



EMPLOYMENT TRIBUNALS

Claimant: Mr A Szucs

Respondent: GreenSquareAccord Ltd

Heard at: Bristol (parties by video) **On:** 21 March 2025

Before: Employment Judge Livesey
Mrs D England
Ms L Fellows

Representation

Claimant: In person

Respondent: Mr Fitzpatrick, counsel

JUDGMENT

Upon remittal from the Employment Appeal Tribunal, the Judgment sent to the parties on 18 August 2022 is confirmed for the following further reasons.

REASONS

Introduction

1. By a claim form dated 5 August 2020, the Claimant brought a complaint of victimisation under section 27 of the Equality Act. The complaint was dealt with at a hearing before this Tribunal over three days on 25, 26 and 27 July 2022. The claim was dismissed and written reasons were subsequently provided at the Claimant's request.
2. The Claimant appealed and, on 15 August 2024, HHJ Beard allowed the appeal in the Employment Appeal Tribunal and the matter was remitted to the same Tribunal for re-hearing on a specific issue.
3. A Case Management Preliminary Hearing took place on 21 January 2025 in which the remitted issue was discussed and listed for re-hearing. The Claimant was unhappy about many of the decisions that were taken on that occasion and the nature of his concerns and the basis for the resolution of

the various disputes were set out in full in the Order and Case Summary produced as a result of that hearing. They have not been repeated here.

Postponement application

4. An application to postpone this hearing was made at 12:49 pm yesterday. It was refused for the reasons set out in the email in reply that was sent later in the day. Again, those reasons have not been repeated here.

The hearing

5. The Respondent produced a copy of the original hearing bundle (R1), to which some recent correspondence and the Employment Appeal Tribunal material had been added. References to pages within it have been cited below in square brackets. The numbers refer to the electronic page numbers.
6. At a Case management Preliminary Hearing which was conducted on 21 January 2025, it was determined that the correct manner for the Tribunal to have resolved the remitted issue was for it to receive further submissions and argument on the point from the parties on the basis of the evidence which had been received and the facts that had been found previously [495-501], which was how the Tribunal approached its task.
7. Despite the discussions at the January hearing and the reasons for the dismissal of the postponement application yesterday, the Claimant insisted on attempting to revisit issues around the alleged fabrication of documents, his alleged poor performance and the grievance process during his oral submissions. The Tribunal attempted to re-direct him to the issue which it had to determine on more than one occasion, regrettably, with limited success. At one point he was clearly distressed and was given time to regain his composure. He overran the time which had been allotted for his submissions and, we suspect, would have done so by a more considerable period if we had not intervened.

Issue remitted and the parties' positions

8. The original issues in the case had been identified and recorded at a Case Management Preliminary Hearing which took place on 1 April 2021 and they were recited in paragraph 5.1 of the Reasons dated 8 August 2022; the Claimant relied upon six protected acts, all of which were conceded by the Respondent on the first day of the hearing. The detriment which was claimed was that of his dismissal on 8 April 2020.
9. Within the factual findings set out in the Reasons, the 6 protected acts were described between paragraphs 6.17 and 6.24; the Claimant's 3 grievances and/or grievance appeals and his 3 approaches to ACAS, or threats to do so. They had occurred between 12 November 2019 and 2 April 2020.
10. Findings were then made in relation to the Claimant's performance and attendance; its deterioration from the spring or summer of 2019 (paragraph 6.27), the performance reviews and one to ones that followed, including the 'red' grading in March 2020 (6.28 to 6.32), which led to the discussions

around his future and the decision to dismiss him before he had acquired two years' service (6.33 to 6.38).

11. It was accepted by Mr Holland, the Respondent's former Employee Relations Specialist, that the process which had led to the Claimant's dismissal had been "*highly unusual*" (paragraph 6.39). The record of the meeting between the Claimant and Mr Lillis (HR), at which he was dismissed, contained a number of different apparent reasons for the decision (paragraph 6.38); whilst there were clear references to the Claimant's perceived poor performance and attendance, there were also some references to him having complained and/or his poor attitude. The Claimant therefore alleged that his dismissal had been, at least in part, on the grounds that he had raised complaints to his employer and/or ACAS and had committed the protected acts.
12. Having set out the relevant law in paragraph 7 of the Reasons, the Tribunal expressed its conclusions within paragraph 8. It determined that the burden of proof shifted to the Respondent under s. 136 because the manner of the Claimant's dismissal had departed so significantly from good industrial practice and because references had been made to him having been a complainer at the point of dismissal, which "*could have been references to his grievance and/or grievance appeal and/or ACAS referrals*" (paragraph 8.1 of the Reasons).
13. The Respondent's case was hampered by the fact that it had not been able to call Mr Lillis to explain his initial decision to dismiss, but the Tribunal found that Mrs Crownshaw, the Executive Director of Operations who dealt with the appeal, gave "*good, compelling evidence about what was in her mind*" at that point (paragraph 8.3) and the Tribunal ultimately found that the Respondent had discharged the burden for the following reasons;
 - Only a small element of the Claimant's complaints had concerned matters which had been covered by the Equality Act (paragraph 8.4);
 - It was the *manner* of the Claimant's complaints (in particular, his apparent failure to accept a decision and move on), not their contents, which had frustrated Mr Lillis (8.4);
 - There was overwhelming evidence of a significant and consistent deterioration in the Claimant's performance through 2019 and 2020 (8.5).
14. Further or alternatively, the Tribunal found that it would have been "*almost inevitable that the Claimant would have been dismissed in any event*" because of a loss of trust and confidence (8.7).
15. In the Employment Appeal Tribunal, HHJ Beard found that the Tribunal "*had set out the correct test in its description of the law*", no doubt referring to paragraph 7 of the Reasons (paragraph 47 of his Judgment [489]). There was, however, criticism of the use of a single word within paragraph 8.5 of the Reasons, the word "*and*" in the following phrase within paragraph 8.5; "*effective and substantive cause*". Its use was described as an "*infelicity of expression*".

16. Upon a simple reading of the Reasons, the learned Judge appears to have misquoted the paragraph; the paragraph actually contained the following sentence;
“We did not consider that the protected acts had been the effective or substantive cause of the Claimant’s dismissal.”
17. That aside, what was understood from the Judgment in more general terms was that the Tribunal had been criticised for not having taken *“the Kong step of clearly identifying the reason or reasons”* for the Claimant’s dismissal and/or for failing to have provided a *“clear exposition that the protected acts had no material or operative effect”*. The Judge stated that, whilst it was *“clear that the performance and attendance complaints played a part...the overwhelming part, in the decision to dismiss,”* ... *“these are not separable in the Martin sense but simply separate in the Kong sense”* (paragraph 51). Further, that there *“was no clear indication that the protected acts played no part.”*

Discussion and conclusions

18. The relevant legal principles did not need to be repeated again in full. When considering whether a dismissal had been caused by protected acts under s. 27, tribunals had been encouraged to concentrate upon the word ‘because’ in the statute; had the protected acts been *an* effective or substantive cause of the detriment? They did not need to have been the only one. If there had been other reasons in the mix, the question was whether the protected acts had been a significant influence upon the detriment (*Warburton-v-Chief Constable of Northamptonshire Police* [2022] EAR 22). To look at it from the other direction, the question could have been whether the detriment had arisen *“in no sense whatsoever”* because of the protected acts.
19. In a case, as here, where a claimant’s conduct, behaviour or other issues had to be examined as potential other causes for the detriment, the principles to be extracted from the cases of *Martin-v-Devonshires Solicitors* [2011] ICR 352 and *Kong-v-Gulf International Bank (UK) Ltd* [2022] EWCA Civ 941 (and that of *Woodhouse-v-West North West Homes Leeds* UKEAT/0007/12/SM) assisted. The question was whether those other reasons could be seen to have ‘stood between’ the prohibited cause and the detriment (from *Woodhouse* in paragraph 7.3 of the Tribunal’s Reasons). To borrow from *Kong* (paragraph 42 of the EAT’s Judgment), were the reasons identified for the detriment claimed *“separate from the protected disclosure, or so closely connected with it that a distinction cannot fairly and sensibly be drawn”*?
20. In this case, despite the burden of proof having shifted to the Respondent, a simple reading of paragraph 8.5 of the Reasons indicated that, in summary, we had found that there had been four reasons for the Claimant’s dismissal;
- (a) His performance, described as the *“overwhelming reason”*, which had been *“consistently recorded as poor”* and had been *“deteriorating through 2019 and 2020”*, the factual basis for which was set out in paragraphs 6.25 to 6.38 in particular;

- (b) His 'attitude';
- (c) His attendance.
21. Only one of those matters might have been seen to have been linked to the protected acts, (b), his 'attitude'. Did that word encompass the fact that he had committed protected acts?
22. That was not what had been meant or intended. We were then referring to the problems which the Respondent had described with the Claimant's attitude in the following respects;
- His failure to accept the Respondent's position in relation to his expenses issues, which had had a "*marked impact ... upon his attitude and performance*" (paragraphs 8.3.1 and 8.3.4), as expanded within Mr Fitzpatrick's submissions at paragraphs 18 (a) – (h) [507-8];
 - His failure to accept "*the overwhelming evidence against him*" in respect of his performance (paragraph 8.5).
23. Mr Lillis' reference to him as a 'complainer', we concluded, was to the Claimant's numerous complaints from February 2019 onwards about his contractual place(s) of work, the expenses policy and his unwillingness to accept the Respondent's position on those matters. It did not relate to protected acts. It was the repeated *manner* of the Claimant's complaints, not their subject matter or contents. We had reached that conclusion, not only because of the proportion of the complaints which had actually been protected under the Act, but also because of his behaviour in connection with them; his repeated failure to accept a management decision and "*move on*" (see paragraph 22 above).
24. In summary, therefore, in respect of that one reason which had been found to have contributed to the Claimant's dismissal and could have been tainted by, or caused by, the protected acts, we found that;
- (i) The proportion of the Claimant's complaints which had actually concerned matters under the Equality Act had rendered the causal link unlikely. That was what HHJ Beard had suspected from his reading of the Reasons (paragraph 52 of the EAT's Judgment [490-1]) and we now confirm that his understanding was correct; and
 - (ii) That the Claimant's conduct, by refusing accept answers to his concerns, complaints and/or grievances and move on and his failure to take on board the performance concerns that had been raised, 'stood between' the content of the complaints (what he was complaining *about*) and the detriment of dismissal.
25. The Employment Appeal Tribunal asked the Tribunal to provide a "*clear exposition that the protected acts had no material or operative effect*". We consider that we have now done so and refer to paragraph 8.5 of the Reasons; the second reason for the Claimant's dismissal referred to in paragraph 20 above was not operatively or substantively caused by the content of the protected acts.

Employment Judge Livesey

Date 21 March 2025

JUDGMENT SENT TO THE PARTIES ON
09 April 2025 By Mr J McCormick
FOR THE TRIBUNAL OFFICE

Notes

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

Recording and Transcription

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/>
written record of the decision.