



EMPLOYMENT TRIBUNALS

Claimant: Mrs H Bannerman
Respondent: The Land Restoration Trust
Heard at: Bury St Edmunds (via CVP)
On: 5 September 2024
Before: Employment Judge Graham
Representation
Claimant: In person
Respondent: Mr T Perry, Counsel

JUDGMENT

1. The Claimant's application for interim relief is refused.

REASONS

Introduction

1. By way of an ET1 claim form presented on 8 July 2024 the Claimant claims that she was automatically unfairly dismissed by the Respondent for making protected disclosures contrary to section 103A of the Employment Rights Act. The Claimant makes other complaints within her ET1.
2. This application for interim relief was presented within seven days of the effective date of termination which was 2 July 2024.
3. The issue I had to determine in relation to this application was whether it appears to me to be likely that on determining this claim a tribunal will be satisfied that:
 - 3.1 There was a protected disclosure; and
 - 3.2 That disclosure was the reason or the principal reason for the Claimant's dismissal.

4. I made clear at the outset that I would not hear any oral evidence as this was not a fact finding hearing but I would decide the application on the basis of the written documents to which I was specifically referred and also the submissions of the parties. I was provided with a bundle of 53 pages from the Claimant, together with an investigation report commentary of 32 pages, as well as a detailed skeleton argument from the Claimant. From the Respondent I received a bundle of 170 pages, witness statements from Alan Carter the Chief Executive and also Ian Betteley the Finance Director, as well as a detailed skeleton argument and a bundle of authorities.
5. I reviewed all of the material I was directed to, including the Respondent's ET3 which had already been filed by the date of today's hearing.
6. The Claimant informed me that she has Asperger's Syndrome and ADHD and I therefore discussed with her what adjustments would assist her. I granted breaks at appropriate stages during the day, and the Claimant was permitted to turn off her camera when the Respondent's counsel was speaking.

The Law

Protected Disclosures

7. The Employment Rights Act 1996 provides:

S. 43B(1) 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—

...

(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,

...

(d) that the health or safety of any individual has been, is being or is likely to be endangered,

...

(5) In this Part "the relevant failure", in relation to a qualifying disclosure, means the matter falling within paragraphs (a) to (f) of subsection (1).

...

S. 43C Disclosure to employer or other responsible person.

Background

37. As I understand from the parties, the Respondent owns and manages public open spaces and the Claimant was employed as an Estates and Facilities Officer at the Respondent's site in Marleigh, Cambridge from 6 December 2021 until the termination of her employment on 2 July 2024.
38. I understand that the site at Marleigh comprises of around 300 new build properties and some community facilities which the Respondent manages in a partnership with Hill Marshall (also referred to as Hill) which is a joint venture between the developer and landowner. Marleigh Estate Management Company Limited ("MEMC") was formed by Hill and has a contract with the Respondent for the delivery of estate services under an Estate Management Contract ("EMC") dated 3 September 2020.
39. I also understand that the Claimant's role included (but may not have been limited to) managing the community centre at Marleigh and she would also act as a point of contact for business partners from Hill and MEMC, and she was also required to raise necessary matters and to maintain service level delivery within budget. Other duties have been referred to but this a general summary of what I understood to be the Claimant's role.
40. The Claimant says that she had previously declined to accept a role with the Respondent because she discovered that she would be dealing with Hill whom she had dealt with before and had a bad experience with. The Claimant says that she was persuaded to take the role and that she would be protected by her line manager(s).
41. The Claimant tells me that there had been an issue with water safety impacting residents in early in 2024 whereby a "do not use water" notice was issued on 18 January 2024 by the water company, and on 22 January a "do not drink" notice was issued, and that this incident was resolved on 24 January 2024. This has been referred to as "the water crisis" by the Claimant.
42. The Claimant says that she brought this to the attention of Mr Carter (the Chief Executive of the Respondent) on 19 January 2024 who she says told her to 'tactically retreat from all things water' and she was told to work from home, however she stayed involved and out of sight so as to not openly disobey his instructions.
43. The alleged whistleblowing features of this claim centre around two alleged disclosures the Claimant says that she made to Mr Carter on 2 February and 8 February 2024.
44. The Claimant says at paragraph 6 of her particulars of claim that she verbally informed Mr Carter of her belief that there was conflict and confusion over roles and responsibilities and that this resulted in there being nobody to take charge during the water crisis.
45. The Claimant tells me that the handwritten and typed version of the notes of those meetings produced by Mr Carter are accurate, although she goes on to say they were not fully complete and did not capture word for word everything that was said. The Claimant says she was raising concerns

about a breach of a legal obligation (the EMC), and secondly the potential health and safety impact of that upon residents, of which the water crisis was an illustration.

46. As to what may have been said, the notes prepared by Mr Carter record that on 2 February the Claimant had said that Hill/Marshall as joint venture were not responding to the community needs that they have; the water crisis is an illustration; and they thought that the Claimant was trouble. This is generally consistent with the Claimant's particulars of claim at paragraph 19. In oral submissions the Claimant informed me that whilst at the time she was under the impression that the failure was of Hill, she now considers that the failure was that of the Respondent which should have known about the water crisis and informed others about it.

47. At paragraph 22 of the Claimant's particulars of claim she deals with the second alleged disclosure of 8 February 2024 where she says that she remained concerned that people may be "dead in their beds" because no-one had been to check on them, and that Mr Carter had told her she was doing too much, to step back, and that he held up the EMC and said that it did not say that she was responsible for people being dead in their beds.

48. I was referred to the copy of the notes of this meeting prepared by Mr Carter, which the Claimant agrees are accurate, and I note that they list the following bullet points:

- *Feeling a bit wired. Juggling. Feeling supported and exposed.*
- *No one knows what's going on apart from me.*
- *Out of control*
- *I can't do the basics of the job*
- *Site walks*
- *Operate centre safely*
- *Bullying and awful nature of Hill/Marshall*
- *No one understanding the remit*
- *Residents and aftermath of water crisis*
- *Hilary feels responsibility to report it*
- *Duty of care*
- *Hill Marshall don't do paperwork etc.*
- *Come up against misogyny*
- *Put in my place*
- *Expose or undermine – not supported*

49. The reference to people being dead in their beds is not listed in that note. The Claimant has invited me to view the two conversations as either protected disclosures in their own right or to view them cumulatively. The Claimant tells me that these alleged disclosures tended to show a long list of matters set out at paragraph 24 of her particulars, in summary they tended to show a breach of a legal obligation (namely the terms of the EMC) and that the health and safety of those living and working at Marleigh had been endangered during the water crisis.

50. The Claimant also says that her disclosures were not made for personal gain, she believed the information was true, and that belief was reasonable. The Claimant provides a long list of reasons why she says that she reasonably believed that the alleged disclosures were in the public interest,

including (but not limited to) that there was a risk of harm to people on other sites due to potential ignorance of contractual obligations, other developments were planned and the lessons learned from the water crisis would be relevant to them; and local residents were paying a service charge to the Respondent and deserved better.

51. The Claimant says that following this the Respondent scabbled around to find reasons to dismiss her, however her arguments were at times complex and contradictory as she made reference to Hill not wanting her there, and finding ways to remove her, much of this allegedly occurring before her alleged protected disclosures were made. The Claimant had also made reference to matters occurring in January 2024, which is before her alleged disclosures, where she said she was in fear of dismissal and that her job was at risk.
52. The Claimant's flow chart produced or relied upon for today's hearing records for 24 to 30 January her feelings that *"No one will engage me. I am in despair. I feel a target on my back"* and on 31 January she recorded *"As a last-ditch effort to avoid being sacked, I reach out to a former director of both Hill and Marshall."* These alleged difficulties with Hill and the Respondent and her feelings that she will be dismissed are recorded by the Claimant as occurring in advance of her alleged protected disclosures.
53. The Claimant's particulars (paragraph 26e) states the Respondent did not know that the root cause of the tension (with the contract parties) was their failure to meet the terms of the EMC and the reason for her removal was that the Respondent knew of no other means by which to release some of the pressure being placed upon it by MEMC to improve the contractual performance, and that they acted in haste at the behest of MEMC in a misguided attempt to reduce their exposure to financial reputational risk.
54. The Claimant's particulars of claim also contain a number of references to matters allegedly occurring in advance of those alleged disclosures. For example "the reason for my dismissal is that my employer undermined my ability to do my job" (paragraph 34). The Claimant also makes references to being consistently upset by censure and confused by criticism from MEMC (paragraph 36), a history of conflict (paragraph 37), and other pressure applied by MEMC (paragraph 38). The Claimant also says in her ET1 that her feeling was that her alleged disclosures "influenced" the Respondent's subsequent decision to dismiss her on 2 July 2024 (paragraph 40).
55. The Claimant has addressed the Respondent's three grounds for dismissing her for misconduct and she tells me that the first ground involving an altercation with a third party contractor (Encore), including an allegation that she made a negative comment about nationality, had been exaggerated and relied upon as an excuse although she accepts that she made a reference to his nationality in order to help her remember him.
56. The Claimant says that the second reason which involved her appointing staff was also an excuse and that she had not hired them as employees, although she accepts that she engaged one person who had recently been dismissed (by another employer), although she disputes that she was not entitled to do so contractually, and she relies upon emergency provisions in

the contract. The Claimant also acknowledges that there was another matter whereby she engaged someone to work with local youths. Whilst the Claimant says that these two people were not employed by her, she acknowledges that there was some expenditure for their time albeit at limited cost.

57. Finally the Claimant addressed the third reason which was that she had committed a data protection breach. The Claimant acknowledges that she sent work material to her home email account, but she suggests that it had been relied upon as an excuse when the Respondent knew that she was mentally unwell and should not have been allowed her to continue to have access her IT after being sent home from work on 19 February 2024 in particular because she says they knew she had been warned previously about the use of her private email account.
58. The Claimant's argument is that these three reasons were simply relied upon as excuses, and that the true reason was due to her protected disclosures, although at the same time she appears to argue that it was due to pressure from Hill or MEMC to remove her.
59. The Claimant spoke at length during the hearing, and whilst much of her oral submissions were directed towards the legal issues for me to decide today, I found her submissions on causation to be difficult to follow as the focus appeared to shift from the Respondent allegedly dismissing her for whistleblowing, to pressure being applied on the Respondent by Hill or MEMC to remove her other reasons.
60. The Respondent submits that the communications of 2 and 8 February were not protected disclosures at all, although the Respondent recognised that depending upon what is said at the final hearing it is possible theoretically that the Claimant's comments of 8 February could amount to protected disclosure, but that at the moment the information currently before the tribunal falls far short of that. The Respondent says that viewing these two communications cumulatively does not alter the position.
61. The Respondent points out that the notes of the conversations between the Claimant and Mr Carter and do not demonstrate any criticism of the Respondent. The criticism is of Hill and as such it is very unlikely that a tribunal will find that the information tended to show that the Respondent was not complying with a legal obligation.
62. The Respondent relies on the reasons why it says it terminated the Claimant's employment (misconduct, breach of trust and confidence, and acting in a manner likely to bring the Respondent into disrepute) and it relies heavily on the difficulties it says the Claimant will face when it comes to causation specifically whether the disclosure or disclosures were the reason or principal reason for her dismissal by Mr Betteley (the Finance Director). Within the witness statement of Mr Betteley he refers to the Respondent conducting a disciplinary investigation and undertaking interviews with witnesses, he says that the water incident was excluded from consideration although the Claimant sought to refer to it, and he looked into whether MEMC wanted to remove the Claimant however he says he was informed by Mr Carter that this was untrue and that they were raising operational concerns. Mr Betteley says that no mention was made of whistleblowing by

anyone when he conducted the disciplinary hearing, and that he was not even aware of the conversation between the Claimant and Mr Carter on 2 and 8 February 2024 so it had no bearing on his decision.

63. The Respondent brings to my attention the references within the Claimant's own ET1 which I have referred to already about the reasons why she says she felt that her employment was terminated, and further it points out that there is an absence of any evidence that Mr Carter passed on to Mr Betteley the information the Claimant says that she gave to him. The Respondent reminds me that for the purposes of causation it is not enough that these alleged disclosures **influenced** the decision to dismiss, they must be the **reason** or the **principal reason**.

Conclusion

64. In coming to my decision, I must take an impressionistic view of the documentary evidence before me, noting that no oral evidence has been given on oath or tested by cross examination. I have therefore carried out a summary assessment of the material before me to form a view as to whether the Claimant is likely to succeed in her claim.
65. I consider that it is unlikely that a tribunal will find that the alleged disclosure of 2 February was a protected disclosure because it appears to me unlikely that the Claimant will persuade the tribunal that the information she says she disclosed tended to show one of the failures the Claimant relies upon. Leaving aside what the Claimant says that she believes now, simply looking at what the Claimant says that she expressed at the time, which is generally consistent with the Respondent's account in the notes and the witness statement of Mr Carter, it is my view that it is not likely that the Claimant will demonstrate that the information tended to show a breach of a legal obligation by the Respondent or the endangerment of health and safety. Whereas tribunals should avoid a rigid dichotomy between allegations and information (*Kilraine*), the information which the Claimant says she disclosed appears to me unlikely to amount to more than a general criticism of the Respondent's contract partner or client, rather than the Respondent itself.
66. The situation is slightly different with respect to what the Claimant says was discussed on 8 February and it appears to me that there is some prospect that the Claimant may be able to demonstrate at a final hearing that the information she says that she was disclosing tended to show either:
- (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject, or*
- (d) that the health or safety of any individual has been, is being or is likely to be endangered,*
67. There is some possibility that some of what is recorded could be found to have been a protected disclosure and whilst these could tend to show one of the failures she relies upon, this would be dependent upon the Claimant's own witness evidence of what was specifically said beyond these very brief bullet points. It also appears to me that it is possible that the Claimant may be able to show that it was reasonable for her to believe that the information

tended to show the failures relied upon, and further that she reasonably believed that these were disclosed in the public interest, but this is dependent upon what information was actually disclosed and whether it contained sufficient factual content and specificity.

68. My summary view therefore is that the Claimant has some prospect of showing that, however I do not consider that it is likely that she will be able to do so. This requires a far higher threshold to be met, and based upon the information before me today, my view is that whilst it **possible** that the Claimant may be able to persuade a tribunal at the final hearing what was disclosed on 8 February amounts to a protected disclosure, I do not find based upon what is before me today that it is **likely** or that there is a **pretty good chance** that she will be able to do so.
69. By way of example there is clear a dispute of fact about whether the Claimant used the expression about finding residents dead in their beds – it is not recorded the Respondent's notes which the Claimant says were accurate, and Mr Carter denies that it was said. In many respects there is a lack of clarity as to what was actually said, and therefore it follows that there is a lack of clarity as to what it tended to show. At present it is not sufficiently clear what was said. Evidence will need to be heard and tested at a final hearing.
70. Having considered both alleged disclosures from 2 and 8 February 2024 together (as per **Norbrook**), this does not alter my impression that the Claimant's is not likely to show that she made a protected disclosure.
71. Leaving aside the issue of whether it is likely that the Claimant will be found to have made a protected disclosure, I would like to address the issue of causation.
72. I am not satisfied to the extent that I need to be from the material before me today (including the oral submissions), that the Claimant will be able to show that the reason or principal reason for her dismissal was that she made a protected disclosure.
73. This is because the material place before me today and the oral arguments fall far short of that. I have in mind the Claimant's own admission that she says that her employment was in jeopardy just before her first disclosure on 2 February, and the Claimant has made numerous references to difficulties of working with Hill previously – she says she initially rejected her role as she had history with them.
74. The Claimant's ET1 claim form also suggests other reasons why she was dismissed, including undermining her role before her disclosures. I also take into consideration that whereas the Claimant challenges the factual premise of two of the Respondent's reasons for dismissing her, she does not dispute the data protection incident occurred. I make it clear that the Claimant has not conceded to me that it amounted to misconduct or that it would have justified dismissal, she has simply been candid and informed me that she sent work material to her home email account, and she has sought to explain the background to that event. I have not interpreted this as a concession, and I am clear that I am making no findings of fact in this hearing.

75. Some of the difficulty I had with the Claimant's arguments on causation was due to what appeared to be the competing reasons why she says she was dismissed. As the Respondent correctly reminds me, it is not sufficient for the disclosure(s) to have been an **influence**, as the legislation requires that they must have been the **reason** or the **principal reason** for dismissal. In this case, based upon what has been presented to me, it appears to me unlikely that even if the Claimant persuades the tribunal at a final hearing that she made one or more protected disclosures, it is not likely that she will persuade that tribunal that what she says she disclosed on 2 and 8 February 2024 to Mr Carter was the reason (or principal reason) for her dismissal by Mr Betteley.
76. I consider that a proper evaluation is required by the tribunal to make findings after hearing all the evidence on the allegations which the Respondent says formed the reasons for the Claimant's dismissal.
77. These documents do not suggest a direct causal link between the alleged disclosures and the dismissal and what was allegedly said on 2 and 8 February 2024. There are clearly factual disputes between the parties.
78. This is not to say that the Claimant will not be able to satisfy the tribunal on the balance of probabilities that the reason or principal reason for her dismissal was because she made protected disclosures. It will be a matter for the final tribunal to determine the veracity of the Respondent's case and only then will it be possible to properly determine the motivation behind the dismissal. However, on the information before me, I cannot say that the final tribunal is likely to find that the reason or principal reason for the dismissal was the alleged disclosures.
79. The application for interim relief is therefore refused.
80. I thank Mrs Bannerman and Mr Perry for their assistance throughout today, including delivering oral and written submissions of such a high quality.

Employment Judge **Graham**

Date 5 September 2024

JUDGMENT & REASONS SENT TO THE PARTIES ON

22 November 2024.....

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FOR THE TRIBUNAL OFFICE

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>