EMPLOYMENT TRIBUNALS

Claimant: Mr Peter Musgrove

Respondent: Hartlepool College of Further Education

Heard at: Middlesbrough **On:** 23, 24 and 25 June 2025

Deliberations: 26th June 2025

Before: Employment Judge Legard
Mrs D Newey
Mrs C Brayson

Representation
Claimant: Mr Stephenson, Mackenzie friend
Respondent: Mr Jangra of Counsel

JUDGMENT

The unanimous judgment of the Tribunal is as follows:

1. The complaint of being subjected to detriment for making a protected disclosure is not well founded and is dismissed.

2. The complaint of unfair dismissal contrary to s.103A of the Employment Rights Act 1996 ('ERA') is not well founded and is dismissed.

3. The complaint of ordinary unfair dismissal is not well founded and is dismissed.

REASONS

1. Issues

1.1 By a Claim Form dated 18th January 2024, the Claimant brings complaints alleging:

- detriment by reason of him having made a protected disclosure (s.47B ERA);
- automatically unfair dismissal pursuant to s.103A ERA 1996;
- 'ordinary' unfair dismissal.

1.2 The Claimant notified ACAS on 18th December 2023 and the EC certificate was issued on 22nd December 2023.

1.3 At the outset of the hearing we discussed the issues with both Mr Stephenson and Mr Jangra. We also took note of the fact that a Case Management Hearing took place on 29th November 2024 following which Employment Judge Johnson set out the issues as follows:

i. What was the respondent's reason (or if more than one, its principal reason) for dismissing the claimant?

ii. If that reason was redundancy, was the claimant's position redundant as defined (s.139 ERA)?

iii. Did the claimant make a protected disclosure in accordance with ss.43A/s.43B ERA?

iv. Was being subjected to the respondent's disciplinary procedure which led to a stage 2 warning a 'detriment' in accordance with s.47B ERA?

v. Did the making of the protected disclosure have a material influence

on the imposition of that detriment?

vi. Was the reason (or, if more than one, the principal reason) for the claimant's dismissal the fact that he had made a protected disclosure (s.103A)?

vii. If the reason for dismissal was redundancy, did the respondent follow a fair procedure?

1.4 Interestingly we noted that the Claimant had not, at any stage of these proceedings, sought to advance a 'health and safety' complaint pursuant to s.100(1)(c) ERA and we say no more about it.

1.5 Although not identified within the list of issues at the CMH above, it was clear from the outset (and both agreed) that a jurisdictional issue arose, namely whether the detriment claim had been brought within the statutory time limit. We therefore added that to our list of issues.

1.6 Before the hearing began Mr Stephenson provided us with a skeleton argument. Having considered the same, we enquired as to whether it was still his intention to maintain a complaint of whistleblowing 'detriment' there being little or no reference to the same within the body of his argument. At first he indicated that he would not be maintaining such a complaint but, before marking it as dismissed upon withdrawal, we gave him a further opportunity to reflect. Having done so, he changed his position and accordingly that complaint remained a live issue between the parties.

1.7 We decided that we would consider all matters pertaining to liability only at this stage with a view to resolving any remedy issues by way of a further hearing, if necessary.

2. Relevant law

'Protected disclosures'

2.1 'Whistleblowing' is protected under PIDA if, but only if, it constitutes a 'protected disclosure' (ERA s.43B). A protected disclosure concerns a past, present or anticipated wrongdoing. Wrong doings covered by PIDA include crimes, miscarriages of justice, failure to comply with legal obligations, risks to health and safety, damage to the environment and the covering up of any of these (s.43B).

2.2 The Act provides a broad definition of what amounts to a disclosure and 'any disclosure of information' will qualify (s.43B(1) ERA). There must still be a 'disclosure of information' as such and not simply 'allegations' about the wrongdoer (see *Cavendish Munro Professional Risks Management Ltd v Geduld [2010] IRLR 38, EAT* and *Smith v London Metropolitan University [2011] IRLR 884, EAT*). In the latter case, mere grievances about the claimant's workload were not held to be a 'disclosure'. Depending upon the facts, it may be possible to 'aggregate' more than one communication in order for them to be read together as constituting a protected disclosure – *Norbrook Laboratories Ltd v Shaw [2014] ICR 546.*

2.3 s.43L provides that a disclosure of information will also take place where the information is provided to a person who is already aware of that information and a disclosure may be a qualifying disclosure even if it subsequently transpires that the information disclosed was incorrect - *Darnton v University of Surrey [2003] IRLR 133, EAT*.

2.4 *Cavendish (supra.)* needs to be read in conjunction with *Kilraine v London Borough of Wandsworth [2018] EWCA Civ 1436* in which the Court of Appeal provided further guidance on what constitutes 'information.' The CA explained that the concept of "information" as used in section 43B(1) is capable of covering statements which might also be characterised as "allegations." Grammatically, the word "information" had to be read with the qualifying phrase, "which tends to show [etc]". There has to be sufficient factual content

and specificity capable of tending to show one of the relevant matters in subsection (1). That was a matter for evaluative judgment by the ET in the light of all the facts.

'Reasonable belief and public interest'

2.5 In all cases, the worker making the disclosure must have a 'reasonable belief' that the disclosed information 'tends to show' the wrongdoing (s.43B(1)). The statutory test (for reasonable belief) is subjective - *Korashi v Abertawe Bro Morgannwg University Local Health Board [2012] IRLR 4, EAT*.

2.6 It is also necessary that the worker making the disclosure has a *reasonable belief* that the disclosure *is in the public interest* – for which, read Underhill LJ's analysis (paragraph 37) in the case of *Chesterton Global Ltd v Nurmohamed*. The words 'public interest' carry a broad interpretation and it is not a case of the tribunal itself determining public interest, but of determining whether the individual had had a reasonable belief in public interest. See also *Dobbie v Felton t/a Feltons Solicitors [2021] IRLR 679* and *Ibrahim v HCA International [2019] 1 WLR 3981* where it was held that the claimant's *motivation* for making the disclosure is *not* part of this test. As Underhill LJ puts it: *'the necessary belief is simply that the disclosure was in the public interest' and 'the particular reasons why the worker believes it be so are not of the essence'*.

Detriment

2.7 In order to establish a detriment it is not necessary for the worker to show that there was some physical or economic consequence flowing from the matters complained of (see *Shamoon v Chief Constable of the Royal Ulster Constabulary (Northern Ireland)* and *Edinburgh Mela Ltd v Purnell [2021] IRLR 874, EAT*, where it was held that '… the threshold for establishing that an act is a detriment is not high'.

Time/Jurisdiction

2.8 By Section 48(1)(A) of the 1996 Act, an Employment Tribunal shall not consider a complaint under [s.47B] unless it is presented to the Tribunal:

(a) before the end of the period of 3 months beginning with the date of the act or failure to act to which the complaint relates, or where that act is part of a series of similar acts, the last of them; or

(b) within such further period as the Tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of 3 months.

2.9 There are essentially two limbs to this 'escape' clause. First the employee must show that it was not reasonably practicable to present his claim in time. The burden of proving this test rests firmly on the Claimant - see *Porter -v- Bainbridge [1978] IRLR 271*. Second if he succeeds in doing so the Tribunal must be further satisfied that the time within which the claim was in fact presented was reasonable. 'Reasonably practicable' can be equated to 'reasonably feasible' - see May LJ in the case of *Palmer & Saunders -v- Southend on Sea Borough Council [1984] IRLR 119*. The question of reasonable practicability must be addressed by reference to all the surrounding circumstances, see *Schultz -v- Esso Petroleum* and ignorance as to either the right to claim or the time limit is not to be treated as conclusive - see *Avon County Council -v- Haywood-Hicks*.

2.10 Essentially it is for the Tribunal to concentrate on the effective cause for the failure to present the claim form within the specified time limit. For example, a physical impediment or medical condition might suffice (as would deliberate misrepresentation on the part of the Respondent). Knowledge of rights can, in certain circumstances, also be relevant. The mere ignorance of the time limit will not of itself amount to 'reasonable impracticability' save perhaps when the employee does not discover the existence of his right until a short time of his expiry of the time limit (see *Walls Meat* and also *Riley v Tescos Stores*.)

'On the ground that' (causation in detriment complaints)

2.11 By s 48(2) 'on such a complaint it is for the employer to show the ground on which any act, or deliberate failure to act, was done.' (subject to the claimant first establishing a protected disclosure). 'On the ground that' requires an analysis of the mental processes (conscious or unconscious) which caused the employer so to act and the test is not satisfied by the simple application of a 'but for' test (*Harrow London Borough v Knight [2003] IRLR 140, EAT*). The employer must prove on the balance of probabilities that the act, or deliberate failure, complained of was not on the grounds that the employee had done the protected act; meaning that the protected act did not materially influence (in the sense of being more than a trivial influence) the employer's treatment of the whistleblower (see *Fecitt v NHS Manchester [2012] IRLR 64*).

2.12 The appellate courts have grappled with the issue as to whether 'malign influence' of others (and not necessarily the dismissing or disciplining manager) is sufficient to establish causative link (so-called 'Iago cases'). See *Royal Mail Group v Jhuti [2020] IRLR 129* where the Supreme Court held that in some circumstances it may be possible to look beyond the motivation of the dismisser (traditionally the correct focus) and take into account the motivation of the background manager. Whether that test remains the same for a 'detriment' complaint remains a moot point – see *Malik*; *William v Lewisham & Greenwich NHS Trust [2024] EAT 58; First Great Western Ltd v Moussa [2024] IRLR 697*.

2.13 When dealing with such cases, it can be helpful to follow the checklist set out by Judge Serota in *Blackbay Ventures Ltd v Gahir [2014] IRLR 416, EAT*.

Automatic unfair dismissal (s.103A ERA)

2.14 In a dismissal case the causation test is more stringent, namely whether the whistleblowing was 'the reason (or, if more than one, the principal reason) for the dismissal.' The start point for determining the reason are the words

of Cairns LJ in *Abernethy v Mott Hay & Anderson [1974] IRLR 213* -namely 'a set of facts known to the employer, or it may be beliefs held by him, which cause him to dismiss the employee'. The proper approach to be adopted by Tribunals in s.103A cases, where there are opposing reasons for dismissal put forward by the parties, was explained by the Court of Appeal in *Kuzel v Roche Products Ltd*, [2008] IRLR 530. Although it is for the employer to prove that he dismissed the employee for a fair and admissible reason, it does not follow, as a matter of law, that if he fails to establish this, the Tribunal must accept the alternative reason advanced by the employee. If the employee puts forward a positive case that he was dismissed for a different reason, he must produce some evidence supporting that case.

2.15 In *Kuzel* Mummery LJ put it like this:

'It is sufficient for the employee to challenge the evidence produced by the employer to show the reason advanced by him for the dismissal and to produce some evidence of a different reason' (para 57). The identification of the reason, being a question of fact, turns on direct evidence and permissible inferences from it, with the consequence that it is open to a tribunal to find that the true reason for dismissal was neither that advanced by the employer nor by the employee, but was some other reason."

2.16 It is permissible, therefore, in s.103A cases for the Tribunal to draw such inferences from the primary facts as they deem appropriate. The process of drawing inferences involves a consideration of all the facts of the case, and will include the assessment of the parties and their witnesses when they give their evidence (*Qureshi v Victoria University of Manchester* [2001] ICR 863, EAT). However, an inference of discrimination cannot be drawn simply from the fact that an employer has behaved badly or unreasonably (in industrial relations terms) towards an employee – *Zafar v Glasgow City Council [1998] IRLR 36, HL.*

2.17 In *Martin v Devonshires Solicitors UKEAT 0086/10 [2011] EqLR 108 the EAT* stated that 'there would in principle be cases where an employer had dismissed an employee in response to a protected act but could say that

the reason for dismissal was not the act but some feature of it which could properly be treated as separable'. According to Underhill P:

'it would be extraordinary if these provisions gave employees absolute immunity in respect of anything said or done in the context of a protected complaint'.

See also *Panayiotou v Chief Constable of Hampshire Police [2014] IRLR 500* and *Kong v Gulf International Bank UK Ltd [2022] EWCA Civ 941*

Redundancy

2.18 Redundancy is a potentially fair reason for dismissal and is defined within Section 139 of the ERA 1996:

> *"(1) For the purposes of this Act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to –*
>
> *(a) the fact that his employer has ceased or intends to cease –*
>
> *(i) to carry on the business for the purposes of which the employee was employed by him, or*
>
> *(ii) to carry on that business in the place where the employee was so employed, or*
>
> *(b) the fact that the requirements of that business –*
>
> *(i) for employees to carry out work of a particular kind, or*

(ii) for employees to carry out work of a particular kind in the place where the employee was employed by the employer,

have ceased or diminished or are expected to cease or diminish."

2.19 The law relating to redundancy dismissals is a well trodden path. *Williams v Compair Maxam [1982] ICR* (still a leading case on this issue) makes clear that, in general terms, an employer will not have acted reasonably in a redundancy situation unless it gives appropriate warning; provides adequate consultation; selects by reference to fair and objective criteria and, finally, makes reasonable efforts to secure alternative employment for the affected employee/s (see also *Langston v Cranfield University [1998] IRLR 172).* The above summary is, of course, simplistic and **Williams** has since been overlaid by abundant caselaw. However, the starting point for consideration by the Tribunal in most cases concerning redundancy (excluding 'collective' redundancy situations) tends to be the 'Compair Maxam' checklist. See also the case of *Polkey – v – AE Dayton Services Ltd [1988] ICR 142*.

2.20 The one clear and consistent principle which has always been applied in construing s 98(4) is that it is not for the Tribunal simply to substitute its own opinion for that of the employer as to whether certain conduct is reasonable or not. Rather its job is to determine whether the employer has acted in a manner which a reasonable employer might have acted, even although the Tribunal, left to itself, would have acted differently - *Iceland Frozen Foods v Jones [1982] IRLR 439); Conlin v United Distillers [1994] IRLR 169*.

2.21 Decisions as to pools and criteria are matters for management and an Employment Tribunal will rarely interfere with them – see *Halpin v Sandpiper Book Ltd [2012] UKEAT/1071/11/LA. Capita Hartshead Ltd v Byard (2012)* contains a very useful summary of the law on assessing the fairness of a redundancy dismissal by reference to the pool of employees

chosen by the employer. Where there is essentially a 'self-selecting' pool of one (*see Capita (supra) and Mogane v Bradford Teaching Hospitals NHS Foundation Trust, [2023] IRLR 44),* consultation should be at the 'formative' stage of the decision.

2.22 The s-called 'band of reasonable responses' test is applied at every stage of the process (see *Sainsburys supermarkets Ltd – v – Hitt [2003] IRLR 23*) and that includes, but is not limited to, the question of whether the dismissal itself was a fair sanction.

2.23 The obligation on the employer to make proper efforts to seek alternative employment for the displaced employee is an important factor in fairness: see *Vokes Ltd v Bear [1973] IRLR 363*, but the duty is to take reasonable steps not every conceivable step: *Quinton Hazell Ltd v Earl [1976] IRLR 296*.

The 'Polkey' question

2.24 A so-called 'Polkey' reduction reflects the chance that the employee might not have lost his job had fair procedures been adopted. Where the tribunal concludes that the dismissal would have occurred in any event a 'nil' award will normally result (or a small additional compensatory award only to take account of any additional period for which the employee would have been employed had the proper procedures been carried into effect - see eg *Mining Supplies (Longwall) Ltd v Baker [1988] IRLR 417*).

3. Evidence

3.1 On the Respondent's behalf, we heard evidence from Ms Flender-Bradley ('SF-B') (Head of Health, Care and Education); Ms Tait ('LT') (Head of HR); Ms Amber Williams ('AW') (Deputy Head of Facilities Management); Mr Hope ('SH') (Assistant Principal Curriculum) and Mr Williams ('DW') (Assistant Principal Finance and Corporate). We also heard evidence from

the Claimant. All witnesses were thoroughly cross-examined.

3.2 The Claimant was represented by Mr Stephenson. Mr Stephenson has some prior experience of representing litigants before the Employment Tribunal and he did so on this occasion with commendable ability and objectivity. The Respondent was represented by Mr Jangra of Counsel. We were referred to a number of documents within an agreed bundle comprising 339 pages (together with a number of later additions).

3.3 As matters turned out there were precious few areas of factual dispute between the parties. The key difference lay in the parties' respective positions as to the true cause for dismissal.

4. Findings of fact

4.1 The following findings are based on the balance of probability having regard to the totality of the evidence. The Respondent is an establishment providing training and education for school leavers and apprentices over a wide range of skills and subjects. It employs over 300 people, approximately half of whom are engaged in teaching roles. It has a small dedicated HR resource, comprising LT (head of HR) and two administrative staff.

4.2 The Claimant was employed as a joinery and maintenance technician from 20th January 2020 until his dismissal which took effect on 30th September 2023.

4.3 In October 2022 the Claimant received a verbal warning about his conduct. That warning was issued by SH and arose as a consequence of a prank that the Claimant had carried out on the Facilities Co-ordinator, Jade Richardson. No evidence was led on the underlying facts that lay behind this verbal warning and, in any event, they are of no relevance to the substance of this claim. This verbal warning was placed on the Claimant's file but SH readily admitted that he failed to inform the Claimant at the time that the warning would be a matter of record. It follows that, by the time that

these matters that came to be considered, the Claimant reasonably believed that the verbal warning was effectively spent.

4.4 Part of the Claimant's role involved relatively low level maintenance tasks such as repairing or fitting locks. On 24th January 2023 the Claimant was contacted by AW who requested him to fit a lock to a fridge located within the Science laboratory. The fridge was an ordinary fridge but for the use of those teaching or being taught sciences and therefore principally used for the purpose of keeping chemical or biological substances or solutions (such as may be required in for laboratory experimentation) in a chilled environment. There was a factual dispute between the parties as to whether (a) AW contacted the Claimant in relation to this task by telephone prior to sending him an email and (b), if so, what the content of that telephone call had been. The Claimant maintained that he received no such telephone call and that the first notification he received about the task was set out in an email from AW timed at 14.27. AW, on the other hand, insisted that not only had she phoned the Claimant but also that she had explicitly told him during the course of that call that the fridge contained substances used for scientific experiments including K12 E. coli.

4.5 It was an agreed fact that the fridge in question contained a modified strain of e. coli known as K12. This strain poses no risk to human or animal health; it is essentially non-pathogenic. It can be bought over the internet, delivered in an ordinary package and is commonly used in student science laboratories for conducting experiments. In this case, the package had been double-wrapped and there was a sheet of paper attached to the front of the fridge alerting those to its contents. Nevertheless, the fridge was readily accessible to many students, not all of whom were science students, and AW had quite legitimately decided to restrict access to the fridge to prevent any unauthorised use of that and other substances. It was for that reason that she instructed the Claimant to fit a lock to it.

4.6 On the balance of probabilities, we found that AW had previously telephoned the Claimant in respect of this task. Her email was a follow-up email, attaching a photograph of the fridge. That email would have made

little sense to the recipient if sent in isolation – it is clearly referencing an earlier conversation. That said, we do not accept that AW told the Claimant that the fridge contained a strain of E. coli. Had that been the case, there is no question, in our minds, that the Claimant would have, at the very least, challenged AW at that point and prior to completing the task. It is inconceivable that the Claimant would have happily opened the fridge and fitted the lock if he had been told that it contained a strain of e. coli. It is quite clear that the claimant had no understanding as to the different strains of e. coli. To him (and this may be common to many ordinary members of the public) e. coli was associated with infectious disease.

4.7 Having received the email, the Claimant duly fitted the lock. He did so, by partially opening the fridge door to pull the fridge forward. It was a simple task and he notified AW by email later that same day that he had completed it. He requested that the job be uploaded onto the 'Every' system. The 'Every' system was an internal communications platform which was used, amongst other things, to notify the Facilities team (of which the Claimant was one) of essential maintenance tasks although, as a number of witnesses made clear, some tasks might just as easily be requested orally.

4.8 In any event, AW added this job to the Every system and, having done so, emailed the Claimant and thanked him for doing the job 'so quickly.' The following morning (25th January), the Claimant was in the vicinity of the Help Desk. The Claimant maintains that he overheard or was party to a conversation with Jade Richardson (the receptionist) who made mention of 'the caretaker' being unhappy about fitting a lock to a fridge when e. coli had been present within it. We found this evidence difficult to reconcile; there being no suggestion let alone evidence of anyone other than the Claimant having fitted the lock. However, we were satisfied that the Claimant was not aware until this point in time that as to the presence of e. coli within the fridge. It was this information that immediately set an alarm bell ringing and triggered his decision to seek clarification from SF-B. At the time, the Claimant was responsible for caring for his elderly parents and he had legitimate concerns that he could have become infected by what he thought at the time may have been an infectious bacteria. He went to speak to SF-

B and asked her a simple and direct question, namely whether the fridge contained e. coli. She answered in the affirmative. The conversation was abrupt and to the point and SF-B had no opportunity to explain to the Claimant that the e. coli in question was non-hazardous and indeed safe for classroom use.

4.9 That evening the Claimant logged onto the Every system and made the following entry:

"[the task] was completed on the 24th, unfortunately I was not made aware the fridge contained hazardous materials (E-COLI Bacteria etc) either by the person who logged the job (Amber Williams H&S) or the lecturer (Sarah Irving I believe) and the fridge did not have a bio hazard sign on it (NOT Happy)."

Following that entry AW and Michelle Roberts (Head of Facilities Management) decided to speak to the Claimant about his concerns; in part to allay those concerns but also, we find, to speak to him about the style (as opposed to the content) of the above entry. It is clear to us that the Facilities team were becoming increasingly concerned about the Claimant's general attitude to various job requests. In terms, there had been a growing dissatisfaction with AW/MR and others about what they perceived to be the Claimant's somewhat curmudgeonly approach to being tasked with routine jobs. It is right to say that the Claimant, who spent the vast majority of his working life in a self-employed capacity and consequently answerable to no-one but himself (and clients), does not come across as a particularly engaging or pro-active individual.

4.10 On 26th January the Claimant attended at the Facilities Office and was met by AW and MR. He was offered a seat but declined. He was breathing heavily although it is fair to say that this may have been in part due to the flights of stairs that he had had to negotiate in order to reach the office. This was an informal meeting (a first stage meeting in accordance with the Respondent's relevant policy between manager and employee designed to head off at the pass anything which has the potential to escalate).

Notwithstanding, the Claimant requested a witness. Indeed, quite unrealistically and somewhat provocatively, he initially requested the Principal to be his witness. MR nevertheless left the room to attempt to action his request. Whilst MR was absent, the Claimant positioned himself directly behind and close to AW as she was on her computer looking to access the Every system entry in order to initiate the conversation. There was a narrow space behind AW and the wall/window of her office; the Claimant was in very close proximity and, on account of his positioning, body language and continued 'heavy breathing', AW began to feel intimidated to the point at which she used her mouse to locate the panic button on her computer. For the avoidance of any doubt we do not accept that, during the course of this 'meeting', the Claimant said to either MR or AW that he was concerned about potential consequences to his health and safety or that 'every single aspect of health and safety had been violated' (see Claimant's further and betters). Had he done so, we are in no doubt that the meeting would have taken a wholly new direction. In fact MR returned to the office; the Claimant was informed that he could, if he so chose, continue the meeting with a Trade Union representative or colleague as his chosen witness. Various alternatives were offered but several follow-up emails sent to the Claimant attempting to re-schedule the meeting went unanswered.

4.11 MR and AW subsequently brought to the Principal's attention not only the circumstances of the above meeting but another two instances of conduct that had taken place in the preceding week which, in their view, demonstrated a worrying pattern of hostile and non-co-operative behaviour on the part of the Claimant. The Principal instructed LT to investigate.

4.12 The other two instances concerned an allegation that the Claimant had been deliberately unco-operative and confrontational when asked to repair/maintain some trolley wheels in the hairdressing salon that were sticking due to the build-up of hair. The other issue concerned a similar allegation arising out of a request for the Claimant to repair a door. We do not propose to set out the alleged facts of either matter within the context of this Judgment having heard no evidence in relation to either incident.

However we note that LT, having investigated all three incidents and having interviewed a number of people including the claimant, concluded that the Claimant's overall behaviour amounted to intimidatory conduct and a breach of the staff code of conduct. LT referenced the Claimant's earlier verbal warning and recommended that disciplinary action should follow.

4.13 It is of note that the Claimant was represented by an experienced Trade Union representative during the course of this investigation (Edwin Jeffries) and that he was given an opportunity to provide further written submissions (which he took advantage of).

4.14 The Claimant was invited to an disciplinary hearing (mis-labelled as an investigatory hearing) scheduled to take place on 24th March. On 16th March the Claimant was signed off as unfit to work with mixed anxiety, depression and stress. Save for the meeting itself, he never returned to work after this date.

4.15 The disciplinary hearing took place on 24th March and, once again, the Claimant was represented by Mr Jeffries. It lasted approximately one hour. It was chaired by SH. By letter dated 27th March, SH confirmed his findings, namely that the Claimant's conduct did amount to a breach of the staff code of conduct but he did not uphold a finding of intimidatory conduct. He issued the claimant with a stage 2 written warning. The Claimant was offered a right of appeal. In response the Claimant said that 'I may wish to appeal but am awaiting advice on the matter.' The Claimant did not appeal.

4.16 The Claimant remained off work over the next several months. There was some communication between the parties. In evidence, the Claimant maintained that the respondent ought not to have attempted any communication with him during this period. When it was put to him by Mr Jangra that he had initiated much of that communication, the Claimant responded by saying, in terms, that it was fine for him to communicate with his employer but not the other way around. Amongst other things the Respondent accommodated (in our view very reasonably) his request to substitute annual leave for sickness absence in order to postpone the

Claimant's reduction to half pay under the terms of the respondent's sick pay policy (over July/August). A welfare meeting was held on 9th June during which, amongst other things, the respondent discussed with the Claimant reasonable adjustments that might facilitate his return to work.

4.17 Of note is the fact that, throughout this period, the Claimant's absence was not felt by the Respondent – in terms of general maintenance or joinery work.

4.18 At around this time (June 2023) the Respondent's executive (comprising Darren Hankey, Principal; SH; Gary Riches and DW) met and determined that the Respondent needed to make significant cost savings. They proposed a voluntary severance scheme in the hope and expectation that such a scheme might produce the desired savings. This scheme closed on 26th June. 19 applications were received but the Executive could only accept 10 of those (the other 9 being considered essential to the running of the establishment).

4.19 The Executive met again and concluded that, as the VR scheme had failed to meet the savings required, compulsory redundancies were needed. They reviewed the staffing structures and took into account the fact that the demand for low level maintenance had diminished significantly since the completion of an estate-wide maintenance programme. A business case (supporting the proposed redundancy of the Claimant's role) was produced. In terms, the Executive's view was that the role was surplus to the College's requirements. Small jobs, of which there were few, could be distributed amongst caretakers and students (under supervision from qualified teachers) and the larger jobs would be assimilated within their capital development plans.

4.20 The Claimant's role was not the only role to be placed at risk of redundancy (a further two roles in the Engineering department and a Team Leader role in work based learning).

4.21 The Claimant was invited to a first consultation meeting on 5th July 2023.

This was chaired by SH with LT in attendance. The Claimant was accompanied by his trade union representative. He was informed as to the business rationale that lay behind the proposal and possible alternatives to redundancy (including reduction in hours) were discussed. LT undertook to see if there were any suitable posts for redeployment. Understandably the Respondent wished to conclude the redundancy process prior to the financial year end (effectively end of July). They attempted to schedule a further consultation meeting but the Claimant refused to attend during the currency of his annual leave (which the respondent had agreed to substitute in place of sick leave – see above). Despite that, the Respondent agreed to accommodate the Claimant's request. His annual leave ended on 11th September so the Respondent arranged a further consultation meeting on 22nd September.

4.22 The Claimant indicated that he would not be well enough to attend so the respondent offered him the opportunity to provide written representations. This he did by email dated 22nd September in which he set out various proposals including:

- A reduction in working hours;
- Providing own tools;
- Doing larger jobs on a 'self-employed' basis;
- Transfer to the construction department in the role of NVQ assessor

4.23 Prior to this, the Claimant had raised a grievance (email also dated 22nd September and timed approximately ½ hour prior to the above 'proposals' email). Within that grievance he named AW (alleging that she had failed to provide a risk assessment in connection with the e. coli/fridge incident and unfairly accusing him of intimidatory behaviour); SH (for placing a verbal warning on his file without telling him) and MR (for matters to do with the storage of tools).

4.24 Because SH was named within this grievance, he recused himself from the redundancy process and the reins were handed over to DW. On 29th September DW wrote to the Claimant informing him of his decision to

terminate his employment by reason of redundancy. Within that same letter he answered the individual proposals that the Claimant had put forward in his earlier email and explained why none of them were viable alternatives to redundancy. The Claimant was informed of his right of appeal which he chose not to exercise.

4.25 An issue arose during the course of the hearing about whether and, in what circumstances, the Claimant came to be in receipt of his letter of termination. As matters turned out, there was nothing to this point. The Claimant was clearly notified that his contract had been terminated by email; via his Trade Union and in hard copy.

4.26 On 3rd October 2023 the respondent provided the Claimant with a written outcome to his grievance. The Claimant contacted ACAS on 18th December 2023 and, following a short period of attempted conciliation (EC certificate dated 22nd December), submitted a claim form on 18th January 2024.

5. Submissions

5.1 We have heard oral and read written submissions from both Mr Jangra for the Respondent and from Mr Stephenson. They were both extremely helpful.

Respondent's submissions

5.2 In very broad terms Mr Jangra argued that the Every system entry was insufficient to qualify as a disclosure of information. It was not made in the public interest but was a mere expression of personal dissatisfaction. In addition there was no evidence to support a finding that he was subjected to a detriment (it being accepted that being subjected to a disciplinary process can amount to a detriment) on the ground that he had made a protected disclosure or that the principal reason for his dismissal is that he made a protected disclosure.

5.3 Mr Jangra contends that there was a genuine redundancy process (the voluntary severance scheme speaking for itself) and there was no longer a requirement for the claimant's role on a full time equivalent basis. The Claimant was in a self-selecting pool of one, a fair consultation process followed and alternative job roles considered.

5.4 On the time jurisdiction point, Mr Jangra argued that the Claimant has failed to bring any evidence as to why it was not 'reasonably practicable' to bring his claim within the three month period following 3 months post the issuing of the warning (namely by 26 June 2023) or any reasonable period thereafter. He prayed in aid paragraphs 18 – 25 of *Cygnet Behavioural Health Ltd v Britton [2022] EAT 108* and emphasised the length of delay (almost ten months) in respect of which, he argued, the claimant had provided no explanation despite the fact that he had had the benefit of union advice throughout.

Claimant's submissions

5.5 On the Claimant's behalf, Mr Stephenson argued that it was abundantly clear that the claimant had a reasonable belief that his health and safety had been endangered and had communicated that in precise terms to his employer. There is no question that the disclosure was made in the public interest.

5.6 Mr Stephenson maintained that, up until the e. coli incident, the claimant had enjoyed an unblemished record but the climate then changed and he was targeted for a number of wholly insignificant matters. It is clear, he argued, that his managers had deliberately singled him out for adverse treatment because he had brought to their attention the fact that e. coli was being insecurely stored in a fridge accessible to all. Mr Stephenson was largely silent on the 'time' point and offered little by way of explanation as to what may have lain behind the delay in bringing a complaint (although, in fairness to Mr Stephenson, there had been precious little evidence led on this issue).

5.7 Mr Stephenson argued that the redundancy process was a manufactured process and little more than a sham or smokescreen camouflaging the

respondent's true reason for dismissal, namely the fact that he had made a protected disclosure. The claimant had struggled to engage meaningfully in the process on account of being unwell.

6. Conclusions

Did the Claimant make protected disclosure(s)?

6.1 We are satisfied that by notifying his managers, via the Every system, that he was 'not happy' about the fact that the fridge contained hazardous materials (e coli bacteria etc.) and was without any bio hazard warning, the Claimant made a disclosure of information that qualified for protection within the meaning of section 43B(1)(d). The Claimant disclosed information, namely that, in his belief (which we find was entirely reasonable) the fridge contained a substance that was likely to endanger not only his but other people's health and safety (including, but not limited to, his own elderly parents). This was far more than a mere allegation. We are therefore satisfied that the disclosure was made in the reasonable belief that it was (a) true and (b) in the public interest.

6.2 For the avoidance of doubt, we do not find that the claimant made any other qualifying disclosures save for that set out above (for example, we do not accept that he made further disclosures to AW and MR during the informal meeting referred to in paragraph 4.10 above).

Did the claimant suffer a detriment?

6.3 This point was conceded by the respondent. By being subjected to a disciplinary process culminating in the issuing of a written warning, the claimant clearly suffered a detriment.

Was being subject to a disciplinary process on the ground that the claimant had made a protected disclosure?

6.4 This was the main area of dispute between the parties. We unhesitatingly concluded that Respondent subjected the claimant to a disciplinary process not because he had raised a concern about e. coli in a laboratory fridge but because of his behaviour towards other staff members, including his supervisors and because of his general non-compliant and unco-operative attitude towards colleagues (both being the subject of specific allegations that formed the basis of the disciplinary investigation and ultimate sanction).

6.5 The claimant's immediate line managers had no health and safety concerns whatsoever about the presence of a non-pathogenic K12 e. coli substance being in a science laboratory fridge. They may have had a wider concern about unauthorised access (hence the request for a lock) but, at no stage, were there any health and safety concerns. Initially it was AW and MR's intention to speak to the claimant informally about his general attitude (which included the style, as opposed to the substance, of his 'Every' system entry). We accept AW's evidence that not only did she feel intimidated by the claimant when left alone with him temporarily in the office but that she was entitled to feel how she did.

6.6 There were other incidences of alleged behaviour on the part of the claimant that the respondent was fully justified in taking further (the ' Katie Thacker' and the 'hair salon trolley' incidents). The investigation itself was initiated by the Principal and undertaken by LT, both of whom had limited knowledge <u>at the time</u> of the 'Every' system entry. We accept LT's evidence that the 'Every' comment formed no part of her decision making process. Neither AW nor MR had any part to play in the investigation or process that followed (save for being interviewed as witnesses). SH chaired the disciplinary hearing and issued a written warning. His evidence, namely that the every system entry did not factor into his decision making, went unchallenged. In the circumstances, we find that the Every system entry did not materially influence the respondent's decision to initiate or follow a disciplinary process nor did it materially influence the outcome.

Was it reasonably practicable for the claimant to have presented his detriment complaint prior to the expiry of the primary time limit?

6.7 In any event, we also concluded that it was reasonably practicable for the claimant to have presented a claim form prior to 26th June 2023 (the expiry of the primary time limit). In fact the claimant submitted his claim form on 18th January 2024 (approximately 7 months after the expiry of the primary time limit and 10 months after the issuing of his written warning which must, on any view, constitute the last of the acts which the claimant contends amounted to a detriment). He was ably supported by experienced trade union representatives throughout the disciplinary process; he had all the necessary information required for bringing a claim by 27th March 2023 and he was not incapacitated to the extent of it not being 'reasonably feasible' to present a claim. We note that the claimant was actively engaging and corresponding with the respondent (albeit on his own terms) throughout this period. He attended numerous meetings with the respondent. There was no deliberate misrepresentation on the part of the respondent. In evidence, the claimant provided no reasons or explanation for his failure to bring his detriment complaint any sooner. The detriment complaint itself was not prosecuted with any vigour by the claimant (or by Mr Stephenson when cross-examining respondent witnesses). Accordingly we find, on balance, that the detriment complaint was presented out of time and the Tribunal lacks the jurisdiction to hear it.

Reason for dismissal

6.8 We find that the respondent has shown that the reason for the claimant's dismissal was redundancy. It had nothing whatsoever to do with the fact that the claimant made an entry onto the Every system in January 2023 in which he raised a concern about the presence of e. coli in the laboratory fridge.

6.9 We are in no doubt that the respondent had a legitimate need to save costs and reduce its headcount. There was ample evidence that a redundancy situation had arisen (the voluntary redundancy scheme speaks for itself).

The evidence showed that the respondent's requirement for an employee performing the role of joinery and maintenance technician had diminished – indeed it had become surplus to requirements. Various significant capital projects had completed meaning that the claimant's contribution to 'larger' jobs was no longer required and any smaller jobs could now be undertaken by joinery students under supervision or (for a few very minor mundane tasks) caretakers. Any substantial works would be outsourced to external contractors. The definition of redundancy as set out in s.139(1)(b)(i) of the 1996 Act is clearly satisfied. It is not for us to 'pierce the corporate veil' or second guess the Respondent's decision to reduce the headcount within the Facilities Department or any other department when faced with a need to save costs. That is a legitimate business decision and one best left to the employer, not the Tribunal.

6.10 We note that the claimant's role was not missed during the period of his lengthy absence nor has it been filled or replaced subsequently. We also note the fact that others, from other departments, were also made redundant. We considered whether redundancy was effectively a 'smokescreen' for 'getting rid' of the claimant. We have no hesitation in rejecting this contention. There was simply no evidence (other than pure conjecture) for supporting such a claim.

6.11 If, as the claimant asserts, his redundancy was as a direct result of making a protected disclosure then one might reasonably have concluded that his dismissal would have been 'engineered' many months before. In any event, (save for SH) those on the executive that were the effective decision makers (in terms of formulating the business case, chairing the consultation meeting and making the decision to dismiss) had no part to play in the earlier disciplinary matter (during which the e.coli issue was obliquely referenced). Insofar as SH was concerned, he immediately recused himself from any further involvement in the redundancy process as soon as he was notified that he had been named within the claimant's grievance. In any event, he was not challenged to any significant degree by Mr Stephenson as to his (or indeed any other person's) motivation in selecting the claimant for redundancy. The Every system entry was made on 25th

January (some 5 months before the redundancy programme got under way) and 8 months or so prior to the claimant's dismissal. In the circumstances we concluded that the claimant's dismissal had nothing whatsoever to do with him having made a protected disclosure.

Was a fair procedure followed?

6.12 The Claimant was on notice that a redundancy situation had arisen back in June 2023 when the voluntary severance scheme was announced. Following the closure of that scheme on 26th June 2023 (with too few volunteers having come forward) he was warned that he was at risk of being made redundant and was invited to a consultation meeting which took place on 5th July and at which he was represented.

6.13 Because the claimant was the sole occupant of the maintenance and joinery technician role, there was no requirement on the part of the respondent to place him within a selection pool as such. It was not suggested, for example, that the site manager and caretakers should have been considered alongside him – not only was this not explored in evidence; there were legitimate reasons for treating the claimant as occupying a self-selecting pool of one. One only has to look at the role's job description and person specification to see that it is unique.

6.14 At his face to face consultation meeting on 5th July, it was explained to the claimant in detail why the respondent had no choice other than to dispense with the role of maintenance technician and how those tasks could be absorbed by others. He given every opportunity to challenge and/or comment upon the same. He did so and indeed each and every contention or proposal made by him (both then and later) was given fair and serious consideration. The respondent accommodated the claimant's request not to hold a further consultation meeting until he had finished his annual leave (despite that being inconvenient to them) and offered him a further meeting

in September. When the claimant informed them he was unwilling or unfit to attend, the respondent gave him the opportunity of providing written representation which he did. These proposals were considered but ultimately rejected by DW but only after careful reflection and following consideration as to whether any alternative roles (such as NVQ assessor) were or might be available as an alternative to redundancy. An appeal was offered but the claimant chose not to. Overall we have no hesitation in concluding that the procedure followed by the respondent meets the test of 'reasonableness.'

6.15 Overall, in light of our findings, we conclude that the reason for the Claimant's dismissal was redundancy and the fact the claimant had made a protected disclosure was not the reason or principal reason for his dismissal. Accordingly we dismiss his complaint under s103A. We further conclude that the respondent acted reasonably in treating redundancy as the reason for the Claimant's dismissal and accordingly the complaint for unfair dismissal must also fail.

Employment Judge Legard

Date 1st July 2025

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