



EMPLOYMENT TRIBUNALS

Claimant: Mr Nathaniel Psaila
Respondent: BFT Mastclimbing Ltd
Heard at: Watford Employment Tribunal by CVP
On: 20, 21 and 22 May 2026
Before: Employment Judge Isabel Manley

Representation

Claimant: Mr J Psaila, brother and lay representative
Respondent: Ms V Hall, litigation consultant

JUDGMENT having been sent to the parties on 3 June 2026 and written reasons having been requested in accordance with Rule 60 of the Employment Tribunals Rules of Procedure, the following reasons are provided:

FULL REASONS

Introduction and issues

1. These claims were brought by the claimant against his former employer. The issues are set out in the case management summary of a preliminary hearing in May 2025. The list of issues, to which we made some small amendments, were agreed at that hearing. I answer the questions raised in the list of issues in my conclusions. In summary, these are claims for ordinary and automatic unfair dismissal and detriments for making protected public interest disclosures.
2. The respondent's case is that the claimant was dismissed by reason of redundancy and that there were no detriments connected to any concerns the claimant had raised. There were four alleged public interest disclosures which are emails on 1 March, 12 March, 26 April and 24 June 2024. The claimant was dismissed the respondent says, by reason of redundancy, on 31 July 2024.
3. At the hearing, I heard from several witnesses. There was a last-minute conversion for the hearing to be by CVP but we all seemed to manage that relatively well. I thanked the parties for having made an effort to make late changes in terms of getting people before computers and so on, at relatively short notice. I also expressed my thanks to both representatives for the way in

which they presented this case and, as far as I can see, how they have managed to co-operate to present a clear case to me. Of course, for Mr J Psaila, as the claimant's representative, who is a lay representative, this can be quite a difficult job for anyone to do.

4. I had a witness statement from the claimant. I had five witness statements from the respondents; only four of whom were in attendance. The witnesses that I heard from were:
 - Mr Ahmed, who is an HR Manager,
 - Mr Moyce, who is Contract Supervisor.
 - Mr Bouzaida, who is an Area Supervisor, and
 - Mr MacKinnon, who is the Operations Manager.
5. The other witness statement was from Mr Cook, who was the claimant's working partner. He did not attend and therefore less weight would be put on that statement because he was not cross examined.
6. I had a bundle of documents of 475 pages and, in this case, I did need to read many of them. I also had two videos, which I will explain later, with respect to job advertisements.
7. Very usefully, the respondent had prepared a chronology, cast list, and a reading list.
8. We agreed to deal with liability only at this stage and consider remedy, if needed, after I gave judgment on liability.

The facts

9. I am now going to set out the facts that I needed to find to decide those matters arising from the list of issues. For the most part, there are not many disputes on the basic facts.
10. The claimant, who lived in Essex, began working as an Installer, based in the south of England, for the respondent in March 2019. The respondent has (or had) around 150 employees, many of whom are installers of masts. The claimant's job involved driving to different parts of the south of England, sometimes London, but sometimes further afield. He worked in a relatively wide geographical area. He was involved in installing masts with platforms. Some of the work was at height. Installers were paid for work they did on client sites for different aspects of the job but not for travel. Installers were provided with a van which, in the claimant's case, at the relevant time period, he was sharing with his partner, Mr Cook. On occasions, installers might stay in hotels overnight.
11. The claimant has an NVQ Level 2 in Hoist Installations and an IPAF (International Powered Access Federation) Accreditation.
12. I have seen a copy of the claimant's contract and the respondent's handbook.

The contract states that the claimant's place of work was "*Various sites nationwide*". There was no opt out for the 48-hour working week under the Working Time Regulations.

13. The handbook I have seen is relatively sophisticated and is 39 pages long. I will refer to those parts that are relevant. First, at page 61, there is a useful summary of what the respondent's services were. It reads as follows:

"BFT is now the UK leader in mast climbing work platforms (MCWP). These are the faster more efficient alternative to traditional scaffolding. We have go-to solutions for the country's most demanding construction, renovation and maintenance projects from low-level flat refurbishments to complex high-rise developments. We use our technology, experience, and unfailing dedication to save our customers time and money."

14. In the staff handbook (page 62) under a heading "*Performance and Review*", it says this:

"Our policy is to monitor your work performance on a continuous basis so that we can maximise your strengths and help you overcome any possible weaknesses. This includes an appraisal scheme which will help monitor staff performance levels with a view to maximising the effectiveness of the individuals. You will be informed in advance of your appraisal dates."

15. At page 66, another extract from the staff handbook headed "*Shortage of Work*", reads as follows:

"In the event that the company is faced with a shortage of work or is unable to provide you with work for any other reason, then you agree that the company may temporarily-

- Place you on short-term working in which case you will be paid for those hours worked, or*
- Lay you off from working in which case you will be paid in accordance with the statutory guaranteed pay provisions in place at that time, or.."*

16. There is then another bullet point relating to furlough, which would not be relevant.

17. It is accepted by the respondent that there were never any appraisals of any installers. The alternatives set out at page 66, which might have been alternatives to redundancy under *Shortage of Work*, were not considered at the time of the redundancy exercise which I come to.

18. The claimant initially worked with someone called Sonny, who was said to be one of the respondent's best installers. The claimant lived relatively close to Sonny when he was working with him, which is important, as teams of two were expected to travel together in the van provided by the respondent, to client sites.

19. There are no issues of note then, except late in his evidence Mr Mackinnon made reference to something which had arisen in 2022, the detail of which is not relevant.
20. No issues were raised with the claimant and he said that he earned a good salary in the year before the termination of his employment of around £61,000 which included time working with Sonny and some of the time with Mr Cook, with whom he worked after Sonny left.
21. There was a redundancy exercise in 2021. I have seen one document which appeared to show the claimant scoring well. His evidence was that he was told by his then manager that he had scored well and he was retained. I have no other evidence about what happened in 2021.
22. As I say, there were no significant issues raised either with the claimant or by him before 2024.
23. There were no appraisals nor any meetings or any formal discussions with him about either his performance or his skill levels.
24. Mr Mackinnon gave evidence that he discussed work related issues with the claimant. There are no documented records of this and it is not very clear to me when Mr Mackinnon said he spoke to the claimant or to the extent of any such discussions which took place. Mr Mackinnon said it was a handful of times, but there is no evidence as to whether he had similar discussions with other installers.
25. There were managers of different sites. Mr Moyce was the Contract Supervisor and I understand he was responsible for about 10 sites. Mr Bouzaida was an area supervisor. The line manager for installers and managers on the sites was Mr Mackinnon who had been responsible for the Northern area from 2010 but moved to have responsibility for the South in 2021.
26. Sonny left in February 2024, and the claimant was then paired with Mr Cook. Their home addresses were a distance apart. The claimant was living in Essex and Mr Cook in Kent. The drive between their houses was at least 45 minutes or possibly longer given that they needed to cross the Thames.
27. Mr Mackinnon states that he was unaware of the distance between these two installers as the claimant's address had not been changed on the respondent HR system. I have no evidence as to how close they would have been to whatever the claimant's address was on the respondent's system. In any event, issues primarily arose when the travelling time was long, that is when it was out of Central or East London, when it became distances such as Brighton, Bristol or Cardiff.
28. On 1 March 2024, the claimant sent an email to Mr Mackinnon. This is the first of the four alleged disclosures (page 246). It reads as follows:

"Hi mate

I am just writing about travel time to work. I left my house at 4.40 am and didn't get to site in Acton until 9.40 am. I know you said to Gary there is no spare vans ATM but one of us is having to leave our house at least by 5.30 latest and lot of jobs other than Walthamstow we're getting there late and home late. On other jobs other than Walthamstow, we're getting there late. I've done 14 hours today and 12 and a half hours yesterday. Me and Gary are 33 miles away from each other. Is there anything BFT can do while we look for new installers as having to stay on site 8 till 4 pm and travel this much in the van is a big strain and I'm finding myself getting exhausted.

Kind regards

Nathan Psaila"

29. There are some follow-up emails in relation to that. And by 12 March, the claimant sent the second alleged protected disclosure; he wrote this:

"Hi mate,

Just wondering if anything is soon going be changed soon about me and Gary as got to site late again today even though Gary left at 5.30 am. Think I done like 70 hours or near to that last week. Is there anything we can get another van as we been working together over a month I think and we have travelled sometimes more than an hour to each other.

Thanks

Nathan Psaila"

30. That was copied to HR and followed up a letter in an email which I have seen at page 251. I will not read it now but that gives some detail of the travelling and the times.
31. On 26 April there was a further email from the claimant (page 253). This is the third alleged protected disclosure and is addressed both to Mr Ahmed, who is HR, and Mr Mackinnon.

"Hi Alek and Lee,

I have been working in Brighton. At first I was staying in a hotel but past two weeks there has not been that option due to price being too much I think. I totally understand that but as Gary is on the way to Brighton I pick him up and take the van home. I've done 69 hours in total this week leaving my house 5.30 and getting home 18.00 the earliest. I don't mind doing overtime at all but these hours are becoming consistent for me and I'm getting tired and exhausted. It's really affecting me. If we were working in London it may relieve the pressure a bit as Gary could take van home one week and pick me up as that was what we was doing when just in Walthamstow to give each other a break. As it is I've been taking van home for week and half and doing 12 to 15 hour shifts every

day since then. I'd really appreciate if anything can be done to relieve my hours a little.

Kind regards

Nathan Psaila"

32. Finally, the fourth alleged disclosure is one written on 24 June (page 384) and it is specific to being booked to go to Cardiff. It says this:

"Hi,

I've been told I'm working in Cardiff for just a day trip and that we need to be on site for 8 am. I don't mind travelling down tonight but Gary doesn't want to and I have the van this week. For me to get to Cardiff on time I'd have to leave my house at 3.30 am, with no stops. Please find attached the photo of Maps.

Also, with coming home from there on the same day would be about 10 hours on the road. I'm really concerned that I will get tired behind the wheel. Is there any chance we can get a job a bit closer please or if I can travel up tonight on train and leave the van with Gary he can drive up and I'll drive back if it is possible. As it is a lot of miles to cover over one day.

Thanks.

Kind regards

Nathan Psaila."

He concludes:

"I know lee is on holiday so I tagged he and Kathrine so if you can pass it on to Nick if Lee is not available. Thanks."

33. There were a number of replies from Mr Mackinnon. In summary, Mr Mackinnon indicated that the respondent was looking to recruit new installers so that the claimant could be paired with a different person, but he made it clear that another van was not an option. That is at page 254.
34. There had been an exchange of emails on a slightly different topic in May. These appears to be about timesheets and the claimant's pay. We looked at these because the claimant alleges one of the comments made by Mr Mackinnon was a detriment arising from his alleged disclosures about working hours. It was a little hard to follow these exchanges but they were on 22 May, and they were between the claimant, a person called Katherine, who appears to have some responsibility for timesheets, and Mr Mackinnon. This led to Mr Mackinnon making the comment that he made in an email of 22 May at 12.55 (page 381) where he says:

"Nathan,

Shut up... I've explained it. Why are you keep going and Kathy has explained I have not even checked that week. Better things to do than go over things with you... Why are you so difficult to deal with all the time. And I don't want to reply to that question."

35. Mr Mackinnon's evidence with respect to this email is that it was a response to what he called "*continuous*" emails from the claimant about issues about a particular timesheet. On the face of it, I can only see three emails from the claimant. They are at page 379 – 381 and are at 9.23; 9.26 and 12.38. They are relatively short and the above is Mr Mackinnon's reply.
36. Another alleged detriment the claimant says were connected to his complaining about working hours, appears at page 380. Again, this was rather earlier, on Wednesday 22 May, and it seems to be in relation to the issue about timesheets. This is from Mr Mackinnon and reads as follows:

"Nathan,

Yes, CVI the client but you need to be fair with the client as well. If you install six masts then CVI the client 6 hours etc. If you leave the project and CVI the client 8 hours it will be reduced. I will look at this again before we issue the timesheets. Again, I am not interested in what time you leave the house and arrive back at so remove these from your timesheets in the future."

37. Mr Mackinnon said that this again was in connection with the timesheets and that, the comment about not being interested in the time he left the house, was simply in relation to that not being put on the timesheets.
38. These then are the exchanges of emails which are the subject of the claimant's public interest disclosure claim.

The redundancy process

39. The oral evidence was that senior management, including Mr Mackinnon, discussed the reduction in work at some point. Unfortunately, Mr Mackinnon could not remember the date that this was discussed nor are there any notes of any such meeting. What Mr Mackinnon said is that they should have started redundancies before but they had not done so. He also accepted that they had not considered either short-time working or lay-off. When asked, Mr Mackinnon said that he had attended training on redundancy procedures given by Mr Ahmed of HR but he was not sure when that happened or how long it was. When I asked about the length of the training, he said it was around 2 hours or maybe a day. I was also not told when that happened; whether it was before or after the decisions on criteria for selection for redundancy had been already made.
40. In any event, the decision by senior management led to letters being sent to installers (page 392). My understanding is that this was sent to all installers but I have only seen that sent to the claimant. It is a letter dated 5 July 2024. It is headed "*Re redundancy at risk*". I will read some extracts:

"Dear all,

We are writing to inform you that due to reduced levels of activity on sites across the UK as a result of multiple project start delays and some large project completions sooner than anticipates, BFT needs to adjust its resource levels to align our costs. This will result in redundancies from our installer teams. Line managers will carry out preliminary scoring for the installer teams on Monday 8th July and by Wednesday 10th July you will be informed if you are at risk of redundancy. The company will then enter into a consultation period with the selected employees on an individual basis and the format of this is detailed below."

It then goes on to say:

"We will score you on the following categories

Performance

Skills competencies

Attendance based on Bradford scores

Disciplinary record

Attendance will be scored from 0 to 4 and the other three items will be scored 0 to 3."

It continues:

"We want to make it clear that no decisions have been taken yet and no decision will be made until the consultation has been concluded."

It then goes on to suggest how the consultation process will proceed and what will happen during that process.

41. There appears to have been no consultation with anyone from the employees' side. As understand it, there was no trade union nor any employee representatives before the criteria were decided upon. I believe the criteria were suggested by HR and appear to have been adopted without much, if any, discussion. As can be seen from what I have read, two were objective criteria - attendance and disciplinary; the other two – performance and skills competencies - have a subjective element, unless, which was not the case here, there had been previous assessments or appraisals carried out on performance or skills. As stated there had been such assessment carried out before the redundancy exercise.
42. Concerns had been raised by the claimant that what is said in that letter is contradicted by a staff newsletter issued about the same time, which I have seen and does, indeed, say that the business was doing well.
43. In any event, matters progressed so that the claimant received a letter a week later on 12 July. This letter appears at page 396. This informs the claimant that

there is to be a consultation meeting on 16 July and it provides the claimant's scores under the selection criteria and some explanation of them.

44. For performance, the claimant was scored 1 with weighting of 4, so the final score is 4. The description is "*performance meets most of the objectives*".
45. For skills competencies, again, his score was 1 with weighting of 4. The final score was therefore 4 and the description is "*limited skills in current role and requires close supervision.*"
46. As I understand it, his attendance and his disciplinary record gave him the highest score available. The total score for the claimant was 26 and he was told that his rank was "*bottom quarter*". The letter says "*Unfortunately, this has resulted in your selection for redundancy.*" It then explains the consultation process.
47. There was little detail in the witness statements about how the scoring was carried out so I asked Mr Mackinnon a number of questions about that. Managers on site or having some knowledge of the site, such as Mr Moyce and Mr Bouzaida were not formally involved in the scoring. Mr Mackinnon told me that he spoke to them in general terms, by phone, to get feedback on installers in the South for whom he was responsible. Those managers were not told that this was part of the scoring for the redundancy exercise. There were 18 installers and Mr Mackinnon got information from between two and five managers, although there were only two or maybe three who seemed to have information about the claimant. That information was given orally to Mr Mackinnon. He said he completed a matrix which is not before the tribunal.
48. As for the detail in page 396, which is referred to above, where the claimant's scores appear, there is a description of the scores given. Mr Mackinnon could not remember the details of what description applied to scores either higher or lower than 1. Mr Ahmed offered to give that evidence towards the end of the evidence part of the hearing. He told me the descriptors of the different levels between 0 and 3 for performance and skills.
49. Mr Mackinnon told me that he completed the matrix on the basis of what he had been told by managers. His evidence was that he was asking about 18 installers. But there are no notes before me although, at one point, Mr Mackinnon thought that maybe he did have some notes. But I have no evidence as to how other installers scored. We know that one other installer in the South was made redundant at the same time as the claimant and two later in September 2024. But it is simply not possible to tell how the claimant's scores compared to others. If there was concern about confidentiality, then it was not necessary for names to be given, but there is simply no way I can compare how he scored and how others scored, in order for me to have any idea of how fair or unfair that part of the process might have been. And, of course, more importantly, neither could the claimant at the point he went into the consultation meetings.
50. Mr Mackinnon appears to have scored on his own. His evidence is that he understood managers on site had concerns about the claimant being argumentative and not following instructions. Some evidence to that effect is

included in Mr Bouzaida and Mr Moyce's evidence. Other examples were provided to the claimant in the consultation meetings. Mr Mackinnon's evidence was that affected the scores for performance. There was no clear evidence about why the claimant scored so low on the skills criterion given his length of service and his qualifications, although Mr Mackinnon did make a reference, again not in his witness statement but in oral evidence, about a qualification the claimant did not have. But I have no information on other installer's qualifications in order to be able to compare what score was given.

51. One of the questions that is of central importance in this case is whether Mr Mackinnon's scoring was affected by the recent emails that he had exchanged with the claimant which included complaints about long hours. I do question how he could have fairly carried out the exercise that he tried to carry out scoring of 18 people, without any notes, and without showing to the tribunal how he decided who to give which scores to. I cannot believe that he was not influenced by his exchanges with the claimant and, of course, it is obvious that he may, with some justification, have become irritated by the number of emails the claimant sent. I do appreciate of course, that Mr Mackinnon might well have been very busy, he was working in a complex environment with jobs needing to be covered, and the logistics being relatively complicated. I appreciate that when one of the installers began to raise issues about the length of the working day, that may well have caused more problems for Mr Mackinnon. I find that Mr Mackinnon was influenced by his dealings with the claimant around the issue of long hours and that fed into his scores which are otherwise not supported by clear evidence as to why he gave those scores, particularly in relation to the skills question.
52. In any event, after scoring, there were consultation meetings on 16 July, 22 July, and a final one where the claimant was dismissed on 31 July. I have seen detailed notes of these meetings where the claimant questions his scores and says expressly that Mr Mackinnon has scored him because of the issues he has raised. The claimant pointed out his qualifications and that he had worked alone. Mr Mackinnon denied that the claimant raising issues had led to poor scores saying this is at page 400, "*The score was based on performance related issues on site*".
53. There were further discussions at the second consultation meeting on 22 July with a number of examples given of problems identified on the sites. The claimant countered this by saying that managers had said he was doing a good job and that he had recently been given a voucher at the site he had been working on for outstanding efforts in health and safety.
54. The claimant had raised a grievance on 18 July (page 417). It is a short grievance and reads as follows:

"Hi,

I would like to raise a formal grievance about my working hours. I have emailed quite a few times regarding the amount of hours I have been doing and I have just been told to get on with it. So, I would like to go through the grievance process so hopefully solve the issue."

55. He did also send a similar email to HR and that is at 419. I will just read that as well:

“Dear Alek

I’m writing to raise a formal grievance about overtime I have had to since Sonny has been gone. I have raised my issues more than once with management but feel like there has been little to no help and just been told to get on with it. I have evidence in the form of emails and have sent them in separate emails. I said to my bosses I don’t mind doing overtime but not continually and I feel like I’ve been spoken down to and just to get on with it and it is not right. I would be grateful if you could let me know when I can meet you to talk about my grievance.”

56. That matter was to be dealt with by Mr McEwan, who is the SHEQ and Training Director, and Mr Mackinnon provided a statement for that process which was to be considered later.
57. There was therefore, on 31 July, a grievance meeting with Mr McEwan at 9.30 in the morning which appeared to be over, according to the minutes, by 9.45, where the contents of the grievance were discussed. As it happened, and I think the respondent’s case is that this was to facilitate the claimant, the final consultation meeting for the redundancy happened about an hour and a half later, at 11.15 and was over by 11.38. In that meeting, the claimant was told that he was to be made redundant. That was after a discussion where the claimant made it clear he disagreed with the decision.
58. In any event, he received a letter confirming the dismissal on 1 August and he was paid, it appears properly, his redundancy pay and pay in lieu of notice.
59. On 2 August he received the outcome of the grievance which was partially upheld. I think it is useful to read sections from that. This is the letter dated 2 August from Mr McEwan and this is at 445:

So, the first part of the grievance is that you have been doing a large amount of overtime (hours spent driving to and back from sites) over the last couple of months. Having checked this, it appears to be travel time rather than overtime. Your average site hours have been between 6 to 7 hours a day. Due to the nature of the job, it can involve varying amounts of travel. This part of the grievance is partially upheld and the operations team will work on a plan to try and minimise the travel time in the future.”

60. The second part of the grievance about the management failing to listen to concerns was not upheld but, in relation to the third part, Mr McEwan said this:

“Your managers speaking down on you when you raise your concerns, having taken witness statements into account, it is clear there have been conversations where both parties have become frustrated and communication has become fraught.

Due to the above this part of the grievance is partially upheld and we will endeavour to provide training and active listening and communication where necessary.”

61. The claimant had by that point been dismissed and matters were taken no further.
62. After his dismissal, the claimant saw that there were still advertisements for installers for the respondent; one on its website and one on the recruitment agency website – “Indeed”. I was shown dated videos for August and October 2024 which are for installers. The explanation by the respondent for these advertisements is that there were always ads for installers on the respondent’s website so that CVs could be kept for any future work opportunity, and that “Indeed” did not have authority to place an advert on its behalf. Clearly, it is not satisfactory for the respondent to allow advertisements for installers to appear where, on its own case, there were no jobs available, and decision had been taken to make either two or four people in the South redundant.
63. One slightly confusing point is that Mr Mackinnon had been telling the claimant that they had been seeking to recruit new installers as late as 30 April (see paragraph 33 above) when the decision on redundancies must have been taken no later than early July. I have however, heard from witnesses that redundancies have continued, and I accept that, and that the workforce has continued to reduce.

Law and submissions

64. The provisions with respect to redundancy and unfair dismissal are in Employment Rights Act 1996 (ERA). The respondent bears the initial burden of showing that it had a potentially fair reason for dismissal and the claimant being redundant is one of the reasons in section 98 (2) c) ERA.
65. The definition of what constitutes a redundancy situation is at section 139 ERA:-

139 Redundancy.

(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) –

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.

66. If the facts support a finding that there was a redundancy situation and that was the reason for the claimant's dismissal, the tribunal must decide, the burden of proof being neutral, whether it was fair or unfair under section 98 (4) ERA:-

Where the employer has fulfilled the requirements of subsection (1), 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.

67. There are well established cases which provide guidance to tribunals upon fairness in redundancy dismissals. The principles are reflected in the list of issues. Williams v Compair Maxam Ltd [1982] IRLR 83 suggested that good industrial relations in such situations would include giving as much warning as possible to affected employees; consult with employees (through a trade union if there is one) on the selection criteria which should not depend on the subjective opinion of one person, consultation with those affected and consider alternative employment.

68. The provisions with respect to public interest disclosure, often known as whistleblowing, also appear in ERA. Section 43B sets out the definition:-

43B Disclosures qualifying for protection.

(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,*

69. Section 43B (2) provides that it is immaterial if the failure at subsection (1) occurred.

70. A qualifying disclosure will be protected if it is made to the employer, as in this case. Section 47B ERA is the relevant section providing for the right not to be

subjected to detriments because of having made a protected disclosure:-

47B Protected disclosures.

(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.

71. The tribunal's first task is to decide whether qualifying and protected disclosures have been made. Again, the steps that are needed to be taken are reflected in the list of issues. Kilraine v London Borough of Wandsworth [2018] EWCA Civ 1436 makes it clear that there must be sufficient factual content and specificity for it to amount to information which tends to show a relevant failure under section 43B ERA. The claimant has to show that they had a reasonable belief that the disclosure was made in the public interest. The case of Chesterton Global Ltd v Nurmohamed and Anor [2017] EWCA Civ 979 makes it clear that a disclosure which is in the private interest can also amount to being in the public interest if sufficient numbers of people are also affected by the matter being raised.

72. And, finally the ERA provides for protection against dismissal connected to a protected disclosure. Section 103A reads:-

103A Protected disclosure.

"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".

73. Kuzel v Roche Products Ltd [2008] IRLR 530 makes it clear that the burden of proof in determining the reason for dismissal remains with the employer. The employee does need to have some evidence to challenge the employer's stated reason. The task of the tribunal is, as always, to find the relevant facts and then apply the tests as set out in the list of issues which reflect the statutory provisions as clarified by cases in the superior courts.

74. I have very helpful submissions from both representatives and I was referred to several cases, some of which appear above and others I am aware of and which are commonly cited. I read the submissions before coming to my decision, and I will not repeat them now. There is no dispute about the legal tests.

Conclusions

Public interest disclosure

75. It is sensible to start with the public interest disclosure aspect first. This is Issue 3.

76. The question at 3.1 is, "*Did the claimant make one or more qualifying disclosures as defined in section 43B of the Employment Rights Act 1996? The tribunal will decide at 3.1.1 "What did the claimant write, when, to whom"*

77. This relates to the four emails of 1 March, 12 March, 26 April and 24 June 2024 as set out above. The claimant did, of course, send those emails.
78. The question then is asked at 3.1.2 "*Did he disclose information?*" It is clear to me that the claimant did disclose information in those emails. There is clear information provided about the travel time and the hours of work, as well as the travel difficulties that he and his work partner faced. It provides, dates, timings and places of work. That is a clear disclosure of information.
79. The next question at issue 3.1.3 is whether the claimant believed that disclosure of information was made in the public interest. I do find that the claimant held that belief. In particular, it is explained by reference to his exhaustion and to the worry about him being a safe driver. I find that the claimant did believe that that disclosure of information was in the public interest and that it did not simply relate to him.
80. The question at issue 3.1.4 is whether that belief was reasonable. I accept that that was a reasonable belief. It is clearly in the public interest that people, both working and sometimes at height and travelling should not be doing excessive hours. That is partly why there are Working Time Regulations with a limit on weekly working hours which can be opted out of varied by agreement, which did not happen in this case. I accept the claimant's belief was reasonable.
81. So, the next question for me is at issue 3.1.5 and that is whether the claimant believed that the information he had provided tended to show that a person has either failed to comply with a legal obligation with respect to excessive working hours or that health and safety of any individual had been endangered. Again, I am firmly of the view that the claimant did have that belief. It is very clear from what he wrote that he was concerned about (a) working hours and (b) about health and safety. There can be little doubt about that in my mind.
82. The next question on that at issue 3.1.6 is, whether that belief was reasonable. And again, it seems to me that must be a reasonable belief. Excessive working hours, as noted in the grievance outcome, accepted, it seems, by Mr Mackinnon and Mr Ahmed, are of some concern and they have potential health and safety risks. It has long been accepted that excessive working hours are, indeed, a health and safety matter. So, that belief was reasonable.
83. The final question which is at issue 3.2 is relatively straightforward. It is whether, if the claimant made a qualifying disclosure, was it protected? It is protected because the claimant made those disclosures to Mr Mackinnon (and Mr Ahmed) who are acting on behalf of the employer.
84. So, my finding is that the claimant did make those protected interest disclosures.

Detriments

85. Turning then to the question of detriments, these are at number 4 of the list of issues. Again, there is not much in dispute here but I will go through it in the order it appears. The question is whether the respondent did the following things.

86. The first at issue 4.1.1. was did the respondent tell claimant to “*Shut up*”. Of course, Mr Mackinnon accepts that that is contained within an email.
87. As is that at issue 4.1.2, telling the claimant to “*Get on with it*”.
88. At issue 4.1.3 that is where Mr Mackinnon told the claimant that he was not interested in the time he left his house. Although Mr Mackinnon seemed to doubt whether he had said that, it is clear that it was stated in the document that was in front of me (paragraph 36). I understand that Mr Mackinnon is saying that was about a different matter and I will come to the question of whether it is a detriment later but that was definitely said.
89. Issue 4.1.4 is subjecting the claimant to a “*sham redundancy process*”. This is a slightly more difficult question to answer. I am not sure that that is quite the correct way of putting this redundancy process. I am not sure that it was a sham redundancy process. It seems to me that there was a redundancy situation and that the respondent did decide that they needed to reduce their workforce of installers. The question really is whether the claimant was properly and fairly selected in that process.
90. Turning then to the final alleged detriment at issue 4.1.5, that is whether the claimant was forced to work overtime. A slight difficulty with that question because this is not work for which he was paid so, strictly speaking, might not properly be called overtime. But it does mean that his working day was long, as is acknowledged in the grievance outcome because of the travelling time. So, this alleged detriment might be more properly put as “*expecting the claimant to work long hours including travel*” or words to that effect.
91. I then turn to the question of whether those matters that I have just set out between 4.1.1 and 4.1.5 subjected the claimant to a detriment. My view is, yes, they do all amount to detriments. The language used by Mr Mackinnon, even though some of it can be explained by his frustration, is not appropriate, and it is clearly detrimental, and the claimant believed it to be so. Being selected for redundancy is clearly a detriment as is being expected to work very long hours including travelling time.
92. The claimant was subjected to all these detriments.
93. So, I turn to issue 4.3, which is whether any of these detriments were done on the ground that he made a protected disclosure. This is, of course, a more difficult question because I have to look at causation, what things were said or done, and the reason they were said or done.
94. On the balance of probabilities, I do find that those detriments were because the claimant had raised issues about his long working day. I appreciate that the “*Shut up*” comment was made in relation to other questions being raised by the claimant about timesheets, but these are all within the same time period and are all part of the picture of Mr Mackinnon having to respond to the claimant’s emails which he clearly, on the face of his replies, found difficult. These are all a reaction to the claimant raising issues about his working hours.

95. I find that the claimant was subjected to those detriments because he had made protected disclosures.

Unfair dismissal

96. I turn then to the unfair dismissal matter. It makes sense to look at issue 1.3 given my findings on protected disclosures, and that is the question of whether the reason, or principal reason for dismissal, was that the claimant had made a protected disclosure.
97. I do find that the scoring by Mr Mackinnon was influenced by the recent email exchanges he had had with the claimant on travel time.
98. I do not say there was not a redundancy situation but that, when Mr McKinnon came to score the installers, he scored the claimant low because of the issues he had raised. In particular, he has been unable to explain to me why the skills score was particularly low, and his reasons for the performance scoring was not as clear as it might be. The question for me is whether the disclosures made were the reason, or principal reason, for the dismissal. Out of 18 installers, the details of whose scores I do not know, the claimant was said to be in the bottom quarter. I have not been convinced that the subjective element of the scoring was done fairly. I believe the fact that the claimant had made protected disclosures did amount to the principal reason for the claimant's dismissal. That means that the dismissal is automatically unfair.
99. I will go on to decide though, if I am wrong about that primary finding that the principal reason was, what my answers are to the other questions raised under the unfair dismissal heading.
100. The first question at issue 1.1 is what the principal reason for dismissal was. This is where the question arises about whether there was a redundancy situation and, of course, if it was not the protected disclosures, then the question is whether the respondent as shown a redundancy situation.
101. Although the evidence given by the respondent on whether there was a reduction in the need for installers is a little inconsistent and unclear, I do accept, on balance, given that other witnesses have referred to the reduction in head count and other redundancies, if the dismissal was not connected to protected disclosures, I accept that the reason was redundancy under the definition in section 139 ERA.
102. That means that I then go on to consider under issue 1.2 that if it was redundancy, whether the respondent acted reasonably in all the circumstances. This is where I find that the respondent has made a number of serious errors.
103. Looking at fairness then at issue 1.2.1 and so on. The first question that arises is whether the respondent adequately warned and consulted the claimant. I appreciate that this is not a particularly large company, about 150 employees, it is medium sized, but there was not an adequate warning. The claimant and other installers were only told on 5 July with a meeting a week later. There was no warning or consultation on the selection criteria. I accept the consultation

meetings were, on the whole, reasonable because the claimant had opportunity to put questions and so on. But he was left in the dark as to how scores had been applied, especially those subjective scores on performance and skills. And the claimant did not know how he might have scored higher than he did when he was only scored 1 when the range was 0 to 3.

104. I do not accept that the respondent's selection decision was reasonable in the circumstances of this case (issue 1.2.2). I do accept that the selection pool was correctly identified as 18 installers, but have had some difficulties in this case as I have no information on those other people in that pool.
105. I do accept under issue 1.2.3, that the respondent appears to have taken reasonable steps to find alternative employment but there simply was not any at that point in time. So that is not really an issue.
106. Turning finally to the question at issue 1.2.4, whether dismissal was within the range of reasonable responses. My answer to that is that it was not, and that is for a number of reasons as outlined above.
107. Putting to one side the finding that I have already made that the dismissal was caused by the protected disclosures, I have grave concerns about how the information was collected to provide these scores. There are no notes of what Mr Mackinnon was allegedly told by managers and I find it difficult to understand how he could retain information collected over the phone for 18 people and then fill in a matrix. No issues of any consequence had been raised with the claimant about his performance. As we went into a number of times, there were no appraisals whatsoever. There was no other information for Mr Mackinnon to look at and he based his scoring, he says, on what he discussed with a couple of managers. There is no comparison with others apparently scored. For instance, I was told something about qualifications others had but no further information. Mr Mackinnon appeared to use general feedback when he was scoring.
108. Given the claimant's grievance, the outcome of which was that it was partially upheld, particularly about working hours and Mr Mackinnon's attitude; in all the circumstances of this particular case, bearing in mind the size and administrative resources, I find that, even if the reason was redundancy, the dismissal was outside the range of reasonable responses.
109. So, the dismissal would have been unfair in any event, if it had not been connected to the protected disclosures.
110. The claimant's claims for automatic unfair dismissal and detriments for making public interest disclosures succeed. It was agreed we could meet on 20 August 2026 for remedy to be determined if there is no agreement between the parties before that date.

Approved by:

Employment Judge Manley

29 June 2026

JUDGMENT SENT TO THE PARTIES ON
1 July 2026

FOR THE TRIBUNAL OFFICE