



EMPLOYMENT TRIBUNALS

Claimant: Mr B Ronoh

Respondent: NHS Professionals Limited

HELD at Leeds by CVP

ON: 22nd, 23rd and 24th April 2025

BEFORE: Employment Judge Lancaster

Members: Ms V M Griggs

Mr I W Taylor

REPRESENTATION:

Claimant: In person

Respondent: Ms Jaimie Whiteley, solicitor advocate

JUDGMENT having been sent to the parties on 25 April 2025 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the Tribunal find provide the following:

REASONS

1. We have reached an unanimous decision in this case that the claim be dismissed in its entirety.
2. Mr Ronoh who has worked as a health professional on the “bank”, engaged through the respondent NHS Professionals, brings complaints of protected qualifying detriment, that is in relation to three alleged disclosures and six alleged detriments that have been defined in the course of two preliminary hearings in this caseⁱ.
3. Unfortunately we have to comment that there does appear to have been partial and incomplete disclosure on both sides, and there has been a

lack of detailed evidence about the chronology. However from the information that we have before us we make these findings.

4. It is admitted that the claimant made a qualifying disclosure on 19 April 2023. That was to a relatively junior employee of the respondent a Ms Laura Brooks. It is clear that he telephoned her early on the morning of 19 April to disclose concerns that had arisen on his shift at Harrogate NHS Trust the previous night. She responded to that telephone call with an email at 9.38. Her response is entirely supportive of the claimant – “thank you for your call. It was lovely to chat to you even though under difficult circumstances” - and she directs him at that stage to the local office of the respondent at the Harrogate Trust. That is because a principal element of his concerns appears to be the sudden re-allocation from his scheduled shift to work at a different location within that NHS Trust.
5. From the recent disclosures that were produced yesterday, we can then see that the claimant indeed then forwarded his concerns in writing to the local Harrogate office which he did at 9.53 on the morning of 19 April. It is accepted that the content of that email discloses information which in his reasonable belief identified that there was a risk to patient safety. That was in relation to the management of acute mentally ill patients and the insufficient qualifications and experience the staff were allocated to deal with them.
6. He received a response to that email at 10.40 from Abigail Taylor who is described as a Trust Service Partner for the respondent at the Harrogate District Foundation Trust. Again her response is entirely supportive stating “I’m sorry to hear your experience of an uncomfortable night”: her first response addresses the concern about the re-allocation of work.
7. Shortly before he received that reply from Ms Taylor the claimant had however cut and pasted the self-same content of that email to Laura Brooks, and again copying the email address she had given him for the Harrogate NHS Professionals. And, although it is not in our file of documents, within the claim form, the ET1, the claimant has quoted from a further email from Abigail Taylor which is evidently a response to that repeat joint email. It is again supportive: “I’m sorry I can’t solve your concerns, I only have involved in our bank members. I cannot handle clinical care issues regarding patients. I do appreciate this is very serious and needs to be handled by the correct team.” She identifies a link for him to use to escalate his concerns on the Wards. It therefore says that obviously the raised concerns are seriously and deals with the matter properly. We do not know what that link was, whether that was to the NHS Trust itself or whether it was to the clinical governance team within the respondent. The best evidence we have from the respondent’s witness May Oyinlade was to indicate that she believes that would have been a reference to the Trust.
8. What we do not know because we have simply no evidence about it, is whether the claimant did ever escalate his concerns about patient safety either to anybody else within the respondent, and the failure on his part to identify within the issues any such escalation beyond the initial

communications indicates that it is unlikely to have happened, or to the Trust. Nor do we have any indication of any response to any further escalation of that complaint.

9. So although on the face of it, as we accept and the respondent concedes, it is a protected qualifying disclosure in terms of the information disclosed there is nothing in the paper chain to indicate that anything happened beyond that final email from Ms Taylor (which is not within the quotation in the ET1 identified by date or time) indicating that if he wished to pursue it the matter would have to be addressed elsewhere.
10. That is the first and admitted protected qualifying disclosure.
11. The second alleged disclosure was in response to a generic letter sent by the respondent on 31 May regarding the agenda for change pay award for that year 2023/2024. That indicated that there would be a pay award effective from 5 June but that the respondent was to exercise a discretion to make an award of back pay. This would be to cover any eligible shifts from 1 April to 4 June and any such eligible shifts should be authorised by 18 June and would then be included in a one off payment on the pay slips issued on 30 June. At 7.34 on the morning of 30 June, so that is the day when payments were due, the claimant replied to that simply stating "I'm writing this email to double check if the expected new payback was withdrawn" and he references the generic email sent on the 31st. Because it was a reply within that chain it went to the same address from which the generic letter had originated hello@NHSPProfessionals.nhs.uk. There is no response to that. The respondent has given evidence, which we accept, that going to that inbox it was never checked and therefore never actioned. The claimant has given no evidence that he ever chased this up or ever made a specific allegation that he was actually owed any additional pay between 1 April and 4 June.
12. But in any event that query is not the disclosure of information to his employer. It does not identify any issues in relation to an actual breach of any legal obligation. It is simply appearing to seek confirmation that a discretionary payment would, if he was eligible, be made.
13. Furthermore, because we accept the respondent's evidence that this was never received, it cannot by definition have been the reason why any subsequent alleged detriment was suffered by the claimant. A detriment to be actionable must be on the grounds of having made a protected qualifying disclosure, and if the respondent did not know of the content of this concern, even if it had amounted to a qualifying disclosure that is not the ground on which they then took any further action.
14. The third alleged disclosure is on 22 July 2023. A joint letter was written regarding concerns by the NHS Professionals bank staff who worked at Harrogate in relation to late cancellations of shifts. That letter was addressed to Jonathan Coulter who we understand was the chief executive of the Harrogate NHS Trust. It is signed by somebody called Kenny (no surname) who the claimant says was a colleague of his. It is

stated to be a joint letter approved by mental health colleagues but there is nothing on the document that we have that indicates who those colleagues were.

15. The claimant, as it appears from the documents that we have, cut and pasted this letter written by his colleague Kenny and forwarded it without any further explanation or comment within a chain of emails that had originated with a notification of a pay increase from July 2023. That is why his forwarded message has the subject heading “changes to the pay rate at your Trust”, but because that original notification of the pay increase had come from a no reply inbox that was where the claimant sent this. This is not a disclosure, as by sending a communication to a “no-reply” inbox it was not being brought to the attention of any relevant person. We accept that that was never received by the respondents so once again it cannot have been the ground on which they subjected the claimant to any alleged detriment. It did not know about this concern that he had forwarded.
16. There was no evidence at all as to whether this letter was in fact ever sent to Mr Coulter, nor any evidence as to whether there was any response to that or any further action.
17. So the only relevant disclosure which could be the grounds on which the claimant was subjected to any detriment is the one the respondent did know about because it was sent to Ms Brook and Ms Taylor. The first alleged detriment is on 19 July, so that is some three months after that disclosure: there has been a transpositional error in the dates throughout the Tribunal proceedings, so a reference to 19 June is incorrect. It is 19 July. That was the date when the respondents received a complaint from the Harrogate NHS Trust relating to the conduct of the claimant at a shift on 16 July.
18. Again we have limited disclosure of information about how that complaint arose or how it was dealt with. But the particular alleged detriment is stated to be the receipt of an email from Vic O'Reilly which is in fact on 25 July and she is an HR advisor with the respondent. But it has been accepted in the course of earlier proceedings at a preliminary stage in this case, that Ms O'Reilly was simply the messenger and was not the person who made any decision, and that's apparent on the face of her email because she says “I write in relation to some feedback received and a request has been made for a Ward restriction at Byland Ward Harrogate to be added to your profile. A complaint investigator will contact you shortly providing further details.” It is worth noting the claimant responds to that – “hi Viv, thanks for your email the message is well noted” and nothing more.
19. Although it is not in our file of documents, in the course of correspondence within these proceedings the claimant did disclose a letter regarding standards and expectations which is effectively a 12 month warning to be placed on his file. That document is undated and it does not record who sent it. There is no address line for either the sender nor the recipient and no signature on the part of the document that the claimant has copied within his correspondence. But it is clear that there was a complaints investigation that the claimant provided

information to the investigator and they found that there had been breaches of his obligations to comply with a proper shift handover, that he was inappropriately wearing earphones when dealing with a patient and that he had been found sleeping on duty. Even though that last allegation was potentially gross misconduct, it is recorded that by agreement with the Harrogate Trust at that stage this could be dealt with simply by way of a warning, but he was therefore put on notice for any future reoccurrence may result in the cancellation of any further assignments through the respondent. He was then told that there was a restriction on his working at two Wards at Harrogate Byland and Jervaux. We do not have any further information about the content or conduct of that investigation or when that restriction was in fact imposed but it appears to have been. as we say, July 2023.

20. We are quite satisfied that the respondent has shown in context of this case, that that decision to impose restrictions on the claimant's working at Byland and Jervaux on that occasion had nothing to do with the disclosure made three months earlier, and we note from the documentation that the claimant did not make any such allegation to the investigator and did not appeal that decision. It is self-evident to us that the reason why the respondent imposed that working restriction, which they were perfectly entitled to do under their contractual agreement with the claimant upon the request of the client Trust, was because of the allegations of misconduct at a shift on 16 July and not, as the claimant seeks to argue, retaliation because he had made an allegation in respect of patient safety three months before that had never on the face of it followed up. And we repeat the respondent's attitude to the raising of those concerns at the time was entirely supportive with no indication it was held against the claimant in any way.
21. Although this action shortly post-dates the email of 30 June we repeat that that can have had no bearing on the decision making because it was unknown to the respondents, even if it had of been a qualifying disclosure.
22. There was then a subsequent complaint on 30 October again in relation to the claimant being found asleep when working. That came from the Ward manager at Harrogate and although it is clear that their name has been redacted from correspondence it would have been known to the respondent at that time. In response to that complaint, the witness Ms Filograno was assigned as the complaints manager on this occasion she not having investigated the earlier complaint in July. Therefore on 8 November she contacted the claimant to tell him that as a result of this allegation of gross misconduct, sleeping on duty, he was restricted from working at all NHS Professionals client Trusts. Concurrent with that it does appear that the pre-booked shifts after that date were also cancelled at that point pending an investigation. But again that is entirely in accordance with the contractual agreement with the claimant and the respondent's policy.
23. The claimant was then invited to provide his version of events and the former must answer questions in what is called a guided statement and Ms Filograno contacted him by phone to discuss those matters and we

have her follow up email to the claimant following that conversation at 13.12 where she records that he declined to participate by completing the statement and she advised him that if he did not co-operate with the inquiry that may be deemed to be non-compliance with her reasonable management instruction. She also whilst investigated this matter was aware as a fact that at that point he was subject to the warning from July, and she referenced that in her email.

24. A somewhat belated allegation has been made only arising in the course of the case management hearing in July of last year that Ms Filograno's attitude in the course of that telephone conversation was bullying, harassing and rude to the claimant. In his witness statement he said that she "implied" that he was lying. In his evidence before us for the first time he has stated that she said specifically that he was lying, because she expressly accused him of doing that when he said he could not remember anything about the incident with which he was charged.
25. We have heard the claimant and Ms Filograno and we unhesitatingly accept her account that she was not rude, did not directly accuse the claimant of lying as alleged, and that her follow up email accurately reflects the substance of what was communicated to the claimant.
26. We also observe, as Ms Filograno herself has, that she was well aware that this phone call was being recorded and although that audio recording is not now available she makes the point which we think is sensible that she would not have made unwarranted or unsubstantiated accusations against the claimant knowing that that fact could be verified by listening to the recording of her conversation. But shortly after that and before Ms Filograno could therefore conclude any investigation the claimant resigned and at that point he was still subject to the restriction on working up any trust with whom the respondents engaged and Ms Filograno therefore confirmed that that provisional restriction would continue because there had been no opportunity to conclude the investigation.
27. Once again we find as a fact that those allegations originating from the NHS Trust were self-evidently the reason why the respondents acted as it did by imposing the contractual restrictions on working pending the investigation, by initiating that investigation via a complaints manager and by then confirming the restriction when the claimant had withdrawn from the investigative process by resigning before its conclusion. They have nothing to do with the fact that in April he had raised the concerns in respect of working with mentally ill patients on the Wards at Harrogate, and most particularly of course we accept Ms Filograno's evidence that she was wholly unaware of any alleged disclosure. She would not have been involved in that matter and there is no legal principle that she should be held to have had constructive knowledge or any requirement that she ought to enquire into matters where she had no reason to think they were material. The claimant did not ever say to her that he had made disclosures and that he believed these actions were therefore retaliatory. As a result of these restrictions of course the claimant did lose income in the short period between the imposing of restrictions from 9 November until his resignation. He of course would

not have worked for this respondent at all that time. He was then not able to work in the future, but of course having resigned that became immaterial. There was apparently a delay in securing one payment for one of the last shifts he did work on 30 October but that was paid on 9 December. But that is quite clearly again on the face of the papers an administrative matter where difficulties arose in processing the fact of the claimant's resignation. There is absolutely no indication at all that the payroll department who had dealt with that matter, nor indeed the Ward at Sheffield where he was claiming payment, were in any way influenced by the fact of the disclosures in April of which they were no doubt have been wholly unaware and where is no evidence at all that they would have known about this.

28. Analysing the three alleged disclosures, only one, the first, is admitted to potentially qualify for protection. The third had it been brought to the attention of the NHS Trust potentially would have been the disclosure of information relating to the mental wellbeing of the bank staff, the psychological impact upon their health and then the consequent potential impact upon their ability to perform their duties and therefore an effect upon patient safety. Although that would in itself therefore have also been capable of amounting to a protected disclosure had it been made to the employer it is not material in this case because the respondent simply did not know anything at all about it.
29. So for those reasons we repeat our initial announced decision that the claim is dismissed in its entirety.

Approved by Employment Judge Lancaster
Date 30th May 2025

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Preliminary Hearing 30th July 2024

1. The following information was given by the Claimant (adopting the paragraph numbering from Appendix – Draft List of Issues):

5.1 & 5.2 – The Claimant stated that he made the disclosure to Laura Brooks on 19 April 2023 by email at 09:53.

5.3 – The Claimant initially told me that he made only one alleged protected disclosure, as detailed above. However, later in the hearing he told me that he made a second protected disclosure on 30 June 2023 at 07:34 by email to hello@nhsprofessionals.co.uk concerning the pay award under agenda for change. The Claimant stated that the detriments he suffered in relation to this protected disclosures were the same as the ones he claims to have suffered as a consequence of the other protected disclosure. The Respondent will need to consider this along with any further information provided by the Claimant to determine its position on whether or not it consents to these new factual circumstances being added to the claim.

7 – the detriments the Claimant claims he was subjected to are as follows:

- (i) On 19 July 2023 an individual (the Claimant will confirm their name when he provides his further information in writing under the above orders) made an allegation against him that he had been sleeping at work.
- (ii) On 30 October 2023 a further allegation was made against him that he had been sleeping at work.
- (iii) Restrictions were placed on his work scheduling application (NHS Professionals Health Roster) meaning that he could not work again in that hospital and they could not book him. The Claimant will provide more information about the dates when he sends his written further information.
- (iv) The Claimant says his shifts which had been booked were wiped from the application (NHS Professionals Health Roster). The Claimant will provide more information about the dates when he send his written further information.
- (v) The Claimant wishes to add a point which was not in his original claim. He was not paid when he should have been and had to chase payment. He acknowledges he was paid but was not paid on time. The Claimant will provide full information about this new detriment that he seeks to include in his claim
- (vi) The Claimant also wishes to add another point which was not in his original claim; that the person who held the disciplinary hearing was rude towards him. The Claimant will provide further information about who that was, when, and in what way they were rude towards him.

Preliminary Hearing 4th December 2024

LIST OF ISSUES

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1. Has the Claimant's claim for detriment under s47B ERA been presented within the time limits in section 48(3)(a) and (b)? The Tribunal will decide:
 - 1.1. Was the claim made to the Tribunal within three months less one day (plus early conciliation extension) of the act to which the complaint relates?
 - 1.2. If not, was there conduct extending over a period?
 - 1.3. If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?
 - 1.4. Was it reasonably practicable for the Claimant to have presented the claim within the correct limitation period?th December
 - 1.5. If not, were the claims made within such further period that the Tribunal thinks reasonable?

WHISTLEBLOWING DETRIMENT (S47B ERA 1996)

2. Did the Claimant make a qualifying disclosure in accordance with section 43B of the ERA?
3. The Claimant relies upon the following as amounting to qualifying disclosures:

Disclosure 1: 19 April 2023 – an email to Laura Brooks and copying in harrogatecrt@nhsprofessionals.nhs.uk where he raised concerns about “patient safety being compromised as well as the staff as they are not trained to deal with such acutely unwell patients, and that a patient tried to seriously harm themselves twice whilst he was on shift”;

Disclosure 2: On 30 June 2023 the Claimant emailed hello@nhsprofessionals.nhs.uk about the “payment in lieu of back pay following the Agenda for Change Pay Award”; and

Disclosure 3: On 22 July 2023 the Claimant emailed noreply@nhsprofessionals.nhs.uk regarding a complaint about recent shift cancellations.
4. Did they disclose information?
5. Did they believe the disclosure of information was made in the public interest? The Claimant says that as he believed patient safety was being compromised, and staff members were put at risk, this was a matter of public interest. Was that belief reasonable? Considering the amended grounds of resistance, the Respondent accepts this in respect to Disclosure 1 but disputes it in respect to Disclosures 2 and 3.
6. Did they believe any of the disclosures tended to show that the health or safety of any individual had been, was being or was likely to be endangered? Was that belief reasonable? Considering the amended grounds of resistance, the

Respondent accepts this in respect to Disclosure 1 but disputes it in respect to Disclosures 2 and 3.

7. If so, did the Claimant make the above disclosures to his employer or other responsible person in accordance with section 43C ERA, rendering it a protected disclosure? This is challenged by the Respondent in respect to all disclosures.
8. Was the Claimant subjected to detriment on the grounds of him having made a protected disclosure? The Claimant relies on the following as amounting to detriment:

Detriment 1: On 19 June 2023, the Claimant received an email from Viv O'Reilly that a request had been made for a ward restriction at Byland Ward of Harrogate District Hospital to be added to his profile. The Claimant confirms that the request for a ward restriction was not made by Viv O'Reilly, who was simply the messenger. The Claimant was not aware who made the request.

Detriment 2: 30 October 2023 another allegation was raised about him sleeping on the Granby Ward. The Claimant did not know who made the allegation but said it was communicated to him by the Ward Manager. He did not know the name of the Ward Manager.

Detriment 3: Restrictions were placed on his account where he was unable to work on the Byland or Granby Wards (Harrogate & District Foundation Trust). The Claimant did not know the name of the person who imposed these restrictions. The restrictions for this allegation concerned those imposed on 19 June 2023 in respect of the Claimant's shifts on solely the Byland or Granby Wards.

Detriment 4: Removal of all pre-booked shifts. The Claimant did not know who removed these shifts. For the purposes of this allegation, the Claimant's claim concerned all of the Claimant's shifts (not simply those on the Byland or Granby Wards). He says this was done in October 2023.

Detriment 5: Disciplinary Hearing – the lady was rude. In this regard, the Claimant said that the lady was called Monica Filograno. He said that she was rude because she alleged that the Claimant was a liar.

Detriment 6: Loss of earnings in respect to the detriments at 3 and 4 above. The Claimant also complained about lost earnings on another shift but could not confirm, during today's hearing, the date of that shift. From his claim form, it appears that the Claimant may be referring to 30 October 2023. However, this is unclear and the Claimant must ensure this is clearly confirmed in his schedule of loss.