EMPLOYMENT TRIBUNALS

BETWEEN

Claimant		**Respondent**
Ms A Cooke	AND	Somerset NHS Foundation Trust

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT Plymouth **ON** 12 December 2025
BY CLOUD VIDEO PLATFORM

EMPLOYMENT JUDGE N J Roper

Representation
For the Claimant: In person
For the Respondent: Mr J Yetman of Counsel

JUDGMENT

The judgment of the tribunal is that:
1. The claimant's claims for detriment because she made protected public interest disclosures have no reasonable prospect of success, but in any event are now dismissed on withdrawal by the claimant under the attached judgment to that effect; and
2. The claimant's claim for unfair dismissal has little reasonable prospect of success, and it is subject to the attached Deposit Order.

REASONS

1. This is the judgment following a preliminary hearing to determine whether the claimant's claims for protected public interest disclosure detriment should be struck out on the grounds that they have no reasonable prospect of success, or whether the claimant should be ordered to pay a deposit as a condition of continuing with these claims because they have little reasonable prospect of success.
2. This has been a remote hearing which has been consented to by the parties. The form of remote hearing was by Cloud Video Platform. An in-person hearing was not held because it was not practicable, and all issues could be determined in a remote hearing. The

documents that I was referred to are in a bundle of 261 pages, the contents of which I have studied and noted. The order made is described at the end of these reasons.

3. Although the claimant does not pursue any disability discrimination claims, she says that she is neurodiverse, and that she is photophonic and phonophobic. She did not request any specific adjustments for this hearing, but she was allowed to ensure that she was comfortable, and to take such breaks as she wished.
4. In this case the claimant Ms Avril Cooke has brought claims alleging unfair dismissal, and detriment said to have been suffered because she made protected public interest disclosures. The claims are all denied by the respondent.
5. As noted above, I have considered the relevant documents in this matter, which includes the contemporaneous documents. I have considered the oral and documentary evidence which it is proposed will be adduced at the main hearing. I have also listened to the factual and legal submissions made by and on behalf of the respective parties. I have not heard any oral evidence, and I do not make findings of fact as such, but my conclusions based on my consideration of the above are as follows.
6. The respondent is an NHS Trust which runs acute hospital services in Somerset. The claimant commenced employment with the respondent on 6 April 2019, initially as a Support Time and Recovery Worker. Later in 2019 she moved to work in mental health in order to undertake her Registered Nurse Degree Apprenticeship ("RNDA"). The RNDA requires nursing students to work 2,300 hours on placement, which are recorded via placement timesheets, and which are signed off by Practice Assessors. The claimant was dismissed for gross misconduct on 2 October 2024. The gross misconduct relied upon by the respondent is that its disciplinary panel found that "between 7 February 2022 and 19 June 2023, the claimant submitted 10 falsified placement timesheets with forged Practice Assessor's signatures." The claimant appealed against her dismissal, and following an appeal hearing, the respondent confirmed that the appeal was dismissed by letter dated 8 January 2025. The following background is also relevant.
7. The claimant attended various management supervision meetings during her placement as was required of the RNDA scheme. With effect from 2022 the respondent had concerns about the claimant's performance. The relevant managers held a formal meeting on 17 July 2023 to discuss certain safety concerns regarding the claimant's practice. The minutes of that meeting record the following matters: "Her record keeping is very poor … There have been concerns around Avril following care plans and implementation of care … There are also concerns around her honesty and integrity … There are concerns raised about Avril's communication … We are not entirely certain she is reporting to managers … I know there are concerns around the timesheets and whether they are accurate … And concerns around falsifying documentation which we will link in with our team to discuss further … Due to the level of concerns raised around fitness to practice and professional conduct, Avril has been removed from all patient contact from her base role …"
8. The respondent also commenced its formal capability process under the relevant procedure. A formal Capability Action Plan was put in place July 2023, and the claimant was issued with a first written warning (referred to as a first stage improvement notice). This was confirmed in a letter dated 4 August 2023. The claimant did not appeal against that notice. The claimant did however have certain health issues, and the respondent obtained an occupational health report which concluded that the claimant's condition "should be manageable with medical and social support. The long-term prognosis will be available after she has had the neurology appointment". There was a further capability review meeting on 29 September 2023 which records that the claimant "had been diagnosed with SUNCT Syndrome, which causes photophobia and photophobia", (but despite this) "all agreed that the claimant has met the expectations of the action plan and will no longer remain on capability monitoring". The claimant was then able to resume her RNDA apprenticeship. During this process the claimant was effectively given the benefit of the doubt in relation to possibly fraudulent record-keeping so that the parties could move on.
9. Unfortunately, there were subsequently further concerns about the validity the claimant's timesheets which prompted a more formal investigation which involved the respondent's

Counter Fraud department, and which took place between April and July 2024. The preliminary conclusion supported allegations that the claimant had falsified information and had forged Practice Assessors' entries and signatures. This related to four different placements and four different Assessors. The claimant was interviewed during the course of this investigation on 23 April 2024.

10. By letter dated 25 September 2024 the claimant was called to a disciplinary hearing to answer allegations of gross misconduct relating to the falsification of information for her placement timesheets and forged Practice Assessors' entries and signatures. A further allegation relating to her claim for attendance at University was also included. The claimant attended a disciplinary hearing on 2 October 2024. The minutes record the claimant was aware of the allegations and she commented: "No issues, I know what it's all about".
11. The decision was taken by a disciplinary panel of three senior managers. The minutes of their deliberations record the following: "AC has admitted to writing the names of the Practice Assessor herself and the date … All in agreement that as per the counter fraud report … Fraudulent timesheets have been submitted. AC was unable to provide any evidence or reasonable explanation as to how this might have happened … She no longer has originals? (Burnt them) … No apparent desire to clear her name or fight the allegations … This is not an isolated incident. Out of 16 timesheets called into question here, 10 were without doubt falsified. Showing a repeated pattern of behaviour … Secondary allegation of AC not being at Uni and not being in work for the two dates and claiming pay for unaccounted work. At worst fraudulent at best poor record-keeping…. AC has demonstrated that she lacks the character and ethics required to become a Registered Nurse ... In breach of the code of conduct (honesty, integrity, accurate record-keeping) … Does this act of dishonesty and fraud constitute gross misconduct? Yes … All in agreement to apply the Level 3 sanction of dismissal with immediate effect."
12. The Respondent decided to dismiss the claimant, and on being informed of this she replied: "That's fine, it's what I expected". The decision to dismiss the claimant was a considered decision which had considered the relevant contemporaneous documents andn the claimant's limited answers to the various allegations. It was a decision which the disciplinary panel was entitled take on the information which they had before them, and it seems to have been entirely reasonable based on that information. This includes the claimant's inability to provide any satisfactory explanation, and their observations that the claimant effectively made little or no effort to clear her name.
13. The claimant subsequently appealed against the dismissal by email dated 22 October 2024. The reason for the appeal was that she wished to "contest the severity of this decision" and asserted that the charge of gross misconduct should be considered, and "should be a lesser statement given the alleged allegations … I believe the dismissal is disproportionate considering my long-term work record and the circumstances surrounding the allegations …"
14. The claimant's appeal was rejected following a detailed appeal hearing which the claimant attended. Reasons were confirmed in a letter by the Respondent's Service Group Director dated 8 January 2025. During this process the claimant confirmed that her grounds for appeal were effectively different , and were now threefold, namely (i) new evidence about blank timesheets … and technical issues around the timesheets; (ii) an incorrect outcome in terms of the mitigation and contextual issues in the character references; and (iii) procedural fairness and the claimant's ability to convey information in the original process because of health issues." The claimant also confirmed that she was no longer appealing on the grounds of undue severity on the basis that there was an incorrect outcome.
15. The claimant made no mention during any of the capability process, the formal investigation, the disciplinary hearing and process, or the appeal process, that she had raised any protected public interest disclosures, nor that she had suffered any detriment because of any alleged disclosures.
16. The claimant commenced the Early Conciliation process with ACAS on 24 December 2024 (Day A). ACAS issued the Early Conciliation Certificate on 4 February 2025 (Day B). The claimant presented these proceedings on 3 March 2025. Allowing for the relevant

extension period under the Early Conciliation provisions, any claims relating to matters which arose before 25 September 2024 are therefore prima facie out of time.

17. The claimant brings claims for detriment said to have been suffered because of protected public interest disclosures, and for unfair dismissal. There was an initial preliminary case management hearing on 15 August 2015, at which Employment Judge Smail directed that this hearing should be listed. As directed, the claimant also provided further information as to the relevant disclosures upon which she relies, and the respondent has provided its comments in return.
18. Having established the above facts, I now apply the law.
19. The Rules which apply to Employment Tribunals are the Employment Tribunal Procedure Rules 2024 and they are referred to in this judgment as "the Rules".
20. Rule 38(1) provides that "the Tribunal may on its own initiative or on the application of a party, strike out all or part of a claim, response or reply on any of the following grounds: (a) that it is scandalous or vexatious, or has no reasonable prospect of success; (b) that the manner in which the proceedings have been conducted by or on behalf of the claimant or the respondent (as the case may be) has been scandalous, unreasonable or vexatious; (c) for non-compliance with any of these Rules or with an order of the Tribunal; (d) that it has not been actively pursued; (e) that the Tribunal considers that it is no longer possible to have a fair hearing in respect of the claim, response or reply (or the part to be struck out).
21. Rule 40(1) provides that "Where at a preliminary hearing the Tribunal considers that any specific allegation or argument in a claim, response or response has little reasonable prospect of success, it may make an order requiring a party ("the depositor") to pay a deposit not exceeding £1,000 as a condition of continuing to advance that allegation or argument. Under Rule 40(2) the Tribunal must make reasonable enquiries into the depositor's ability to pay the deposit and have regard to any such information when deciding the amount of the deposit.
22. In this case the reason for the dismissal was conduct which is a potentially fair reason for dismissal under section 98 (2) (b) of the Employment Rights Act 1996 ("the Act").
23. Section 98 (4) of the Act provides "…. the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) – (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and – (b) shall be determined in accordance with equity and the substantial merits of the case".
24. Under section 43A of the Act a protected disclosure is a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H. Section 43B(1) provides that 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, or is likely to be deliberately concealed.
25. Under Section 43C(1) a qualifying disclosure becomes a protected disclosure if it is made in accordance with this section if the worker makes the disclosure – (a) to his employer, or (b) where the worker reasonably believes that the relevant failure relates solely or mainly to – (i) the conduct of a person other than his employer, or (ii) any other matter for which a person other than his employer has legal responsibility, to that other person.
26. Under section 103A of the Act, an employee is to be regarded 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.

27. Under section 47B of the Act, 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.
28. Under section 48(2) of the Act, it is for the employer to show the ground on which any act, or deliberate failure to act, was done.
29. I have also considered section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992, and in particular section 207A(2), (referred to as "s. 207A(2)") and the ACAS Code of Practice 1 on Disciplinary and Grievance Procedures 2009 ("the ACAS Code").
30. During the course of this hearing the claimant was invited to explain the basis of her public interest disclosure detriment claims in more detail. During this process, and by reference to the further particulars already provided, she accepted that she was unable to establish who it was who allegedly had caused her to suffer detriment because of any disclosures made, and that she was unable to establish that any such detriment was caused by any disclosure in the first place. In addition, she agreed that the various claims were on the face of it out of time. Following reflection, the claimant decided to withdraw these claims, and they are now dismissed on withdrawal by the claimant as confirmed in an attached judgment of today's date. For the record, in my judgment these claims had no reasonable prospect of success in any event.
31. The claimant subsequently confirmed that her only remaining claim was one of unfair dismissal under sections 94 and 98 of the Act. She was not on notice that there was any application to strike out this claim under Rule 38. However, I did go on to consider whether a Deposit Order should be made under Rule 40 in connection with this claim, and the respondent applied for the same.
32. I have considered the cases of British Home Stores Limited v Burchell [1980] ICR 303 EAT; Iceland Frozen Foods Limited v Jones [1982] IRLR 439 EAT; Bowater v North West London Hospitals NHS Trust [2011] IRLR 331 CA; London Borough of Brent v Fuller [2011] ICR 806 CA; Polkey v A E Dayton Services Ltd [1988] ICR 142 HL.
33. The starting point should always be the words of section 98(4) themselves. In applying the section the tribunal must consider the reasonableness of the employer's conduct, not simply whether it considers the dismissal to be fair. In judging the reasonableness of the dismissal the tribunal must not substitute its own decision as to what was the right course to adopt for that of the employer. In many (though not all) cases there is a band of reasonable responses to the employee's conduct within which one employer might take one view, and another might quite reasonably take another. The function of the tribunal is to determine in the particular circumstances of each case whether the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within the band the dismissal is fair: if the dismissal falls outside the band it is unfair.
34. The correct approach is to consider together all the circumstances of the case, both substantive and procedural, and reach a conclusion in all the circumstances. A helpful approach in most cases of conduct dismissal is to identify three elements (as to the first of which the burden is on the employer; as to the second and third, the burden is neutral): (i) that the employer did believe the employee to have been guilty of misconduct; (ii) that the employer had in mind reasonable grounds on which to sustain that belief; and (iii) that the employer, at the stage (or any rate the final stage) at which it formed that belief on those grounds, had carried out as much investigation as was reasonable in the circumstances of the case. The band of reasonable responses test applies as much to the question of whether the investigation was reasonable in all the circumstances as it does to the reasonableness of the decision to dismiss.
35. In this case there was a full and thorough investigation into the alleged gross misconduct for which the claimant was eventually dismissed. There was an initial investigation into dishonest or disorganised timesheets in 2023 in respect of which the claimant received the benefit of the doubt. There was then a further investigation by the respondent's Counter Fraud department during 2024 which resulted in the disciplinary proceedings against the claimant. During that process she had every opportunity to state her case and provide her

explanation as to the nature of the documents in question, in circumstances where she appeared to have burnt some of the originals. A disciplinary panel of three senior managers considered the documentary evidence and the observations and comments put forward by the claimant. They unanimously concluded that there were 10 instances of fraudulent documents; the claimant had admitted to writing the names of the Assessor herself and the dates; the claimant was unable to provide any evidence or reasonable explanation as to why fraudulent timesheets had been submitted; there was no apparent desire to clear her name or fight the allegations; and that there was a pattern of dishonest behaviour. In my judgment that was a reasonable conclusion which the respondent was entitled to reach given the information before it. The claimant was afforded an appeal against that decision, which was determined by a manager who was independent of the earlier decision. The grounds of appeal, which varied during the process, were considered in detail, and did not materially affect the original decision. It was reasonable to reject the appeal.

36. In my judgment it is clear that this respondent will easily be able to establish that it had a genuine belief that the claimant had committed gross misconduct, and that this belief was based on reasonable grounds. Clearly dismissal is within the band of reasonable responses which are open to the respondent when faced with gross misconduct of this nature. For these reasons I consider that this is a claim which has little reasonable prospect of success, and accordingly I have made the attached Deposit Order under Rule 40. The claimant is impecunious, but she does have two different jobs, although she still has to repay some of her training fees to the respondent. For these reasons I have limited the deposit to a payment of £50.00.

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Employment Judge N J Roper
Dated 12 December 2025

Judgment sent to Parties on
5 January 2026

For the Tribunal Office

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