

# THE INDUSTRIAL TRIBUNALS

CASE REF: 47/13

**CLAIMANT:** Jonathan Eves

**RESPONDENT:** Omagh Minerals Limited

## DECISION

The unanimous decision of the tribunal is that the claimant's claim of unfair dismissal by reason of making a protected disclosure is dismissed. His claim that he was subjected by the respondent company to a series of detriments by virtue of making a protected disclosure is also unanimously dismissed.

### Constitution of Tribunal:

**Chairman:** Mr D Buchanan

**Members:** Mr J Barbour  
Mrs M E Torrans

### Appearances:

**The claimant was represented by Mr E McArdle, Barrister-at-Law, instructed by Rosemary Connolly, Solicitors.**

**The respondent was represented by Mr G McHugh, Barrister-at-Law, instructed by Logan & Corry, Solicitors.**

- 1(i) The claimant, by a claim form presented to the industrial tribunals on 20 December 2012, alleged that he had been dismissed by the respondent company contrary to Article 134A of the Employment Rights (Northern Ireland) Order 1996 ('the 1996 Order') because he had made a protected disclosure. He also alleged that the respondent company had subjected him to a series of detriments (which amounted to a continuing act) in the period following the making of his protected disclosures up to, and beyond, the termination of his employment, contrary to Article 70B of the 1996 Order.

- (ii) This is a 'whistleblowing' case, and the issues for determination by the tribunal were agreed at a Case Management Discussion before the Vice President of the Tribunals on 19 March 2013, and together with the Record of Proceedings of that Case Management Discussion, are set out at **Annex A** to this decision.

In short, the respondent company's case is that the claimant's employment was ended because he was made redundant. The claimant contends that the redundancy was a 'sham', contrived to get rid of him because he made protected disclosures. While the respondent company's case in relation to termination rests primarily on the genuineness of the redundancy situation, it also claims that the claimant does not have the protection of the 'whistleblowing' provision as any disclosure which he made was not made in good faith.

- (iii) In order to determine this matter we heard evidence from the claimant. While he made a detailed witness statement, and provided equally detailed answers to supplementary questions as part of his evidence-in-chief, we found some of his answers to questions posed in cross-examination evasive and disingenuous.

The following gave evidence on behalf of the respondent company : Mr Roland Phelps, its Managing Director, Mr Ronan Conway, its Assistant General Manager, and Mr Brendan McAleer, a non-executive Director. We found all of them, particularly Mr Phelps, impressive, rational and consistent in their evidence, and where there was a conflict in their evidence with those of the claimant, we unhesitatingly preferred their accounts and explanations to his.

We also had regard to the documentary evidence submitted by the parties.

- (iv) We find the facts set out in the following paragraphs.

- 2(i) The claimant, a qualified Extractive Metallurgist, was appointed technical manager of the respondent company on 7 November 2011 and remained with it until his employment was terminated on 11 October 2012.

The respondent company was a small mining company based in Northern Ireland, and was owned by a parent company, Galantas Gold Corporation. The company's purpose was to mine for gold at its Omagh site.

- (ii) The claimant had previously worked for the respondent company from July 2006 until September 2008, during which time he had set up its analytical laboratory. The claimant was someone with extensive laboratory experience. He described himself as having been 'immersed in sampling theory', and he also pointed to his previous production experience and responsibilities for both operations and maintenance of a large plant.
- (iii) At the time of his appointment as Technical Manager in November 2011 the claimant was told that some of the mining operations would cease in 2012 as the 'Kearney' vein reached the end of the line, and that operatives (as opposed to managers) would be made redundant in early 2012 as that happened. The gold plant would continue to operate using stock filled material of low grade waste until a new underground mine became available. There would be a continued need for sampling/sample analysis, and therefore on this basis he was given to understand that the Technical Manager post would be permanent.

- (iv) Sampling and sample analysis is of critical importance in the mining industry. In effect, it forms the basis on which large scale commercial transactions take place, so the integrity of the process is of fundamental importance. Initially, the agreement between the respondent company and Xstrata, its principal client, required the former to use an independent company to conduct the sampling of gold concentrate, but because the mine at Omagh continued to make a loss, an agreement was reached to stop the requirement for an independent company, and allowing the respondent company to do its own sampling in order to save money.

In these circumstances it is clear that Xstrata needed to have full trust and confidence in the respondent company's processes.

- 3(i) It appears that the claimant began to have concerns about the validity of gold sample analysis shortly after he took up his employment – indeed some of these concerns appear to have arisen during the handover period in November 2011 when his predecessor in post, a Mr Hingston, was still on site. Tests were being repeated because the concentrate gold grade had been consistently dropping, and the claimant stated:-

*"[t]here was real concern because the company was no longer making money".*

The claimant was also asked by the then General Manager, Mr Crew, to repeat analyses he had done, and expressed surprise that Mr Crew asked that the tests be carried out by a laboratory assistant, Mr Neil Harte. The claimant described Mr Harte as 'a semi-skilled and relatively junior employee'.

- (ii) The claimant let Mr Harte do the first half of the analysis. He stated in evidence – in his witness statement:-

*"When I saw how different but consistent his results were I suspected that Mr Harte had deliberately swapped higher grade samples dating from a previous period for the low grade samples that he should have been testing, (kilos of samples are retained from old containers) so as to give higher readings.*

*I became concerned that such deliberate substitutions, if that is what was going on, potentially amounted to a substantial fraud on the client, which would be misled as to the grade of gold being supplied to it by the company."*

The gist of the claimant's concern is that the sampling analysis misrepresented the gold content of the samples and that this was a deliberate fraud on the client, Xstrata.

- (iii) The claimant complained about these matters, and the possibly swapping of samples so that high grades were reported to Xstrata, at a management meeting on 16 December 2011.
- (iv) In one of the tests which his predecessor had repeated, the result had come back considerably higher. This was sample number 344/345. On 12 January 2012 the claimant noticed that he had accidentally sent in this container sample along with

his own for gold analysis. The result of the analysis of his predecessor's sample indicated that the original (lower) analysis had been correct. This confirmed the claimant's suspicion that something irregular and illegal was taking place.

- (v) We are satisfied that the claimant formed these suspicions on the basis of evidence that was tenuous or non-existent. There was no evidence of deliberate swapping of samples, or of a systematic and protracted series of deliberate frauds. Much of the alleged fraud was being laid at the door of Mr Harte, but as a relatively junior employee, it is difficult to see any advantage to him in indulging in such contact. The claimant attempts to link Mr Crew to Mr Harte's activities, but there is again no evidence of this.
  - (vi) We also find it significant, in the context of his allegations against Mr Harte, that the claimant had a generally low opinion of the former. We have already noted at *Paragraph 3(i) above*, his somewhat gratuitously disparaging reference to Mr Harte as 'semi-skilled' and 'relatively junior'. He also pointed out that Mr Harte was on a final warning for a clock card offence, that his attendance and time-keeping were 'abysmal' and that he seemed to come and go as he wished.
- 4(i) In a letter to Mr Ronan Conway, dated 21 January 2012 and sent on 23 January 2012, the claimant set out his concerns about alleged fraudulent activity in the company and he repeated his allegations against Neil Harte stating, without providing any convincing evidence, that the latter:-

*"may have already succeeded in defrauding Xstrata in the past to the tune of hundreds of thousands of pounds".*

He recommended, among other things, that Mr Harte should:-

*"be suspended on full pay and subject to a disciplinary action for suspected fraud".*

There was no suggestion in the recommendation that the disciplinary process against Mr Harte should be preceded by any investigation.

- (ii) The claimant also sent this letter and attachment to DETI (ie the Regional Department for Enterprise, Trade & Investment). In his witness statement dealing with this aspect of the matter, he says, at *Paragraph 19*:-

*"I did not appreciate at the time that in making these disclosures to my employer directly I was making a Protected Disclosure for the purposes of the whistleblowing legislation. I am now advised and accept that this was the effect of making the disclosures I did to my employer. Instead, at the time, believing that I had to log my disclosure with the regulatory authorities. I also sent this letter and its attachment to the DETI."*

However, in cross-examination the claimant conceded that before sending the letter of 21 January 2012 to DETI, he had spoken to a named official in that Department in mid-January 2012 about protected disclosure. This raises the issue of why in his witness statement, he indicated a lack of awareness about the nature of protected disclosure.

- (iii) Mr Conway forwarded the claimant's letter to Mr Phelps. The latter expressed the view that the claimant had been quick off the mark to allege fraud. He considered that the facts disclosed showed that if Mr Harte was rigging samples, he was 'making a poor job of it'. He continued:-

*"I don't see that there is evidence to put Neil in the frame or that a mistake even took place."*

However, he accepted that the matter would have to be looked at in detail on his next trip to Omagh. In the meantime, Mr Conway arranged to see Neil Harte on the afternoon of 24 January 2012, and it was arranged to send a letter to Xstrata saying that there had been the potential for a sample mix-up in samples 344/345 and asked if the company would take a sample of the shipped material to verify the grade. Consequently, the respondent company's customer was informed of the allegations promptly, so as to minimise any potential reputational damage or damage to the trading relationship.

- (iv) The claimant stated that between 23 January 2012 and 7 February 2012 he became dissatisfied with Mr Conway's response to his allegations, and that it was in the latter date that he sent a copy of the correspondence to DETI. Notwithstanding this declaration of dissatisfaction in the course of his evidence, he made no record of it in the detailed notes which he made of the events which had taken place. Nor did he express any concerns to DETI about lack of management action about his complaint.
- (v) On 24 February 2012 the claimant had a conversation with Mr Conway about facilities in, and requirements for, the laboratory. Mr Conway questioned whether the laboratory was needed given that the mine was only producing a container per week. According to the claimant he took that as a threat that he might be sacked or victimised if he did not also substitute high for low grade samples.
- (vi) On 27 February 2012 the claimant progressed his concerns by e-mailing Mr Roland Phelps, the Managing Director. The claimant was called to a meeting in Mr Conway's office that afternoon. Mr Crew was there and threatened to sue him for libel. Also present was Mr Brendan McAleer, a local businessman and non-executive director, who was commissioned by Mr Phelps to carry out an investigation into the claimant's allegations. On the same date, Mr Phelps told the claimant for the first time in an e-mail that the position of the laboratory was under review.
- (vii) On 27 February 2012 Mr Conway also spoke to the police in Omagh and outlined the allegations made against the company's management. He was advised that the police view was that it was a matter for Trading Standards initially, who would contact police if they considered there was sufficient evidence to merit the latter's involvement. On 28 February 2012 Mr Phelps also e-mailed the client in Canada, informing it of the alleged impropriety, the setting up of an investigation under the independent director, Mr McAleer, and stating that he would welcome the participation of the client company's sampling representative, to contribute expertise and to ensure transparency.
- 5(i) Mr McAleer carried out an investigation, as directed by Mr Phelps, and set out his conclusions in an e-mail of 6 March 2012 to the latter.

The claimant, in evidence, did not accept that Mr McAleer was independent, in that he had an interest in the business. However, Mr McAleer was a non-executive director, and was semi-detached from the day-to-day running of the business. He was a prominent local businessman, with his own good reputation to protect, and we accept his evidence when he said that he went into the investigation with an open mind, that had he thought he was out of his depth he would have asked for help, and that had he discovered evidence of fraud, he would have called in the police.

He spent several days meeting, and talking, to those involved, and spent time in the laboratory, getting an understanding of the work done there, what the processes were, and the integrity of those processes. Mr McAleer, in the course of his investigation, formed the impression that the claimant was determined to get rid of Mr Harte.

- (ii) Mr McAleer e-mailed Mr Phelps on 6 March 2012, stated that he had completed his investigation and he set out a list of his recommendations and conclusions. His principal conclusion was that there was no evidence of deliberate impropriety. A further conclusion (No 5) was that:-

*“[t]he change of lab staff and conflicting personalities during November 2011 resulted in errors.”*

All these points had been previously agreed with the claimant.

- (iii) There was a meeting on 8 March 2012 to sign off Mr McAleer’s report. The claimant and Mr Phelps were present at that meeting. At that meeting conclusion No 5 (above) was deleted. While Mr McAleer was prepared to move on this finding, the claimant subsequently took this as confirmation that his allegations had been well-founded. This is somewhat disingenuous as the removal of No 5 is equally consistent with mistake as opposed to impropriety.
- (iv) The claimant took issue with Mr Phelps’ presence at the meeting. He said that Mr Phelps put him under pressure and he felt that he was directing Mr McAleer. He was also under pressure because Mr Phelps said he would be hearing any appeal, and his presence at the meeting represented a threat that things could get much worse for the claimant. He said in evidence that he formed this view ‘from Mr Phelps’ facial expression’.
- (v) The upshot of the meeting was that subsequent to it the claimant wrote to Mr Conway apologising to him and accepting that he had not been threatening him with the loss of his job but rather had been doing his job investigating areas of the business where savings in costs could be made. As far as Mr Conway was concerned, he considered the matter closed.
- (vi) The claimant also wrote to DETI in the following terms on 8 March 2012:-

*“I’m writing to update you on the progress of the independent director’s investigation into my allegations. I’m glad to report that the investigation has been both urgent and thorough. The director has made the necessary recommendations to ensure that the wrong sample is not passed on to the*

*customer again, I will be implementing these recommendations. The customer's representative is due to visit us in due course and will be shown all our documentation. The correct value for the gold consignment will be ascertained [sic] with the customer's representative and the correct payment will be made.*

*All the allegations I have mentioned were investigated and all those I have mentioned have been exonerated. I welcome the outcome and accept it fully. I am apologising to those I have accused.*

*I believe the matter should be closed."*

- (vii) The claimant now says, further, that the investigation by Mr McAleer was totally unsatisfactory, and secondly, that he felt under pressure to accept Mr McAleer's report, to apologise, and to write to the regulator effectively withdrawing the allegations he had made.

As far as his complaint about the unsatisfactory nature of the investigation is concerned he did not accept when it was put to him in cross-examination that it had been 'both urgent and thorough' notwithstanding that these were the words he used in his letter to DETI.

He went on to say in cross-examination that everyone has his 'breaking point'. However, we are satisfied that he was not someone who could be pressurised into going against his own beliefs. We agree with Mr Conway who described the claimant as a 'robust individual who would not be easily influenced or swayed'. The claimant also stated that the state of his mental health was an issue on 8 March 2012. However, he did not mention this in his witness statement.

Overall in respect of the matters just mentioned, we find the claimant's evidence completely disingenuous. In particular, there was nothing objectionable in principle to Mr Phelps' presence at the meeting. We also note that the claimant did not raise the issue of fraud or other irregularities again after this time.

- 6(i) On 21 September 2012 the claimant was informed that he had been provisionally selected for redundancy. The reasons given was that following the quashing of a planning consent in judicial review proceedings in the High Court, the company found itself in the position where it was unable to continue with its operations as planned.

The claimant was invited to a meeting, which ultimately took place on 5 October 2012, to discuss his views on the matter, the possibility of other work within the company. He was told that he could bring someone to the meeting with him. He was also told that the company welcomed applications for voluntary redundancy, and that as an incentive was offering an additional £750.00 top-up on any statutory redundancy payment.

- (ii) Following the meeting on 5 October 2012, the claimant was told by letter of 11 October 2012 that his redundancy would proceed. An appeal meeting was held on 24 October 2012, and the claimant was told on 5 November 2012 that his appeal had been unsuccessful.

(iii) An ostensibly fair procedure was therefore carried out by the respondent company. However, the claimant's case is that the redundancy, together with the procedure implementing it, was a 'sham'. Management was working to an agenda to get rid of him because he was a whistleblower and because of the ill-will engendered by the disclosures he had made. Part of the company's solution to its problems was to outsource the work of the laboratory. This was also indicative of a 'sham' because there would be no saving as a result of this. Other matters on which the claimant places reliance are the fact that he was the only person holding a managerial role to have been made redundant; that others made redundant were operatives and foremen who had been told their jobs were at risk, whereas he had been given no warning of that risk and had been made redundant shortly after his recruitment; and that he was not included in a redundancy matrix, ie he was in a pool of one.

7(1) We are, however, satisfied of the following facts, having heard the evidence of Mr Phelps, the managing director of the company. As stated, we found Mr Phelps to be a most impressive witness. Mr Phelps is a mining expert (unlike the claimant, who is a metallurgist), and his evidence was clear and compelling, particularly in relation to the workings of the mine, and the potential operational and financial difficulties which the respondent company was facing at the relevant time.

(ii) The claimant, on joining the company in November 2011, would have been aware of the mine resources within the site and that each mine had a limited lifespan. Steps to reduce costs were ongoing throughout 2012.

(iii) The quashing of the planning consent in the judicial review proceedings seriously affected the respondent company's operations. Significant savings and economies were required. This affected not only the respondent company, but also Galantas, the holding company, which had to make reductions in costs. The claimant has downplayed the financial significance of the quashing of the planning consent. In Mr Phelps' words the company 'had simply run out of money'.

(iv) The claimant was the only person in the company employed to do the technical analysis which he did. Inevitably this made the redundancy pool narrow. This was work which could be outsourced. The company considered it desirable to have this facility on site – it was something which enhanced its image – but it was not essential. It was work which could be outsourced. To do so was not particularly costly in financial terms, nor did outsourcing lead to any particular delay. It had the potential to result in savings.

(v) While some other managerial staff were retained, there were good reasons for this. Geologists employed by the company were allocated to specific tasks mandated by an investor, and the site could not operate without the production manager, who was also retained.

The work of these people could not be outsourced.

(vi) There was no strong business case for retaining the claimant. Notwithstanding this, we accept that the company did not want to lose the claimant. They saw him as someone with a skills net. They regarded such workers as being at a premium and in an attempt to maintain a connexion with him they offered him consultancy work for a couple of days each month. However, this came to nothing as the claimant



sought to lay down conditions which the company was unable to accept – he wanted all the recommendations which he made to be implemented.

8 We now turn to various acts of victimisation by the respondent company to which the claimant alleges he was subjected and deal with those principally pursued at the hearing:-

- (i) The claimant alleges that he was denied anti-bullying and harassment training provided to other employees. This training seems to have been pretty basic and was rolled out to employees. It appeared to consist of a handout produced by the Equality Commission. It seems probable that the claimant was not on site when his training was to take place. He raised no complaint about this issue until after he had been made redundant.
- (ii) He also alleged that he had experienced difficulty in the payment, by the company, of his fees to a professional body. This had never previously been the case. However, these fees related to a foreign professional body which exercised no jurisdiction in Northern Ireland. It was not normal for such fees to be met by the company. The matter was referred to the Chief Executive Officer and following a meeting between the claimant and Mr McAleer, Mr Conway was instructed to pay him.
- (iii) The claimant alleges that he did not have his salary reviewed after six months, as had been promised, whereas those in other management positions were having their pay and conditions substantially improved.

We accept the evidence of Mr Conway that he was not aware of any such arrangement. The claimant had been employed at a salary in excess of that of his predecessor, and he had never raised any complaint about his remuneration.

- (iv) The claimant stated he was not allowed to develop a second stream laboratory. We find, on the evidence of Mr Conway, that this idea was not followed up for a variety of reasons, including a decline in exploration work, lack of investment, and an absence of feedback on the idea from the claimant himself.
- (v) He also complained that Mr Crew threatened to sue him for defamation. However, any such proceedings would have been brought by Mr Crew as a private person. It is hardly surprising that he considered this option in view of the allegations the claimant was making against him. There is no evidence that the respondent company was encouraging, supporting or financing any proposed proceedings by Mr Crew.

9(i) We now set out briefly the relevant law, which is found in the Employment Rights (Northern Ireland) Order 1996, as amended.

- (ii) Part VA, (Protected Disclosures, Articles 67A – 67L) sets out the disclosures which qualify as protected, and the conditions which a worker must satisfy in order to have the protection of the law. One of these conditions is that in order to be a qualifying disclosure, any disclosure must be made ‘in good faith’.
  - (iii) Article 70B provides that a worker shall not be subjected to any act, or any deliberate failure to act, by the employer on the ground that the former has made a protected disclosure. Article 71, dealing with complaints to industrial tribunals, provides *at Paragraph (2)* that on such a complaint by a worker that he has been subjected to a detriment in contravention of Article 70B, ‘it is for the employer to show the ground on which any act, or deliberate failure to act was done’.
  - (iv) Article 134A (automatically unfair dismissal) states that an employee who is dismissed shall be regarded as unfairly dismissed if the reason (or if more than one, the principal reason) for the dismissal is that the employee made the protected disclosure.
  - (v) As far as the burden of proof in dismissal cases is concerned, the burden of proof will generally be on the employer to show the reason for dismissal. However, in cases such as the instant case, where a claimant does not have the required continuity of service (ie one year’s continuous employment) to claim ordinary unfair dismissal, the burden will be on him to prove that the reason for dismissal was an automatically unfair reason (here, the making of a protected disclosure). **See : *Smith v Hayle Town Council [1978] ICR 996*, together with the recent decision of the Employment Appeal Tribunal in Great Britain in *Ross v Eddie Stobart Ltd [UKEAT/0068/13/RN]*.**
  - (vi) In relation to alleged detriment, Article 71(2), above, would seem, in view of its wording, to place the burden of proof clearly on the respondent.
- 10(i) In this case, the respondent’s representative accepted that what he termed ‘the mechanics of disclosure’ under the legislation were present. He contended, however, that the claimant did not act in good faith, and that he had an ulterior motive for his contact with DETI, namely a personal dislike of, or a grudge against, Mr Harte. While we have some suspicion that this may have been, at least in part, the motivation for the claimant’s contact, we do not consider that it is necessary to make any finding of fact on the matter.
- (ii) From the other facts we have found, and again particularly having regard to the evidence of the respondent company’s witnesses, we are entirely satisfied that there was no link between any disclosure the claimant made and his redundancy. The company was in dire financial straits, it had not been in a healthy situation when he joined it, and the quashing of the planning consent had a severely detrimental effect on its current and planned operations. We are satisfied that the claimant’s redundancy was genuine, and that it was not, as alleged, by him, a ‘sham’. Equally, we are satisfied that the company has provided explanations for any detrimental treatment suffered by the claimant which satisfy us that such treatment was not connected in any way to his disclosures. We are also satisfied that the company’s desire to retain the claimant as a consultant was genuine, and this is hardly consistent with the case he has made.

(iii) The claims are dismissed.

**Chairman:**

**Date and place of hearing: 13 – 15 August 2013, Belfast**

**Date decision recorded in register and issued to parties:**



THE INDUSTRIAL TRIBUNALS  
CASE MANAGEMENT DISCUSSION

CASE REF: 47/13

CLAIMANT: Jonathan Eves

RESPONDENT: Omagh Minerals Ltd

DATE OF HEARING: 19 March 2013

REPRESENTATIVES OF PARTIES:

CLAIMANT BY: Mr E McArdle, Barrister-at-Law, instructed by  
Rosemary Connolly, Solicitors.

RESPONDENT BY: Mr J McGrath, Barrister-at-Law, instructed by  
Logan & Corry, Solicitors.

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Case Management Discussion  
Record of Proceedings

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1. Issues

The issues were agreed and are attached to this Record of Proceedings.

2. Interlocutory matters

Notices for Discovery and Inspection and Additional Information have been served by both sides. Each party shall disclose to the other party all relevant discoverable documentation and all documentation upon which they intend to rely no later than 5.00 pm on 16 April 2013. The parties shall reply in full to all Notices for Additional Information which they have received no later than 5.00 pm on 30 April 2013.

3. Preliminary issues

There were no applications for preliminary issues at present, although the respondent's representative indicated that there was a possibility that an application could be made for a pre-hearing review into whether there was a qualifying disclosure. The parties were referred to the summation of the existing case law in the tribunal decision in relation to *Sefton* on the tribunal's website and an indication was given that it could be

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difficult, at this stage, to sever the issue indicated from the substantive issue satisfactorily. However, that matter was left to any further application.

4. **Orders**

In accordance with Rule 10(1) of the Industrial Tribunals Rules of Procedure 2005, I make the following orders, by consent:-

(i) **Witness Statements**

- (a) The claimant and any witness he wishes to call must provide a witness statement to the respondent's representative by 5.00 pm on 23 May 2013.
- (b) The respondent and any witness it wishes to call must provide a witness statement to the claimant's representative by 5.00 pm on 20 June 2013.
- (c) If the claimant or any of his witnesses wishes to respond to any evidence given in the respondent's witness statements, he must provide a supplementary witness statement to the respondent's representative by 5.00 pm on 24 June 2013.
- (d) A witness statement must be a complete statement of the evidence relating to the issues, in respect of both liability and remedy, in the case, that the witness wishes to give to the tribunal. A witness will not be permitted to add to his statement without the consent of the tribunal. Consent will only be given where there is good reason for doing so.

Witness statements should commence with an introductory paragraph which identifies the witness and explains the relevance of the witness to the claim, eg claimant, line manager, member of interview panel, etc.

The statement should then use the factual issues agreed [or identified] at Paragraph A above and set out the witnesses' evidence [if any] in relation to each factual issue chronologically. The witness statement should finish with a short summary paragraph.

Witness statements may not exceed 10,000 words unless otherwise directed by the tribunal.

- (e) Witness statements will not be read aloud to the tribunal, subject to the discretion of the tribunal hearing the case.
- (f) Witness statements will be read by the tribunal prior to the commencement of the hearing.



(ii) **Schedule of Loss**

The claimant in his witness statement shall refer to and annex a separate schedule of all financial loss claimed by the claimant, setting out in particular the nature and amount of any such loss claimed and how that sum is made up.

(iii) **Bundles**

- (i) Both parties were professionally represented and were advised briefly of the need to ensure that the agreed bundle consisted only of core documentation and was in proper chronological order.
- (ii) The bundle should not exceed **one Lever Arch folder** without prior permission.
- (iii) The bundle should be lodged in the Office of the Tribunals on **1 July 2013**.

(iv) **Date of Hearing**

The hearing will be from:-

**2 – 4 July 2013**

Either party has leave **within the next 10 days** to indicate the non-availability of witnesses or parties and to apply for an agreed alternative listing **at the earliest possible date**.

The tribunal will read the witness statements between **10.00 am and 11.00 am on the first day of hearing** and the substantive hearing will commence **immediately** thereafter. Parties and witnesses must be in attendance at that point.

Parties and their representatives should note that if any matters arise which require a further direction or order by the tribunal, they should **immediately** notify the Office of the Tribunals of that matter and attend at **10.00 am** on the first day of hearing so that such matters can be resolved.

NOEL KELLY  
Vice President:

Date: *17* March 2013

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### Notice

1. If any party fails and/or is unable to comply with any of the above Orders, any application arising out of such failure or inability to comply must be made promptly to the tribunal and in accordance with the Industrial Tribunals Rules of Procedure 2005.
2. Failure to comply with any of these Orders may result in a Costs Order or a Preparation Time Order or a Wasted Costs Order or an Order that the whole or part of the claim, or as the case may be, the response may be struck out and, where appropriate, the respondent may be debarred from responding to the claim altogether.
3. Under Article 9(4) of the Industrial Tribunals (Northern Ireland) Order 1996, any person who, without reasonable excuse, fails to comply with a requirement to grant discovery and inspection of documents under Rule 10(2)(d) of the Industrial Tribunals Rules of Procedure 2005 shall be liable on summary conviction to a fine not exceeding Level 3 on the standard scale - £1,000 at 3 September 2007, but subject to alteration from time to time.
4. A party may apply to the tribunal to vary or revoke any of the above Orders in accordance with the Industrial Tribunals Rules of Procedure 2005.



THE INDUSTRIAL TRIBUNALS FOR NORTHERN IRELAND

Between

Jonathan Eves

(Claimant)

And

Omagh Minerals Ltd

(Respondent)

Case No 47/13 IT

(DRAFT) LIST OF ISSUES FOR CMD, SCHEDULED FOR 18<sup>th</sup> MARCH 2013

**A. Legal Issues**

1. Protected Disclosure

Did the Claimant, prior to his dismissal, make a protected disclosure?

- (a) Did the Claimant make a 'qualifying disclosure', a disclosure of information that tended to show one or more of the following:
- that a criminal offence had been committed, was being committed or was likely to be committed,
  - that a person had failed, was failing or was likely to fail to comply with any legal obligation to which he was subject
  - that information tending to show any matter falling within the foregoing subparagraphs had been, was being or was likely to be deliberately concealed?
- (b) Did the Claimant make a qualifying disclosure in good faith
- to his employer, or
  - to a prescribed person?

(Per Articles 67A, 67B, 67C and 67F of the Employment Rights (Northern Ireland) Order 1996.)

2. Detriment

Was the Claimant subjected to any detriment by any act, or by any deliberate failure to act, by the Respondent, done on the ground that the Claimant had made a protected disclosure, contrary to Article 70 B of the 1996 Order?

Automatic unfair dismissal

Was the Claimant unfairly dismissed, contrary to Article 134 A of the 1996 Order, by reason (or, if more than one, the principal reason) that he had made a protected disclosure?

**B. Issues of Fact**

*Disclosures*

1. Did the Claimant make disclosures to his employer in January/February 2012?
2. Did the disclosures consist of or contain information?
3. If so, did the information tend to show any of the matters cited under 'Legal Issues' at 1 (a) above (criminality, breach of a legal obligation, concealment of information)?
4. Were the Claimant's disclosures made in good faith?
5. Did the Claimant make disclosures to a prescribed person, a Government Department? Why? Was it the appropriate Department?
6. Did he reasonably believe that the information he disclosed and any allegations contained in it were substantially true?

*Investigation*

7. Did the Respondent carry out an adequate investigation to test the allegations contained in the Claimant's disclosures? If not, in what respects was the investigation deficient? What findings did it reach?
8. Did the Respondent's insistence on obtaining evidence to the criminal standard of proof against the employees complained of undermine the effectiveness of its investigation?
9. Did the Respondent take appropriate remedial steps, including disciplinary measures, to address the matters raised by the Claimant in the course of its investigation?
10. Did the Respondent's conduct of its investigation into the Claimant's disclosures and its resolution of the issues raised, evidence any relevantly hostile attitude on the Respondent's part towards the Claimant on the grounds that he had done a protected act in making a protected disclosure and could potentially have caused embarrassment for the Respondent with a major client and with the regulatory authorities?

.....

*Detriment*

Did the Respondent submit the Claimant to a series of detriments amounting to a continuing act in the period following the making of his protected disclosures up to the termination of his employment and beyond in the following respects:

- making indirect threats to the future of his role within the company (Mr Roland Phelps, the CEO, and Mr Ronan Conway, the Deputy Manager (within a few months of his re-appointment to the role of Technical Manager, and within days of his making his disclosures) under the pretext of restructuring (February 2012)
- threatening to sue him for defamation (General Manager, Mr Richard Crew, February 2012)
- placing obstacles in the way of his obtaining appropriate replacement equipment for his laboratory (February 2012)
- denying him training opportunities afforded to other employees (February and September 2012)
- withholding, until after his appeal against dismissal, payment of his professional registration fees (July 2012)
- singling him out among those made redundant in refusing to allow him to work his notice period (October 2012)
- initially offering and then withholding employment consultancy opportunities after the Claimant had raised reasonable concerns about his previous treatment (November 2012)?

*Dismissal*

12. Did the Respondent's CEO (Mr Roland Phelps) and Deputy General Manager (Mr Ronan Conway) separately threaten the Claimant indirectly with dismissal within days of his having made protected disclosures as early as February 2012, under pretext of vague suggestions of restructures affecting the Claimant's role?
13. Did the pre-planned programme of redundancies of production workers, let go in the course of 2012 (concerning which the Claimant was advised in advance at the time of his recruitment interview in November 2011, without any warning as to likely consequences for his post), have any direct implications for the Claimant's management post, in light of the continuation of the Respondent's gold mining and sampling operation?
14. Was the timing, the manner and the handling of the Claimant's dismissal consistent with the Respondent's claims that his post was redundant?
15. Did a High Court decision on planning consents and/or the lifespan of the mine at Cavenacaw have any bearing on the Respondent's decision to make the Claimant redundant?

16. Did the cost of outsourcing the Claimant's role play a significant part in the Respondent's decision to dismiss the Claimant for redundancy?
17. Does the Respondent's case that the Claimant's post was redundant, in light of all the facts and circumstances surrounding the termination of the Claimant's employment, stand up?
18. Did the Respondent dismiss the Claimant for the main or principal reason that he had blown the whistle on malpractices by the Respondent?

The Claimant reserves the right to amplify or amend the above draft as necessary in light of any matters emerging in the course of interlocutory exchanges.