bribery and gifted clients substantial and large gifts, which are disguised as Compensation Events as a contract comes to a close, prior to final account. DR noted that this was against a surveyors code of conduct to not acknowledge this activity, and that he thought it was potentially a case of Fraud by Misrepresentation. DR noted that is was a disgusting and unprofessional practice, particularly as public money is often involved with infrastructure projects, that the company almost exclusively work on.'

66. The Claimant said the minutes of the meeting at page 29 did not reflect fully what he set out above and disputed their accuracy. I reminded him I was not making findings of fact but did read the email referred to above I have taken this as part of Disclosure 3.

67. In relation to this **Disclosure 3** I found that he had a pretty good chance of establishing that this was a disclosure of information and not a mere allegation. He set out what it was he was complaining about and it is clear he is referring to fraud taking place and how it was achieved i.e. by compensation claims.

68. I also found that he had a pretty good chance of establishing that he made the disclosure in the public interest, as clearly others paying the company monies and allegedly being charged extra when they should not be billed extra was clearly potentially in the public interest.

69. I found that in relation to this belief that he had a pretty good chance of establishing that he held it reasonably.

70. I found that he had a pretty good chance of establishing that he believed the disclosure related to breach of a legal obligation. He accused people of criminal activity and a using card to buy personal items and then covering it up by creating a 'compensation event' something he said was a common thing in construction and might be for demobilisation or delays [P.22].

71. I also found that he had a pretty good chance of establishing that he reasonably held this belief.

72. However whilst I found that he had a pretty good chance of establishing that this **Disclosure 3** was a protected disclosure I did not find that he had a pretty good chance of establishing causation as by this time the disciplinary hearing had been set up and he made this disclosure during the meeting when they invited him to attend a future disciplinary meeting, and also just after in a follow up email, and I did not find that he had a pretty good chance of establishing that Disclosure 3 went towards disciplining him and dismissing him i.e., the reason or the principal reason that they dismissed him.

73. I turn now to **Alleged Disclosure 4,** which was referred to in the ET1, and at p.22 – where the Claimant makes an allegation of fraud and money laundering amongst other things 5 March 2025. In particular it says:-

' As you are aware I have made formal whistle blowing complaints in relation to fraudulent activity fraud by misrepresentation money laundering and bribery and corruption, I am not a lawyer and have had no exposure to such activities in the workplace previously, therefore I have a limited understanding of the law. However what knowledge I do have I have strong reason evidence to suspect wrong doing.

Given that I believe all members of senior management directors are Privy to such activity and given that what I believe to be criminal activity I'm not willing to provide evidence or details of certain activity as I believe it would give the company and individuals mentioned an unfair chance to remedy cover up any wrongdoing the accusation is a matter of public interest and concerns the misuse of public money Please note I will be withholding my company laptop to provide as evidence to the relevant authorities.

The persons I believe are actively involved in fraudulent activity dash money laundering dash facilitating bribery are Jack sales director, Chris Dutton commercial director Mike Wadely recruitment manager.

74. I did not find that the Claimant had a pretty good chance of establishing that this **Disclosure 4** was a protected disclosure as he specifically stated that he would not provide any specific detail and I find that this was simply an allegation and not a disclosure of information. He said on this as follows:-

Given that I believe all members of senior management directors are Privy to such activity and given that what I believe to be criminal ***activity I'm not willing to provide evidence or details of certain activity*** *as I believe it would give the company and individuals mentioned an unfair chance to remedy cover up any wrongdoing the accusation is a matter of public interest and concerns the misuse of public money*

75. In any event by the 5 March 2025 the disciplinary procedure was ongoing to consider his dismissal and I do not find the Claimant had a pretty good chance

of establishing that the reason or principal reason for dismissal was contributed to by this Disclosure 4.

76. As to the final disclosure, **Alleged Disclosure 5,** this is not referred to in his claim form, and so it is not part of his claim unless he makes an application to amend his claim and that application is successful. This was a reference to an email sent on the 6 March 2022 where very specific details are given about the information he discloses and the Respondents conceded this was the disclosure of information and was not a mere allegation, and that it was in the public interest.

77. Whilst it is not currently part of his claim I deal with this in the alternative in the event he is allowed to amend to add this Disclosure 5 to his claim. I find that he has a pretty good chance of establishing it was the disclosure of information and in the public interest, and fell into the category of a breach of a legal obligation and that his belief it was in the public interest and was a breach of a legal obligation was reasonably held.

78. However I do not find that on causation he has a pretty good chance of establishing that the reason or principal reason for dismissal was due to the making of this protected disclosure as by the 6 March and on the Respondents submissions they had by this point decided as early as the 12 February 3 weeks before to initiate an investigation, followed by disciplinary proceedings, and the decision to dismiss, and this suggestion was because of this Disclosure 5 cannot be said to have a pretty good chance of success.

Conclusion

79. In coming to my decision, I must take an impressionistic view of the documentary evidence before me, noting that no oral evidence has been given on oath or tested by cross examination. I have therefore carried out a summary assessment of the material before me to form a view as to whether the Claimant is likely to succeed in his claim.

80. I have analysed above why individually on causation I do not conclude the Five Alleged Disclosures have a pretty good chance of success.

81. My summary view on all the alleged disclosures taken together is that the Claimant has some prospect of showing that may have caused the dismissal and were a reason or a principal reason for the dismissal, however I do not consider that it is likely that he will be able to do so. This requires a far higher threshold to be met, and based upon the information before me today, my view is that whilst it possible that the Claimant may be able to persuade a tribunal at the final hearing that the alleged disclosures either individually or cumulatively amounted to a protected disclosure/disclosures that were a reason or principal reason for his dismissal, I do not find based upon what is before me today that it is likely or that there is a pretty good chance that he will be able to do so.

82. It is not sufficient for the disclosure(s) to have been an influence on the decisions to dismiss, as the legislation requires that they must have been the reason or the principal reason for dismissal and the Claimant has failed to establish that he has a 'pretty good chance' of succeeding in his claim at final hearing for the purposes of this application for interim relief.

83. The application for interim relief is therefore refused.

Approved by:

Employment Judge L Brown

12 April 2025

JUDGMENT SENT TO THE PARTIES ON

.....21 April 2025.....

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FOR THE TRIBUNAL OFFICE

Notes

All judgments (apart from judgments under Rule 51) and any written reasons for the judgments are published, in full, online at *https://www.gov.uk/employment-tribunal-decisions* shortly after a copy has been sent to the claimants and respondents.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. 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:

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