EMPLOYMENT TRIBUNALS

Claimant: MRS ANNA KUZNIAR
Respondent GENERAL DENTAL COUNCIL

Heard at London Central (by CVP)
On: 14 and 15/8/2025
Before: Employment Judge Mr J S Burns

Representation
Claimant: In person
Respondent: Ms B Davies (Counsel)

Judgment

1. The protected disclosure detriment claim (section 43B ERA 1996) is struck out
2. The application to amend the victimization claim (section 27 Equality Act 2010) is refused
3. The victimization claim is struck out
4. The Respondent's costs application is refused.

Reasons

Introduction and background.

1. I was referred to a preliminary bundle of 218 pages, an addendum bundle of 587 pages, to authorities bundles and to skeleton arguments and supplementary skeleton arguments from both sides.

2. The Claimant is a dentist. The Respondent is the UK regulator of dentists and dental care professionals (including dental nurses and hygienists) under the Dentists Act 1984. The Claimant was employed by a company called Roxdent Limited but was dismissed in March 2023. On 31/5/2023 Roxdent Limited referred the Claimant to the Respondent which started an investigation, and, following a review, recorded that significantly failures were apparent in the Claimant's treatment planning and outcomes, record keeping, duty of all candour and radiographic practice, potentially including over-exposure of patients to radiation as outlined. The Respondent started fitness to practice proceedings against the Claimant, and ultimately placed conditions on her right to practice dentistry in the UK, which conditions continue, which she is unhappy about and which is the motivation for the instant claim.

3. The Claimant brought previous ET proceedings against Roxdent Ltd under case number 2212689 2023 which included unsuccessful claims for automatic unfair dismissal pursuant to s.103B of the Employment Rights Act 1996 and whistleblowing detriment pursuant to s.43B of the ERA. The Claimant had relied on certain letters (respectively dated 20/2/23 and 2/3/23) written by her to Roxdent Limited as claimed protected disclosures but the Tribunal found that they were not. The detriment she claimed was the referral of her to the Respondent. The Tribunal found that the reason for the referral to the Respondent was genuine concerns on the part of Roxdent Limited about the Claimant's clinical practice and that the reason for the dismissal was not the letters in any event but the breakdown in the employment relationship culminating in the Claimant's sickness absence and failure to provide a doctor's certification.

4. By the time of the judgment in 2212689 23 the Claimant had issued the instant proceedings 6009997 2024 on 29/8/24, claiming (i) whistleblowing detriment (ie a section 47B ERA 1996 claim) and (ii) victimisation contrary to section 27 Equality Act 2010 against the current Respondent (the General Dental Council).

5. The claims were presented in an incoherent manner and have already required considerable previous case management.

Reasons for paragraph 1 of the Judgment (strike out of claim for detriment because of protected disclosures)

6. In a hearing on 20/1/25 the Claimant was recorded as having agreed that she has not been and is not employed by the Respondent and was not a worker engaged in a contract for the Respondent. At a hearing on 3/4/25 she made an application to withdraw the admission that she was not a worker of the Respondent and to amend her claim to rely on the extended definition of worker in section 43(K)(1)(a) ERA 1996. That application was refused. Hence the question today remained whether the Claimant, not being or having been an employee or worker of the Respondent, could bring a valid section 43B ERA 1996 claim against the Respondent.

7. The Claimant produced lengthy written submissions and citations for the hearing today especially on the jurisdiction issue, which she explained (in the course of her oral submissions) she had created or obtained using AI (ChatGPT), and many of which she accepted were incorrect or non-existent. Most of the real authorities she cited were irrelevant. I asked her in her oral submissions to focus on and summarise on her main arguments and she did so and these I have dealt with below:

8. Firstly the Claimant relied on parts of section 47B ERA 1996 which read as follows:

(1) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure.

(1A) A worker ("W") has the right not to be subjected to any detriment by any act, or any deliberate failure to act, done— (a) by another worker of W's employer in the course of that other worker's employment, or (b) by an agent of W's employer with the employer's authority, on the ground that W has made a protected disclosure.

(1B) Where a worker is subjected to detriment by anything done as mentioned in subsection (1A), that thing is treated as also done by the worker's employer….."

9. These provisions do not assist the Claimant and are irrelevant because the Respondent was not the employer, the worker of the employer, or the agent of the employer.

10. Secondly the Claimant relied on Article 14 (prohibition of discrimination) and Article 10 (freedom of expression) in the European Convention on Human Rights. In the event that a breach of these articles is found, section 3 of the Human Rights Act 1998 provides that: *"(1) So far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect to in a way which is compatible with Convention rights".*

11. In Gilham v Ministry of Justice [2019] 1 WLR 5905, the Supreme Court, applying these principles, adopted a purposeful interpretation of S.230(3) ERA 1996 based on a need to avoid an unlawful exclusion of the status of District Judges from whistle-blowing protection. A core part of the reasoning was that the exclusion of the judiciary from the protection afforded to others in analogous positions, other employees and workers, was discriminatory. Baroness Hale at paragraph 16 stated. '*It is clear, therefore, what the question is: did the parties intend to enter into a contractual relationship, defined at least in part by their agreement, or some other legal relationship, defined by the terms of the statutory office of district judge? In answering this question, it is necessary to look at the manner in which the judge was engaged, the source and character of the rules governing her service, and the overall context, but this is not an exhaustive list*.'

12. The four Gilham questions are: *Do the facts fall within the ambit of one of the Convention rights? Has the claimant been treated less favourably than others in an analogous situation? Is the reason for that less favourable treatment one of the listed grounds or some "other status"? Is that difference without reasonable justification – put the other way round, is it a proportionate means of achieving a legitimate aim?*

13. The EAT in McLennan v The British Psychological Society [2024] EAT 166 gave the following guidance to assist in answering the "analogous" question, relevant factors would likely include: Type of role and level of responsibility, Duties of role, Likelihood that person will become aware of wrongdoing, Importance of person making disclosures in public interest, Vulnerability of person to retaliation – livelihood/reputation, Availability of alternative routes; and Any other relevant distinctions.

14. The facts of this case fall within the scope of Articles 10 and 14. Plainly the actions of the Respondent can have a significant impact on the livelihood and reputation of a dentist such as the Claimant. The Respondent did have some control over her work standards, in that she was supposed to comply with the statutory requirements which it oversees.

15. However, there was no contractual or similar work relationship between the Claimant and the Respondent or between Roxdent Limited and the Respondent. The Claimant performed no work or services for the Respondent, received no pay from it and was not a part of its organisation. The Claimant's position was not analogous to an employee or worker of the Respondent who would have rights against the Respondent to protection against whistleblowing detriment.

16. The Claimant also has alternative routes to complain about her treatment by the Respondent, namely under the Equality Act 2010, by internal appeal under section 29 of the Dentists' Act 1984 and Judicial Review.

17. Domestically, the Gilham-type extension of whistleblower protection has not been applied to the relationship between regulator and regulatee. I therefore conclude that this principle does not assist the Claimant in this case.

18. The Claimant referred to Fecitt v NHS Manchester [2011] EWCA Civ 1190 in which the Court of Appeal stated that an employer cannot be held vicariously liable for acts of victimisation of its employees in cases of whistleblowing. This case would not have assisted the Claimant and in any event has been superseded by the introduction of provisions of section 47B(1B) ERA 1996 etc referred to above.

19. The Claimant referred to Cox v Ministry of Justice [2016] UKSC 10 in which the MOJ was held vicariously liable in tort for a prisoner dropping a bag of rice on the Claimant in that case, because of the character of the relationship between the prisoner and the prison service (an agency of the MOJ). This authority is irrelevant in the instant case in which the Claimant is not seeking to hold the Respondent liable vicariously for the actions of anyone and there is no relationship between a claimed tortfeasor and the Respondent which requires analysis.

20. I am satisfied (i) that there is no authority in the law of England and Wales for the proposition that regulators are liable to whistleblowing detriment against regulatees and (ii) that the ET jurisdiction for this type of claim remains dependent on employee, worker, or extended worker status, which the Claimant does not have *vis a vis* the Respondent.

21. If the Tribunal did have jurisdiction the problem would arise that the Claimant is seeking to rely on the letters dated 20/2/23 and 2/3/23 which the ET has already found were not protected disclosures. Any claim that they were, would be an abusive collateral attack on the judgment in 2212689 23. However, given my findings on jurisdiction I do not need to deal with this point.

Reasons for paragraph 2 of the Judgment (refusal of permission to amend victimisation claim)

22. The ambit of the existing victimisation claim is difficult to discern from the ET1 (and its attachment) which refers in passing to victimisation but does not identify the claimed protected acts or victimisation detriment clearly or at all.

23. The proposed amendment, if allowed, would result in the victimisation claim being formulated (and already recorded in previous CM Orders signed on 4/2/25 and 3/4/25 respectively)) as follows: "*The Claimant says that the protected acts were the sending of a letter on 20th February 2023 and 2nd March 2023 to her employer (not the Respondent) in which she said that she had been working in a hostile environment; that she cannot continue working in this condition; that she was taking sick leave but she intended to return and requested that her employer put in place some reasonable adjustments to enable her to return…. The detriment to which the Claimant said she has been put because of the alleged protected acts is the starting of the GDC investigatory proceedings by the Respondent.* ' In submissions the Claimant suggested that the detriment would also consist in the manner in which it subsequently handled/proceeded with the investigation.

24. At the previous CMPH on 3/4/25 the Claimant had raised the possibility of a further amendment (see paragraph 17 of the CMO which includes "…*the protected act she relies on in her victimisation claim was also in relation to sex discrimination*"). I asked the Claimant about this and we established that the Claimant did not contend that she made any protected act complaining about sex discrimination. So the application to amend was as per paragraph 23 above.

25. The core test in considering an application to amend is where the balance of injustice and hardship lies in allowing or refusing the application (Vaughan v Modality Partnership [2021] ICR 535.

26. Relevant factors may include the nature of the application, time limits, and the timing and manner of the application (Selkent Bus Co Ltd v Moore [1996] ICR 836).

27. Reference may also be had to the prospects of success of the amended claim and applications to include claims that have no reasonable prospects of success should not be allowed Kumari v Greater Manchester Mental Health NHS Foundation Trust [2022] EAT 132 at para 65. Further, even if there are more than 'no reasonable' prospects of success, low merits can properly be taken into account when exercising the discretion to amend although the Tribunal should proceed with care and caution and not be drawn into conducting a mini- trial (at paras 65 & 88).

28. A protected act is defined in section 27(2) of the Equality Act 2010 which reads as follows:
27(2) Each of the following is a protected act—

- *bringing proceedings under this Act;*
- *giving evidence or information in connection with proceedings under this Act;*
- *doing any other thing for the purposes of or in connection with this Act;*
- *making an allegation (whether or not express) that A or another person has contravened this Act.*

29. The letter of 20/2/23 (the first claimed protected act) from the Claimant to Roxdent Ltd reads as follows:

"It is with great regret that I need to inform you, that given the current circumstances at work I no longer feel safe to continue working. It is not safe for me nor the patients. I am taking sick leave. Due to anxiety and stress caused by the work place.

The hostile and unsafe environment created in the work place has meant that I found it very difficult to concentrate on treatments.

Every day I am facing verbal assaults, constant degrading comments and on many occasions I was prevented from doing treatments which patients requested. For instance, I am being forced to answer the phone during the treatment.

However, I understand your concern about providing patients the best possible quality of service, but given the environment at work it is simply not possible to ensure quality treatment for patients when there is not a quality working environment. I am very professional at my work and expect to treated in this manner by my colleagues. To date, this has simply not being the case. Every day I have been faced with disrespectful and oppressive conduct and this is simply not somewhere I can work to my best ability. The lack of stability has caused me great anxiety as each day I come to work I am unsure what type of unprofessional behaviour I will be faced with.

It is my intention to come back to work but my return must be planned according to my current health condition and my concerns must be addressed appropriately. I will not come back to work in the same hostile environment and therefore, it is essential that things change and that each issue is dealt with to create the best possible environment for my work and therefore for the patients care

I'll send you the detailed letter stating the exact list of issues which need to be addressed within 7 days from the date of this letter.

I regret I can't provide treatments to my patients at this time but it is my concern about their best interest which made me to make this decision. I will only work in a professional manner and right now that is not possible for me as a result of my stress and anxiety.

I will provide my medical certificate within 7 days from the date of this letter if requested".

30. The letter dated 2/3/2023 (the second claimed protected act) to Roxdent Ltd reads as follows:

"Dear Sirs,

I would like to inform you that my GP has signed me off for a month on sick leave and I can provide you with a copy of the medical certificate upon request. I will also continue to inform you about my health on an ongoing basis.

I would like to confirm as I mentioned in my previous letter, that also, following the advice of my doctor, I cannot commit to the previous arrangements regarding working conditions as they are unsafe and I can not continue to practice in this environment.

Finally, please note that I always provide the highest standard of care and professionalism to my patients and for this reason I will not work in an unsafe environment. I have a duty of care to patients that I cannot fulfil in my current condition.

Should you have any urgent questions or require any information concerning those patients whose treatments I will not be able to finalise, please contact me solely by an email at: ihanka3@yahoo.co.uk with all relevant documentation so I can help to my best ability given my current health condition.

I will respond to your queries as soon as possible. I have also left my records in order so that another dentist should be able to continue treatments with my patients.

I'm sure that you will address patients' needs with honesty, integrity and in a professional manner.

In addition as I was advised by doctor to minimalize stress as much as possible I won't be able to communicate by phone but I'm checking my emails on regular basis.

For now I'll send to you my initial calculations for my February 2023 invoice in my next correspondence.

Please provide me also with the company grievance policy as I haven't found it in my contract and anti-Bullying, harassment and violence Policy

Please note that without this document I won't be able to provide you detailed letter which I intended to send you within 7 days from the date of 20.02.2023 when I signed off myself from work.

I would like to also inform you that I'm in contact with professional bodies which my insurance support recommended to maintain my mental and physical welfare.

Thank you very much. I appreciate your help and understanding on this matter".

31. The letters refer to the Claimant's heath and to stress and anxiety but do not state or imply that this was a long-term condition. There is not an express or implied reference to disability as defined in the Equality Act 2010 or to any other protected characteristic. While the first letter complains about conditions at work (*"verbal assaults, constant degrading comments and on many occasions, I was prevented from doing treatments which patients requested. For instance, I am being forced to answer the phone during the treatment")* this does not suggest or imply to the reader that she is complaining about PCPs placing her at a disadvantage as a disabled person, but rather about interpersonal conflict and a requirement to answer the telephone which would be annoying to any practicing dentist. No request for reasonable adjustments for a disability is made expressly or by implication in either letter. The wider context in which these letters would have been read includes the

fact that the Claimant had never suggested to the addressee (Roxdent Ltd.) that she was disabled. The Claimant had not and did not make any Equality Act 2010 claims against that company and has made no disability discrimination claim against the Respondent in these proceedings.

32. I note the reference to "harassment" in the letter of 2/3/23 but the word is often used colloquially to mean mistreatment independent of any protected characteristic and no such characteristic is mentioned in either letter to suggest or imply a complaint about a breach of section 26 EA 2010.

33. I therefore conclude that it is unlikely that a Tribunal would find that these letters were protected acts.

34. Furthermore, the Claimant stated in oral submissions that the first time she showed these letters to the Respondent was in November 2023. That was many months after the Respondent started its investigations about the Claimant. Clearly the letters cannot have caused the investigation to begin.

35. More fundamentally, during oral submissions the Claimant conceded that she is not suggesting that these letters were the cause of the Respondent either starting the investigation into the referral or conducting the investigation and imposing the conditions that it did. She accepted that it is the proper role of the Respondent to investigate referrals. Her real complaint is that she feels that the Respondent acts unfairly by accepting and investigating all referrals by dentist employers (such as Roxdent Ltd) without screening them or pausing to consider whether the referral is in bad faith. She refers to the letters in this context to support an argument that despite the fact that the Respondent after starting investigating was shown these letters (which provide contemporary evidence of the fact that she was having problems and relationship issues at work and had complained about them to her employer before the referral) the Respondent nevertheless continued with its investigation (rather than abandoning it or dealing with it in some other way). That is not a victimisation claim and it is not a claim which is before the Tribunal.

36. Furthermore any suggestion that the Respondent should have screened out the Roxdent Ltd referral because it should have realised that it was it was simply retaliation for the Claimants internal complaints or otherwise made in bad faith, would again constitute an abusive collateral attack on the previous judgment which held the opposite in paragraphs 89 which includes the following : *"(Roxdent Ltd) asserts that the Claimant's referral to the GDC was solely motivated by concerns for patient well being given evidence of the purported deficiencies in the Claimant's clinical practice. The Claimant asserts that it represented an act of retaliation as a result of her having made the protected disclosures. We reject the contention that (Roxdent Ltd) was primarily motivated by the Claimant's letters dated 20 February and 2 March 2023. It is self-evident that the Respondent had genuine concerns regarding the Claimant's clinical practice and spent an enormous amount of time investigating these…".*

37. In any event quite apart from the Claimant's concession, it is fanciful to suggest that the Respondent would have subjected the Claimant to a detriment on the grounds that she

had requested reasonable adjustments from her employer; (even if she had done so - which it appears she did not) as this would be a matter wholly irrelevant to the Respondent. The most likely reason for the Respondent investigating and taking proceedings against the Claimant was the fact that Roxdent Ltd for genuine reasons (already found in the previous judgment) had made a referral to the Respondent which in turn had a duty to investigate and take proceedings on the basis of its findings.

38. The victimisation claim after the proposed amendment would have no reasonable prospect of success so the balance of prejudice favours the Respondent and it is inappropriate to allow the amendment.

Reasons for paragraph 3 of the Judgment (strike out of victimisation claim)

39. The Employment Tribunal Procedural Rules Rule 38.—*(1) At any stage of the proceedings, either on its own initiative or on the application of a party, a Tribunal may strike out all or part of a claim or response on any of the following grounds— (a) that it is scandalous or vexatious or has no reasonable prospect of success*;

40. It is trite that caution must be exercised in considering striking out discrimination and whistleblowing claims where there are factual disputes. This does not mean it will never be appropriate, in exceptional cases it may be, as recognised in both Ezsias v North Glamorgan NHS Trust 2007 ICR 1126, CA and *Anyanwu and anor v South Bank Student Union and anor* 2001 ICR 391, HL. The test is no reasonable prospects, not no prospects, and strike out can legitimately be ordered where the Claimant's version of disputed facts is fanciful.

41. The claim is wholly unparticularised and does not disclose a coherent cause of action. The Claimant has made it clear today that her real complaint, which she has until now described as a victimisation claim, is nothing of the kind. It has no reasonable prospect of success. Even if I should have allowed the amendment I would still strike it out for thIs reason and the reasons given in paragraphs 27 to 37 above.

Reasons for paragraph 4 of the judgment (refusal to award costs)

42. The Respondent applied for costs against the Claimant in the sum of £2804.40 on the basis that the Claimant had acted vexatiously and unreasonably in run up to the OPH causing considerable problems and extra work for the Respondent's solicitors in a manner which (I find) is accurately summarised in the following extract from the Respondent's supplementary skeleton argument:

"On 07 August 2025 at around 3pm, C provided to R's representative a number of documents, including a skeleton argument, a skeleton argument summary, and an appendix, listing the authorities upon which she relied.

Upon receipt of C's documents, R's representatives became concerned that some of the cited authorities were inaccurate. As such, R's representatives embarked on preparing a schedule of those authorities which is included alongside this application …... In preparing this schedule R's representatives conducted a detailed search by way of an initial search via Google (mindful that this is often the means by which Litigants in Person identify

relevant cases) of both the full case name and citation provided, then the case name alone, and then the citation alone. R's representatives then conducted the same search via the Westlaw "case search" function, and where appropriate also via the Employment Appeal Tribunal Government database.

R's representatives findings are set out in the schedule and fall into two broad categories:

- *Cases which do not exist ["Non-Existent Authorities"];*
- *Cases which do exist, but do not support the proposition C asserts ["Inaccurate Authorities"].*

As explained in relation to each case, those cases which fall into the category of Non-Existent Authorities consist of varying combinations of:

- *A real case name;*
- *A non-existent case name;*
- *A real citation;*
- *A non-existent citation.*

Of those cases which fall into the category of Inaccurate Authorities, the following apply:

- *In some cases there is a real case, but with a slight different citation;*
- *In some cases the case name and citation are correct;*
- *In all cases, the authority does not support C's proposition, and could not reasonably be read to do so, for example because C asserts that the case related to Regulatory Bodies when it patently does not, or where C asserts that the case relates to whistleblowing, when no such claim was brought;*

In respect of one of the cases, Yerrakalva v Barnsley MBC [2012] EWCA Civ 1399, C cites a quotation which is not found within the judgment.

In total R has identified 28 problematic authorities, consisting of 15 Non-Existent Authorities and 13 Inaccurate Authorities. No issue is taken with 9 of the authorities.

On 08 August 2025 R's representatives informed C that they were unable to find a number of the authorities she cited, and asked that C provide copies of the same by 4pm on Monday 11 August 2025.

In response, the Claimant submitted "Claimant's Expanded Skeleton Argument", "Authorities Bundle_correct_names" [534 pages and 20 authorities] and "Authorities_Bundle_Index_no nr" [982 pages, circa 38 authorities].. Due to time constraints and considering proportionality, the Respondent has not checked all of the authorities cited in the Expanded Skeleton.

At paragraph 1.2 of her Expanded Skeleton C explains she had identified 4 authorities to be substituted and explained that any "earlier imprecision, which arose from reliance on secondary resources and the practical difficulty of obtaining some older judgments via freely available legal databases". No explanation is given as to the remaining 11 non-existent authorities. The majority of the Expanded Skeleton seeks to reply to the Respondent's Skeleton Argument.

The additional authorities provided do not include copies of any of the cases specifically raised by R in the correspondence of 08 August 2025. C has abandoned 4 of the authorities, and has sought to adduce copies of the remaining 10; these are still not the authorities cited.

43. Dealing with the above and trying to respond to it has cost the Respondent additional legal costs estimated for purposes of the cost's application at £2337.00 plus Vat = £2804.40 reflecting 5 hours counsel's time 4.5 hours trainee's time and 0.5 hrs partner's time.

44. The Claimant explained that the problems arose from her using AI to carry out research. She had previously used AI/ChatGP to carry out research without problems in her litigation against Roxdent Ltd and so she expected to be able to do so again successfully in the instant case. She did not know about the problems with the citations when she told the Respondent's solicitors about them, and when she found out about them, she did her best within the short time available to mitigate or reduce the problem. She did not act in bad faith or with any intent to place false information before the Tribunal. I accept this explanation.

45. The Claimant conducted the claim unreasonably as described above by referring to the Respondent a large number of nonsensical and in many cases non-existent citations without taking any or sufficient care to check them first. By not doing so she passed the work of checking them to the Respondent to have to do at short notice. My discretion to award costs is engaged.

46. However, I decline to award costs because AI is a relatively new tool which the public is still getting used to, the Claimant acted honestly (and furthermore has presented her case honestly to me over the last two days), and she tried to her best to rectify the situation as soon as she became aware of her mistake.

47. Furthermore, although I did not make any formal enquiry into her financial means, she told me that she has only £2000 in the bank and is struggling to find work as a dentist because of the conditions imposed by the Respondent.

Employment Judge J S Burns
London Central
15/08/2025
For Secretary of the Tribunals
Date sent to parties
20 August 2025