EMPLOYMENT TRIBUNALS

Claimant:	B
Respondent:	E
Heard at:	Nottingham
Heard on:	16 & 17 June 2025
Before:	Employment Judge Victoria Butler (sitting alone)

Representation
Claimant: In person
Respondent: Mr D, Director

JUDGMENT

The decision of the Employment Judge is:

1. The Claimant's claim of whistleblowing detriment succeeds.

2. The Respondent is ordered to pay her £5,232.25 (gross) in respect of loss of earnings.

REASONS

Background to this Claim

1. The Claimant presented her claim to the Tribunal on 6 June 2024 after a period of early conciliation between 17 July 2024 and 20 August 2024. She brings a claim of automatically unfair dismissal for whistleblowing or whistleblowing detriment in the alternative, the detriment pleaded being the Respondent's decision not to engage her for any further work.

The issues

2. I had to decide was whether the Claimant was self-employed, a worker or an employee.

3. If she was a worker or an employee, did she make a protected disclosure? If she did, was she automatically unfairly dismissed if she was an employee or did she suffer a detriment if she was a worker?

The evidence

4. I heard evidence from the Claimant and Mr D. Overall, I preferred the evidence of the Claimant which was consistent with the contemporaneous documents where they existed. I found that the Respondent advanced reasons for the Claimant's 'dismissal' which were contrary to what was communicated to her at the time and therefore unreliable. I resolved any conflicts on the balance of probabilities.

Anonymity

5. The claim centres around Mr D attempting to kiss a 17-year-old worker. I raised the issue of her anonymity, and we agreed that she would be referred to as Ms Y to protect her identity.

6. To further protect her identity via jigsaw identification and, by consent, the Claimant and Respondent were also anonymised.

The facts

7. The Respondent is an indoor climbing centre which teaches adults and groups of children how to climb, including adult/child SEN groups, vulnerable children's groups, parties, scouting groups and school children. The Claimant commenced working for it on 30 November 2021 and is trained in level 3 safeguarding.

8. The Respondent's Director is Mr D, and the Claimant had a good working relationship with him.

Employment status

9. The Claimant was engaged by the Respondent as a Freelance Climbing Wall Instructor with effect from 30 November 2021. She signed a "*Letter to Self -Employed Professionals'* which provided:

> *"Dear*
>
> *APPOINTMENT TO SELF-EMPLOYED CLIMBING INSTRUCTOR*
> *I am pleased to confirm the terms of our agreement under which we will retain your professional services. These will be:*
>
> > *general instruction and supervision of children's, beginners and improvers groups and unrelated reception duties when required*

You have confirmed you are self-employed by the attached document and, therefore:

You will commence providing services for [the Respondent] on: XXX

You will receive payment on our receipt of your invoice, in the following manner: £8.50 per hour paid in cash.

You will work such hours that will enable you to provide the above services to our satisfaction, and should liaise with the centre manager to this effect.

You will be personally liable for your own income tax payments and National Insurance contributions…….

You are not entitled to any paid leave of absence for reasons of sickness, injury, holiday, or for any other reason from the company. (You are advised to make your own sick pay and pension arrangements)

You are not entitled to any of the statutory rights extended to an employee as defined by section 230 of the Employment Rights Act 1996 and set out in that Act as a whole.

You are covered by our own employer's liability insurance when working within our premises.
…..
You may work for other companies, but you must recognise that you will gather commercially valuable information,……

The company reserves the right to evaluate the effectiveness of the services which you provide, and to take whatever action is necessary including the summary termination of this agreement for your services." (pages 44 – 45).

10. The Claimant was free to pick and choose her shifts after consulting the Respondent's diary and was under no obligation to undertake work. She was also free to choose the groups of climbers she would instruct and could decline working with groups she did not enjoy instructing without consequence.

11. The Claimant was at liberty to bring her own clients to the centre to teach but elected not to do so. Rather, she taught groups booked in by the Respondent and had the freedom to choose what she taught and how.

12. The Claimant was not set up as a limited company and did not have liability insurance in place. Rather, she was covered by the Respondent's insurance when undertaking work, contrary to the self-employment agreement.

13. Typically, she would regularly work between five and seven days a week but there would be periods when there were less bookings so less opportunity to work. On

average, she worked twenty-six hours per week over a period of two and a half years.

14. The Claimant invoiced the Respondent monthly or fortnightly depending on her cash flow and was responsible for her own tax and national insurance. In theory she was free to negotiate how much she charged for her services, but, in reality, the Respondent was only prepared to pay her little over national minimum wage. The Claimant's hourly rate increased in line with the national minimum wage annually. She did not receive holiday pay or sick pay.

15. The Claimant did not have the right or obligation to provide a substitute if she was unable to perform the work personally. Rather, the Respondent would allocate another trainer to her sessions, and she was not responsible for the costs of any alternative cover.

16. The Claimant did not need to seek authorisation for periods of absence but would let the Respondent know out of courtesy. She was not subject to its disciplinary or grievance procedures.

17. When the Claimant undertook work at the Respondent, she was obliged to follow its Standard Operating Procedures ("SOPs"), wear its uniform and use its equipment.

18. The Claimant's contract provided that she would undertake climbing instruction and reception duties. However, she also undertook cleaning duties, staffing support, diary management, till procedures and cash handling/till closure and reconciliation. When Mr D was absent for two months, he appointed the Claimant as the main point of contact at the Respondent. In a communication to staff, he said:

> *"While I am away I have asked [the Claimant] to look after things. She is keen and motivated and sees things that must be done…….. Bookers and printers [the Claimant] will deal with your requests"* (page 80).

19. The Claimant's average weekly wage at the Respondent was £207.01 per week. She also undertook permanent part-time work at a local university and a different climbing centre.

The events leading up to the disclosure

20. The Respondent has safeguarding procedures in place namely "*Reporting Concerns About Children*" issued by the BMC and the Respondent's "*Guidance on Handling a Disclosure from a Child*".

21. Ms Y started working at the Respondent in late March 2024. She was vulnerable in that it was understood she had experienced a troubled childhood and suffered with her mental health.

22. The Claimant was opposed to Ms Y working for the Respondent because she had been in relationship with another worker. She also had an *'instinct'* that Ms Y working

at the Respondent was not good for her albeit was unable elaborate further.

23. On or around 29 March 2024, Ms Y was upset and broke down in front of Mr D. Mr D consoled her, and they hugged. As they broke away, he went to kiss Ms Y on the forehead in what he says was a fatherly way, but she pulled away. Mr D believed that his attempt to kiss her triggered past trauma.

24. However, Mr D and Ms Y continued to work together without complaint thereafter Mr D continued to give her lifts home. They were never alone together at work in the true sense because of the nature of the Respondent's business.

25. Subsequently, Ms Y told a senior colleague about the kiss and that she had felt uncomfortable with the way Mr D approached her. The colleague asked another colleague to investigate who then in turn discussed the matter with the Claimant. The Claimant took it upon herself to investigate given her training in safeguarding and arranged to meet with Ms Y, advising her that she could have someone to accompany her in support because she was a minor. Ms Y elected to have a friend accompany her who was also a client.

26. The meeting was conducted professionally and Ms Y said little albeit expressed again that she had felt uncomfortable with Mr D's approach. She did not ask for the matter be taken any further and, at this early stage, the Claimant admits to doubting Ms Y's truthfulness. However, she took the view, and told Mr D, that he should not work alone with Ms Y and felt morally obliged to keep the matter under review.

27. On 4 May 2024, Mr D visited the Claimant at her home and told her that his wife might be calling. He asked her to reassure his wife that there were no concerns about his relationship with Ms Y if asked. The Claimant said she could not lie and the best she could offer was to say she did not know if it was an issue.

28. On 5 May 2024, the Claimant met with Ms Y along with Mr D. Again, Ms Y said little, but the Claimant took the view that she seemed uncomfortable. The Claimant was concerned that Ms Y was being groomed because: i) Ms Y considered what had happened with Mr D was okay ii) she was happy with his behaviour towards her, and iii) she did not want the matter taken any further. Mr D became agitated during this meeting because the Claimant had allowed Ms to be accompanied at the earlier meeting by someone who was not a member of staff.

29. After the meeting, Ms Y was upset and confided in Mr D. Ms Y was concerned that the Claimant did not like her and thought that she had made up the story about the attempted kiss. In response, Mr D texted the Claimant on 5 May 2025 as follows:

> *"Sorry to involve you, but not my choice. What [Ms Y] told you about what I did was all true. I misread the situation, she didn't make it up. Please keep to yourself unless you feel you have to speak to others. Please don't mention it to [my wife] or that will really drop me in it. The main point is [Ms Y] didn't make it up, she didn't imagine it, all my wrongdoing. As you can*

> *see we get on famously with no issues. She is a good kid and needs a break. I know she will do no harm to me, the business or its staff. I'm in later so you can tell me off then. Just need your help so we can carry on as we are. Thank you." (page 88).*

30. On 7 May 2024, the Claimant became increasingly troubled by the situation and was concerned that if Mr D was behaving inappropriately with Ms Y, it could potentially cause a safeguarding risk for other children using the centre, some of whom were particularly vulnerable. She confided with a friend who worked at a children's charity which was also a client of the Respondent. Her friend advised her to report the matter to Derby City Council so professionals could take a view on the situation.

31. On 8 May 2024, the Claimant telephoned the Safeguarding Team at Derby City Council to report the matter in the first instance. She was asked to put her concerns in writing, and she followed up with a comprehensive e-mail later that day headed: "*Concern for 17 year old employee*' (pages 85 – 87).

32. Within the email, the Claimant explained the chronology of events including that Ms Y had initially told a colleague that Mr D had approached her in a manner she was uncomfortable with. The Claimant expressed her concerns that Ms Y was young, Mr D was her manager, and her confusion that their friendship had developed quickly. Equally, she acknowledged "*if there is a friendship and both parties are happy about this, then great, but I do not feel equipped to judge that given the initial report and that [Ms Y] is an employee".* Within the body of her e-mail, the Claimant quoted the text from Mr D in which he admitted attempting to kiss Ms Y.

33. The Claimant advised Mr D that she had reported the matter the same day. He responded by text saying: "*Well, I assume in advance that will be the last we see of [children's charity]*" (page 88). The Claimant replied: "*I don't know it will depend on how professionally it is dealt with"* (page 88). The Claimant and Mr D had an exchange of texts thereafter during which the Claimant told him that she "*needed to call it in. Let the professionals deal with it*" (page 89). Mr D asked her repeatedly not to, that it was scaring and upsetting Ms Y who did not want it reporting, to which the Claimant replied: "*I want to know that she is safe, it will be dealt with sensitively, that is why I need the professionals to take it from here*" (page 89).

34. On 9 May 2024, Mr D texted the Claimant in the following terms:

> *"Was expecting to see you to discuss things better face to face. In short while this action taken by you is on going, we can't work together and likewise you can't work along side [Ms Y]. This includes using the centre to climb. I don't know how long it will take to sort so in the meantime please return the keys so others can use …"* (page 89).

35. Mr D accepts that this was a decision not to offer the Claimant any more work and akin to a dismissal.

36. Derby City Council contacted Mr D for the first time to discuss the report on 14 May 2024 (page 79A).

37. On 11 June 2024, Mr D e-mailed the Claimant to say: *"At some point you may need a reference from me. This is not a problem. I am happy to write a reference for you. Happy to send copy to you first so you can amend*" (page 90).

38. On 17 July 2024, the Claimant wrote to Mr D as follows:

> *"I am writing to you in accordance with the safeguarding and whistle blowing policies and my treatment as a result of having raised safeguarding concerns.*
>
> *Concerns were raised to staff by [Ms Y] on 24th April 2024 and 27th April 2024 of unwanted and inappropriate conduct by yourself. In line with the safeguarding policy, you were made aware of the allegation and advised that not being alone would be prudent to protect both parties. As this was not the case and your handling of it was not in accordance with the policies, concerns grew.*
>
> *In accordance with [the Respondent's] Safeguarding policy*
>
> *"if there is a concern about a child's welfare or the behaviour of an adult, the one thing not to do it nothing. If there is any doubt about whether or not to report an issue then it should be reported"*
>
> *And as referring the matter to an alternative Director could result in a conflict of interest the matter was referred to Derbyshire Safeguarding team 8th May 2024 after informing you this would be the case. Thursday 9th May I received a text from you stating that we could not work together and you requested I return keys - which I did that evening. Saturday 1st June I received an email stating that you would be happy to provide references - I have taken these actions as summary dismissal."*

39. The Claimant went on to request her loss of earnings for the period 9 May – 22 July 2024 (pages 72 – 73).

40. In response on 23 July 2024, Mr D replied:

> "*I have taken these actions as summary dismissal.*
>
> *You are contracted on a zero hour basis with [the Respondent] therefore you can't be dismissed.*
>
> *When hours are available you are offered them or not and you have the choice to accept them or not.*

If hours aren't available they can't be offered to you.

Contracts had to be cancelled by a few groups meaning less work was available and there was no need for you to have keys or a uniform as in the short term, work was going to be limited" (page 73).

41. Since leaving the Respondent the Claimant has taken pro-active steps to mitigate her loss. She continued with her part-time work but to mitigate her loss of income from the Respondent, she secured temporary agency work as a Visitor Experience colleague, and two other temporary roles within the Ministry of Justice. She was without additional income for a period of twenty-one weeks in total. All other weeks between her termination from the Respondent and this hearing were covered by her part-time and temporary work.

The law

42. Section 230 of the Employments Rights Act 1996 ("ERA") provides:

(1) In this Act "employee" means an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment.

(2) In this Act "contract of employment" means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing.

(3) In this Act "worker" (except in the phrases "shop worker" and "betting worker") means an individual who has entered into or works under (or, where the employment has ceased, worked under)—

(a) a contract of employment, or

(b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual;

and any reference to a worker's contract shall be construed accordingly.

(4) In this Act "employer", in relation to an employee or a worker, means the person by whom the employee or worker is (or, where the employment has ceased, was) employed.

(5) In this Act "employment"—

(a) in relation to an employee, means (except for the purposes of

section 171) employment under a contract of employment, and

(b) in relation to a worker, means employment under his contract;

and "employed" shall be construed accordingly.

43. Section 43B ERA provides:

> *(1) In this Part a " qualifying disclosure " means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following—*
>
> *(a) that a criminal offence has been committed, is being committed or is likely to be committed,*
> *(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,*
> *(c) that a miscarriage of justice has occurred, is occurring or is likely to occur,*
> *(d) that the health or safety of any individual has been, is being or is likely to be endangered,*
> *(e) that the environment has been, is being or is likely to be damaged, or*
> *(f) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.*
>
> *…….*

44. Section 47B ERA provides:

> *(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.*
> *.....*

45. Section 103A ERA provides:

> *An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure.*

46. I was referred by the Claimant to the case of ***Uber and others v Aslam and others*** **[2021] UKSC 5.**

Conclusions

Employment status

47. I am wholly satisfied that the Claimant was not an employee. Indeed, the Claimant did not seek to argue that she was at the hearing – rather, her position is that she was a worker. She accepts that she was engaged on a '*freelance*' basis and was responsible for her own tax affairs. There was no contract of employment, she was under no obligation to undertake work and was free to pick and choose shifts. She was not obliged to book holidays or explain her absence and was not subject to the disciplinary and grievance procedures.

48. In determining whether the Claimant was a worker, I had regard to the provisions of s.230 ERA and the wording of the self-employment agreement which on the face of it indicates engagement on that basis. However, I must consider the true nature of the agreement between the parties.

49. I asked myself whether there was a contract between the parties, and I am satisfied that there was. The Claimant was primarily involved in the instruction of climbing and reception duties but also other duties as and when required by the Respondent for which she received remuneration. She worked regularly for the Respondent averaging twenty-six hours per week from November 2021 until the arrangement was terminated. Of significance is that she was appointed by Mr D to '*look after things*' when he was absent for two months thus evidencing the reality of their relationship, namely that the Claimant was not only integrated in the Respondent but at times integral in its management in Mr D's absence. This additional managerial responsibility extends way beyond the terms of the self-employment contract, which was not amended to reflect it.

50. The Claimant was also required to perform her work personally and her personal service was the dominant feature of the contract. She had no right to provide a substitute nor was she was responsible for any costs in the Respondent providing replacement cover to cover the lessons she had agreed to undertake.

51. The Respondent does not seek to argue that it was a client or customer of the Claimant. For completeness, I am satisfied that she was not. In practice, she used the Respondent's equipment, instructed clients booked by the Respondent, was covered by its insurance, and was obliged to follow its SOPs. Furthermore, whilst the Claimant was paid under invoice and settled her own tax affairs, she had little control over how much she was paid thus indicating that she had little bargaining power and was subordinate to the Respondent.

52. For these reasons, I am satisfied that the Claimant was a worker within the meaning of s.230(3)(b).

Protected disclosure

53. In determining whether the Claimant made a protected disclosure, I have considered whether she disclosed information which in her reasonable belief tended to show that

a relevant wrongdoing had taken place, was taking place or was likely to take place and whether she reasonably believed that her disclosure was in the public interest.

54. I am satisfied that the Claimant disclosed information. Her e-mail to Derby City Council was headed '*Concern for 17 year old employee*' and disclosed relevant information, namely that Mr D had attempted to kiss Ms Y which had made her feel uncomfortable, that he had continued to work with Ms Y and give her lifts home. She quoted Mr D's text message within which he admitted to mis-reading the situation and that it was all his '*wrongdoing*'.

55. The Claimant was concerned that Mr D's behaviour amounted to a safeguarding issue, and I am satisfied that such belief was reasonable. Ms Y was a vulnerable minor and had initially reported that Mr D had approached her in a manner she was uncomfortable with. At no point prior to this hearing did Mr D provide the Claimant his explanation of what happened. Absent his explanation and considering the contents of his text message on 5 May 2024, the Claimant's belief in a wrongdoing, namely that there was a breach of a legal safeguarding obligation or alternatively a danger to the health and safety of Ms Y was reasonable. It does not matter if her belief subsequently turns out to be wrong or the facts alleged do not amount to a relevant failure in law.

56. The Respondent argues that the Claimant's disclosure was not made in the public interest, but rather in her own personal interest because she never wanted Ms Y to be hired or alternatively wanted '*revenge*' for Mr D hiring her. In essence, it says that the disclosure was made in bad faith. The Claimant says that she was concerned about Mr D's behaviour, not only because of the effect on Ms Y as a vulnerable minor but also other children who used the centre, some of whom were also particularly vulnerable.

57. I reject the argument that the disclose was made in self-interest and therefore bad faith. I am satisfied that the Claimant believed that Mr D might be grooming Ms Y and therefore other young users of the Respondent could also be a risk of his behaviour. Mr D had admitted to his wrongdoing and failed to give his account of what happened to the Claimant despite having opportunity to do so. The Claimant was trained in safeguarding and took the view that Ms Y was uncomfortable with Mr D's behaviour and, given her vulnerable status, might not have recognised that his behaviour was potentially inappropriate. Furthermore, the Claimant took advice from her friend who worked at a children's charity and was advised to report the matter thus adding legitimacy to her concerns about Ms Y and other users. As such, I am satisfied that the Claimant genuinely believed that her disclosure was in the wider public interest.

58. I am also satisfied that viewed objectively her belief was reasonable for the same reasons as above. Furthermore, Mr D admitted in this hearing that following the Claimant's disclosure, he was subject to an investigation by Derby City Council and has been barred from working with children for a period of ten years thus validating the Claimant's reasonable belief at the time that her disclosure was in the public interest. Mr D says that he has submitted a complaint about the way the investigation

against him was handled but that does not change the findings.

59. Finally, the Respondent does not seek to argue that Derby City Council is not a responsible person for the purposes of making a disclosure. Rather, it takes issue with the way the Claimant handled matters internally which I address further below. For completeness, I am satisfied that Derby City Council was a responsible person because it has responsibility for investigating safeguarding concerns.

60. Accordingly, I am satisfied that the Claimant made a protected disclosure.

Detriment

61. Mr D conceded that his text message dated 8 May 2024 was a termination of the working relationship which undoubtedly amounts to a detriment.

62. It is for the Respondent to prove that the disclosure did not materially influence the detrimental treatment of the Claimant in more than a trivial way. This involves an analysis of the mental processes (both conscious and unconscious) of the Respondent when it acted as it did.

63. The Respondent says two things. Firstly, that it did not know about the disclosure until Mr D was contacted on 14 May 2024, which was after his text message. Secondly, it says that the Claimant was *'dismissed*' for failing to follow the correct safeguarding procedures.

64. Mr D gave evidence that he made the decision because the Claimant failed to follow the "*Reporting Concerns About Children*" issued by the BMC and the "*Guidance on Handling a Disclosure from a Child*". He submitted that by her own actions the Claimant had also made their working relationship impossible in that i.) she had failed to listen and follow the wishes of Ms Y, ii) she had alienated Ms Y by not believing her, iii) she had interrogated Ms Y when they first spoke about the attempted kiss, iv) she allowed a companion to attend that '*interrogation*', v.) she carried out her own investigation and made-up her own conclusions, vi.) she interviewed Ms Y and mistreated her, and vii.) she taken advice from her friend.

65. I deal with the knowledge point first. I am entirely satisfied that Mr D was aware that the Claimant had reported the matter because she expressly told him she would on 8 May 2024 hence his text stating about losing the children's charity as a client. They had a further exchange by text that evening in which it was clear that she had reported it. Mr D repeatedly urged the Claimant not to disclose the matter and acknowledged that her disclosure would likely result in the loss of a client.

66. The very next day, Mr D texted the Claimant terminating her work for the Respondent saying: "*In short whilst this action taken by you in ongoing, we can't work together and like wise you can't work alongside [Ms Y]……*" This is incontrovertibly in response to the fact that the Claimant had made the disclosure. There is simply no evidence that the matters the Respondent now relies on were in Ms D's mind at the

time of taking the decision.

67. In a subsequent e-mail dated 23 July 2024, Mr D justified his decision to terminate the relationship by saying there had been a downturn in work which is inconsistent with the reason advanced in these proceedings.

68. Accordingly, I am satisfied that the Respondent had not discharged the burden of proving that it was for another reason, and, given the wording and timing of Mr D's text message, I am satisfied that the Claimant's disclosure materially influenced his decision to terminate her work for the Respondent.

Remedy

69. The Claimant simply claims her loss of earnings for the period 13 May 2024 until 5 May 2025. I am satisfied that she has attempted to mitigate her losses during this period having undertaken various temporary jobs in the meantime. She has properly given credit for income received in that period and I award her £5,2322.24 gross.

Approved by:
Employment Judge Victoria Butler

Date: 15 October 2025

JUDGMENT SENT TO THE PARTIES ON

.....04 November 2025.....

.....

FOR THE TRIBUNAL OFFICE

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.

"Recordings 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/"