

JB1



THE EMPLOYMENT TRIBUNALS

Claimant

Respondent

Ms A Hernandez Fornas

v

Mezqual Limited

Heard at: London Central

On: 28, 29 September, 6 October 2017
9 October 2017 (in Chambers)

Before: Employment Judge Jones

Members: Mrs J Cameron
Mr I McLaughlin

Representation:

Claimant: Mr J Neckles, Lay Representative

Respondent: Mr P Doughty, Counsel

JUDGMENT

The unanimous Judgment of the Tribunal is as follows:

The claim is dismissed.

REASONS

- 1 By a Claim Form submitted on 23 December 2016, the Claimant alleged that she had been automatically unfairly dismissed contrary to Section 103A of the Employment Rights Act 1996 (the Act) from her post as Secretary/Personal Assistant as a result of making a series of protected disclosures. The Respondent denied that this was the reason for the Claimant's dismissal alleging in the alternative that the true reason was interpersonal conflict with those with whom she shared an office.

Preliminary Matters

- 2 On the first day of the hearing there was an application for a postponement by the Claimant's representative which arose in the following circumstances. The Tribunal was unfortunately unable to find a Tribunal Panel of a Judge and 2 Members to hear the case for a period of 4 consecutive days commencing on the 28 September 2017 in line with its original listing. This was explained to the parties at the outset of the hearing and discussions were entered into with a view to find a satisfactory solution to the problem which avoided undue delay to the proceedings. At the end of this process, which involved the Tribunal giving the parties an opportunity to seek instructions from their client's witnesses, the Tribunal offered the following solution. The Employment Judge and Members offered to make themselves available on Friday 6 and Monday 9 October 2017 so that the case could be completed within short order, albeit not as originally listed. This solution was acceptable to the Respondent. The solution was not, however, accepted by the Claimant whose representative applied for the case to be postponed and relisted for a period of 4 consecutive days at a later date. Enquiries of the Listing Officer indicated that a fresh set of dates would not be available to the parties until February 2018 at the earliest.
- 3 The reasons which the Claimant's representative submitted in support of his application for a postponement were as follows. He said that he had become involved in the case only the day before the hearing commenced on 28 September 2017. He was instructed to represent the Claimant as a friend and not in a professional capacity, although he had originally described himself as her Trade Union Representative, which turned out not to be accurate. He explained that, due to his late instruction, he had attended the hearing hoping to be able to be present throughout the 4 days of the listing but that this had not been guaranteed due to his other commitments. He added that he was unable to come on Friday 6 October or Monday 9 October 2017 because of other appointments. He clarified that these were professional not medical appointments. The Claimant's representative further submitted that, due to a suspected medical condition, he would find it difficult to recall the evidence if the hearing was adjourned between 29 September and 6 October 2017. He explained to the Tribunal that he had not had any medical diagnosis but was experiencing difficulties with memory loss which meant that he required notes to refresh his memory of key facts and to keep refreshing his memory of dates in order to retain information in his short term memory. He confirmed that there were no other adjustments that would assist him to represent the Claimant to the best of his ability.
- 4 Having considered the matter at some length and taking account of the overriding objective, the Tribunal decided unanimously that it was in the interests of justice to commence the hearing and complete it, if necessary, the following week on the additional dates that had been offered. This would enable all parties to obtain a resolution of the matter at the earliest available opportunity. The Tribunal considered the particular needs expressed by the Claimant's representative but balanced that against the fact that, even if the

original hearing dates had all been viable, he may not have been able to attend with the Claimant for all of them in any event.

- 5 Mr Neckles for the Claimant requested full reasons of this decision and asked for a postponement as he wished to appeal. The Tribunal was not amenable to postponing at that stage to enable him to appeal but agreed to provide full reasons for the decision in this Judgment.
- 6 In the event, the hearing continued on 6 October 2017 and Mr Neckles was available to be present, cross-examining the remaining witnesses for the Respondent on the Claimant's behalf and making oral submissions for her. He did so professionally and without notifying any medical difficulty. The parties were in fact not required to attend on Monday 9 October 2017 as the evidence was completed by 6 October 2017 and, having reserved its decision, the Tribunal was in chambers deliberating on that day.

The Evidence

- 7 The parties produced a bundle of documents running initially to some 454 pages. Additional documents were submitted by the Claimant with the consent of the Respondent which were placed at the back of the bundle from pages 456 to 489 at the outset of the hearing. On the third day of the hearing, the Respondent sought to admit a transcript of two telephone calls translated from Spanish into English. These were also added to the bundle from pages 490 to 495 but on the order of the Tribunal rather than by consent. It is necessary for the sake of completeness to explain the background to the introduction of this evidence.
- 8 On the third day of the hearing the Respondent's Counsel advised that it had just been drawn to his attention that there was additional evidence of relevance to an issue of fact. The issue of fact, he said, had come to the Respondent's attention on receipt of the Claimant's supplementary witness statement the day before the hearing commenced. This issue was that it was apparently in dispute whether or not the Claimant had been involved, with another witness, Mr Moral, in the booking of a courier to take documents from the UK to Madrid on behalf of the Respondent. The Claimant said this had never happened. Mr Moral was giving evidence that it had.
- 9 The evidence that the Respondent sought to admit on the third day of the hearing was the transcript of a telephone call between Mr Moral and the courier which apparently set out the circumstances of the booking. At the beginning of the hearing on the third day, the Tribunal refused to admit the transcript because the Respondent had not disclosed the audio file to the Claimant to listen to. The audio file emanated from software kept by the Respondent which recorded all incoming and outgoing telephone calls. Over an adjournment during the morning the audio file was obtained and disclosed to the Claimant. The Claimant's representative confirmed that he had had the opportunity to listen to the short file with his client and that they had followed it with the transcript, which they accepted to be accurate. The grounds of objection to its inclusion were as to its veracity and lateness

rather than any prejudice to the Claimant in being able to deal with it. For that reason, the Tribunal considered it in the interests of justice to admit the evidence and hear any submissions as to the weight to be attached to it during the parties' closing arguments.

- 10 The Claimant gave evidence and was cross-examined on her lengthy witness statement, which ran to 26 pages. She also submitted a supplementary witness statement in accordance with the Tribunal's directions in response to the Respondent's witness evidence.
- 11 The Respondent called live witness evidence from Mr Antonio Arenas, Mr Ivan Londono, Mrs Maria Isabel Garcia and Mr Adria Moral. The Respondent also submitted in evidence written statements from Mr Juan Carlos Alvarez and Emilio Alvarez, both directors of the Respondent who did not give oral evidence at the hearing. The witness statements submitted on their behalf were notarised. The Respondent also submitted written statements from Ms Anna Belen Martinez and Ms Esther Fernadez, who again did not attend before the Tribunal. The Respondent's Counsel was at pains to explain that the reason for these witnesses' non-attendance was due to the cost and inconvenience of bringing them from Spain to give evidence on matters that were deemed by the Respondent to be peripheral. The Tribunal reminded the Respondent that the Tribunal had video-conferencing facilities that had already been highlighted to the parties at the Pre-Hearing Review when the management of the case was discussed.

Clarification of the issues

- 12 At the outset of the hearing the Tribunal was not clear as to what the protected disclosures were upon which the Claimant relied and how it was said that they fitted into the statutory framework for "whistle-blowing". This was explained to the Claimant's representative and the Claimant was given time to create a list of the disclosures she relied upon. These were expressed to be as follows:
 - 12.1 A complaint to Mr Arenas made orally in or about May 2016 that post addressed to the Respondent was being unlawfully opened by employees or agents of Skornik Gerstein LLP (Skornik) contrary to the Postal Services Act 2000, Section 84 (1);
 - 12.2 A further complaint of illegal post opening by the Claimant to Mr Juan Carlos Alvarez of the Respondent orally on 18th July 2016;
 - 12.3 A third complaint of illegal post opening to Mr Arenas on 20 July 2016 and again on 12 August 2016 orally;
 - 12.4 A verbal complaint by the Claimant to Mr Arenas on 20 July 2016 that she was asked to sign a legal document when she was not an employee of Skornik, representing a fraud contrary to the Fraud Act 2006, Section 1 (a);

- 12.5 An oral complaint by the Claimant to Mr Arenas on the 20th July 2016 that Mr Londono had behaved towards her in such a way as to create risk to her health and safety;
- 12.6 An allegation made orally by the Claimant to Mr Arenas on or about 20 July 2016 that Mr Moral was charging for opening correspondence in breach of contract.

Findings of Fact

- 13. Based on the evidence the Tribunal made the following findings of fact.
 - 13.1 Skornik is a law firm registered and regulated in the UK with an office based at 9-10 Stable Inn Buildings, London WC1V 7QH. The partners of the law firm are Mr Arenas (the Managing Partner) and Mr Londono. They have a small team of lawyers working for them at this address. They serve a number of clients, many of whom are based in Spain. The office itself is an open plan room measuring in the region of 30 square metres. Mr Arenas has an office within the main space but separated by glass panelling. Otherwise, the area is entirely open plan.
 - 13.2 The Respondent was a client of Skornik. It was a Spanish-owned Company incorporated in the UK in 2014 but it moved its registered office address to Skornik's address at Staple Inn on 9 March 2016. The legal retainer between the Respondent and Skornik was dated 15 February 2016. Key sections of the retainer were translated into English and available at page 197 of the bundle.
 - 13.3 In summary, via its retainer, Skornik agreed to provide services to the Respondent which included handling its accounting, tax, employment and social security matters. It also hosted the business for the purposes of providing desk space and meeting facilities with telephone landline etc as required, at its London office. There was an agreement for the Respondent to be provided by Skornik with two draft contracts of employment – one for Mr Juan Carlos Alvarez and one for a secretary.
 - 13.4 The Claimant met Mr Arenas in or about 2008 and was offered, and completed, an internship with Skornik over a number of months. Thereafter, she kept in touch with Mr Arenas and from time to time would seek his advice and assistance with various matters. One such matter was in late 2015 when she experienced difficulties with the Home Office and wanted to be in a position to demonstrate that she had paid work so as to support her challenge against deportation. This coincided with a period of serious ill health that the Claimant was experiencing and Mr Arenas wished to be helpful to the Claimant as a consequence. Accordingly, Mr Arenas offered to provide the Claimant with freelance translation work on an ad hoc basis when needs arose at Skornik. In addition to the translation, the

Claimant would attend the premises of Skornik and assist carrying out administrative and secretarial tasks. She was not paid for this work and did so to assist the practice and Mr Arenas in response to his offer to provide her with translation work when it arose.

- 13.5 This arrangement continued from December 2015 to February 2016. At that time, Mr Arenas raised with the Claimant the opportunity of a paid part-time secretarial role with the Respondent, which he was aware they were seeking to fill to assist the business in the UK. The Claimant was interested and Mr Arenas put her forward to his client, the Respondent. This led to an employment agreement that the Claimant would work for the Respondent as a Secretary/PA for 20 hours per week from 9am to 1pm, 5 days per week. She was to carry out this work from Skornik's offices pursuant to the agreement between the Respondent and Skornik, to provide it with, amongst other services, an office base in the UK. The Respondent's officers were based in Spain and visited the UK only occasionally. The Claimant signed a contract of employment dated 18 March 2016 and the employment commenced.
- 13.6 The Claimant was paid £1,255.78 net per month for 20 hours work each week. She carried out general administrative tasks for the Respondent and personal administrative tasks for Mr Juan Carlos Alvarez. There was not a large amount of administration to do and the Claimant was not unduly busy. There were occasional items of correspondence received at the address of Skornik that she would open, scan and send to the Respondent by email. Mr Alvarez visited the UK briefly three times whilst the Claimant was employed.
- 13.7 As a result of the fact that the Claimant had experience of assisting Skornik with administrative tasks, the fact that she was not fully occupied in working for the Respondent, and the fact that she was working from a desk in its office, the Claimant continued to assist Skornik colleagues when requested to do so with minor administrative tasks. Initially the Claimant willingly obliged when asked to do such things and there was a continuing good relationship between the Claimant and Skornik. The relationship, however, soon began to deteriorate for the following reasons.
- 13.8 First, the Claimant became insecure about the fact that on occasion correspondence which was received at the offices of Skornik for the Respondent was opened by a lawyer rather than herself. This concerned the Claimant because she felt that the little she had to do was being done by others and that this might put her job at risk. Mr Moral and the other Skornik members of staff were interested, however, in making sure that correspondence they were required to process under their retainer with the Respondent was read and dealt with appropriately.

- 13.9 The Claimant raised her unhappiness with Mr Arenas. He wanted the matter to be resolved quickly and without conflict. He suggested verbally to his team that they ensure that correspondence that was not related to matters of a legal nature that arrived at the offices addressed to the Respondent, was passed to the Claimant to open and deal with. Unfortunately, however, this did not permanently resolve the matter.
- 13.10 Early on in the Claimant's employment an incident occurred between the Claimant and Mr Londono. The Respondent suggested this was the 9th March 2016 and the Claimant asserted that it was May 2016. Nothing in particular turned on the date and the Tribunal focused on what occurred. There was no dispute that an incident happened.
- 13.11 The witnesses agreed that the Claimant had decided that she wished to order and purchase on the Respondent's behalf a lockable drawer for her desk. She looked for a suitable piece of furniture but could not find anything that matched the rest of the furniture in the office. She therefore approached Mr Londono to ask him for information as to how to locate a matching set of drawers for her desk. He suggested that the Claimant could instead move to a desk that already had a drawer to save money. The Claimant refused. She said that she wanted to stay in her current desk and that the alternative desk offered was next to a window that did not open. Mr Londono replied that the window did open. The Claimant replied that she had authority to buy a drawer and that she proposed to do so. There was a row. The Claimant wanted to make the point that she could do as she wanted because she didn't work for Skornik. Mr Londono thought the Claimant was being petty and unreasonable and spending money unnecessarily. Both the Claimant and Mr Londono raised their voices and other members of staff in the open plan office heard the argument.
- 13.12 At this point Mr Londono retreated to his desk which was approximately 12 feet away. Having reflected on the matter, however, he decided that he was well within his rights to assert his authority as a partner in the firm hosting the Claimant's employer, its client. He said to her in a raised voice from his desk that she should do as he said. This was not at all well received by the Claimant and she responded in anger. The argument ended with Mr Londono saying the Claimant should do as she wanted.
- 13.13 Following this incident, Mrs Garcia, a long-standing senior employee of Skornik, coached Mr Londono, saying that he had spoken in a way to the Claimant that was unwise.
- 13.14 Another incident occurred on 27 April 2016. The Respondent required the transfer of some documentation from the UK to Madrid. This followed a meeting that had taken place in the UK involving the Claimant, representatives of the Respondent and Mr Adria Moral and

Mrs Garcia from Skornik. A courier was contacted to provide this service but, by the time the Claimant was due to leave work that day at 1pm, the documents had not been collected. She therefore asked Mr Moral to oversee the collection of the documents in her absence. In the event, however, the courier did not appear to collect them at all that day.

- 13.15 The next day, the courier contacted Mr Moral and he took it upon himself to make the arrangements necessary for the collection to be re-arranged. The Claimant overheard him making these arrangements and took exception to his continued involvement in the matter. She was cross that he had continued with the task now that she was back in the office and felt undermined in front of her employer. At first Mr Moral did not understand why the Claimant was so troubled by his actions – he was only trying to help. However, having reflected on the matter, he apologised to the Claimant and said he would make sure that on a further occasion he transferred the task back to her. Mr Moral thought that the matter had been resolved by his apology. Initially, that seemed to be the case.
- 13.16 A couple of weeks later, however, the Claimant and Mr Moral had a further disagreement. This time it centred on the Claimant's disquiet at Mr Moral opening mail which was addressed to the Respondent and which she said it was her job to open. Mr Moral explained that the purpose of opening mail was to make sure that correspondence with HMRC and Companies House was dealt with appropriately for the Respondent, but the Claimant was not appeased. She challenged Mr Moral and asked him whether or not he charged for opening such correspondence. Mr Moral confirmed that this was the normal arrangement. The Claimant went on to accuse Mr Moral of dealing with the courier collection previously in order to charge further fees to the Respondent. Mr Moral was offended by this accusation, which he said was completely unfounded. There was from then on a difficult atmosphere in the office between the Claimant and Mr Moral.
- 13.17 After this incident, the Claimant complained about Mr Moral to Mr Arenas. The complaint was that Mr Moral had dealt with the courier instead of her. Mr Arenas dealt with the matter by seeing both the Claimant and Mr Moral individually and giving them each a verbal warning relating to conflict in the workplace. Mr Moral took this seriously, particularly in view of his junior place in the law firm, and kept his contact to the Claimant thereafter to a minimum.
- 13.18 On 16 June 2016, the Claimant complained again that post had been opened that was destined for the Respondent and which it was her job to process. She complained verbally to Mr Arenas. Mr Arenas explained that post was opened by the lawyers at Skornik when necessary to fulfil their legal and contractual duties to their client, but the Claimant was having none of it. As a consequence, Mr Arenas

spoke again to both the Claimant and Mr Moral and advised them that arguments in the office were not to be tolerated. He also sent an email to all members of staff at Skornik (page 224 of the bundle) in which he stated that all correspondence about Mezqual should be left on the Claimant's desk unless it related to matters in which the firm had been specifically instructed.

- 13.19 On 13 July 2016, Mr Arenas was working from home and he sent a letter by email to the Claimant asking her to print it in hard copy at the office. The document was a covering letter (page 229) to be sent with a document that Mr Arenas explained to the Claimant had been left on his desk duly notarised by a third party. He wanted the Claimant to print the letter, collect the enclosure from his desk, and put them both in an envelope for the post. That was the simple task he requested the Claimant to assist him with.
- 13.20 What followed could only be described as a debacle. First, the Claimant pointed out that there was a typographical error in the covering letter. It was mid-morning by this time. In pointing out this typographical error to Mr Arenas, the Claimant asked him to rectify it himself because the version of the document that she had been sent was in PDF format. Having not heard further from Mr Arenas by 12.23 that day, the Claimant emailed him again, reminding him that she was leaving at 1 o'clock. At some point thereafter, the Claimant sought the advice of Mr Londono. He suggested that if she wanted to produce the letter without the typographical error she could copy-type it. It was an extremely short letter that would take minutes even for an inexperienced typist to reproduce (p229). Mr Londono then explained that if she did this, she could sign it herself in the usual way i.e. "Skornik Gerstein LLP" above the law firm's typed name.
- 13.21 The Claimant took great exception to being asked to do this task. She said that it was because she was not an employee of the law firm and could not therefore sign the letter. She seemed under the misapprehension that she was being asked to sign her own name in some way, although Mr Londono had said she should sign it "Skornik Gernstein LLP". The Tribunal also found that the Claimant was very unhappy about being asked to do this task because she did not view it as her job and also as it was approaching the time when she wanted and was due to go home. Mr Londono was not happy. He was frustrated by the fact that such a simple task required him to stop what he was doing and help the Claimant and he was baffled by her point blank refusal to assist. In the end the job was done by a trainee solicitor but Mr Londono was left with a poor impression of the Claimant.
- 13.22 After this second incident between the Claimant and Mr Londono, the Claimant sought advice through a legal advice centre. She also sent an email to Mr Arenas to ask if she could speak to him (page 232). At some point in the days that followed, either the 19 or 21

July 2016, there was a conversation between the Claimant and Mr Arenas. During this conversation the Claimant expressed her unhappiness at having been asked to type out the letter on 13 July 2016 and she also said she was unhappy with the way in which Mr Londono spoke to her about it. She made it very clear to Mr Arenas that she did not see it as her job to do administrative work for Skornik any more and that she would no longer do so. She explained that she was going on holiday on 25 July for 2 weeks. Mr Arenas asked if she had the Respondent's authority to take off that length of annual leave so early in her employment. She confirmed that she had.

- 13.23 It was common ground that the Claimant was on annual leave from 25 July 2016 until Friday 12 August 2016, which was her first day back in the office.
- 13.24 Whilst the Claimant was away on annual leave, there was a meeting between Mr Arenas and Mr Londono at which the Claimant was discussed. Mr Londono explained what had happened when the Claimant had refused to deal with the covering letter task on 13 July 2016. He also gave the background and a description of the desk drawer incident that had happened some months earlier about which Mr Arenas was at that time ignorant. Mr Arenas was also aware at that time of the conflict that had taken place between the Claimant and Mr Moral because he had had occasion to speak to them both more than once in connection with it.
- 13.25 Taking all these matters into consideration, Mr Arenas formed the view that things needed to change if the Claimant was going to continue to work for the Respondent within his small firm office. He made contact with the Respondent's Spanish lawyer, Marta Brime, and relayed the problems that he and his colleagues were encountering in their relationships with the Claimant to her. He explained it was his intention to meet with the Claimant and Mr Londono on her return from holiday.
- 13.26 Skornik had a system for retaining electronic copies of client files. Mr Londono oversaw this task which involved the scanning of matter files and their archiving on specially indexed remote hard drives which he was responsible for keeping. When the Claimant assisted Skornik from time to time one of the tasks she would carry out was to scan these files and save them onto the hard disc. On 12 August 2016, on the Claimant's return from holiday Mr Londono came upon her and a trainee solicitor from Skornik known as Nara having a disagreement about the whereabouts of a series of client files. Nara was convinced that the Claimant had deleted them in error. Mr Londono calmed the situation down and explained that the files would be found and to be more careful next time round.
- 13.27 The same day, Mr Arenas called the Claimant and Mr Londono into a meeting. The purpose of this meeting from Mr Arenas' point of view

was to try and mediate between the Claimant and Mr Londono and help her to realise the impact her behaviour was having in the workplace. The Claimant became extremely agitated and angry in the meeting. She felt accused when there was discussion about the possible deletion of the electronic files and threatened to go to the Police. She said she could sue Mr Londono for making false accusations. She was asked to calm down and Mr Arenas tried to keep control of the situation. Mr Arenas soon concluded, however, that the temperature had risen beyond that which could be dampened down and he brought the meeting to a close with the suggestion that it might be best for the Claimant to resign her position with the Respondent. The Claimant refused to do so and completed her work leaving at 1pm that day.

- 13.28 Over the intervening weekend, on 13 August 2016, Mr Arenas exchanged emails with the Respondent's Spanish legal representative, Marta, the translations of which appear in the bundle at page 242-243. The first of these emails deserves special mention because the Claimant viewed this as particular evidence that the Respondent had sought to manufacture a reason to dispose of her services when the real reason was her whistle-blowing. This arises from the email at page 243. The Tribunal did not interpret the email in the same way as the Claimant. Rather, the Tribunal viewed this email as one lawyer writing to another setting out the legal basis upon which employment could be terminated on the facts available in light of the fact that the Claimant had declined to leave of her own accord. At this time, Skornik had identified an individual who could take over the role of the Claimant if she were to be dismissed. This was "Sonia", currently working as an intern for Skornik.
- 13.29 On Monday 15 August 2016, the Claimant came to work as usual. On leaving the premises she was followed by Mrs Garcia who asked her to return her keys to the office. The Claimant was not willing to do so stating that she would only return the keys to her employer.
- 13.30 At 17.46 on 15 August 2016, the Claimant wrote a lengthy email to Mr Arenas (page 246). She outlined her concerns about her interaction with Mrs Garcia earlier in the day and also reiterated her unhappiness at what she described as "disrespectful treatment, degrading and aggressive treatment by your partner Mr Ivan Londono". The email was silent in relation to any of the other matters said to the Tribunal have been protected disclosures.
- 13.31 The Claimant did not attend work on the 16 August 2016 when Mr Arenas replied to her email of the previous day (page 248). He requested her to hand in the office keys and took issue with her assertion of the facts in a number of respects. In particular, he stated that he viewed both Mr Londono and the Claimant's behaviour to have been inappropriate. The Claimant returned the keys on 17 August 2016 (page 252).

- 13.32 By this time, the Respondent had approved a proposed letter of dismissal which Mr Emilio Alvarez of the Respondent had signed (page 250). As the Claimant did not attend for work on 18 August, the letter of dismissal was sent to her by email and first class post (page 254). The letter of dismissal stated that the Claimant would be paid in lieu of notice and that her last day of employment would be 16 September 2016. It was common ground, however, between the parties that the effective date of termination was the date upon which the Claimant read this letter being 19 August 2016.
- 13.33 The letter of dismissal gave the following reason for dismissal - “the reason for your dismissal is your continuous conflictive behaviour towards the persons with whom you share your place of work. It is unfortunate that despite the various warnings given to you by our legal counsel, disputes arising with you have reproduced”.
- 13.34 On 1 September 2016, Mr Arenas wrote to the Respondent stating that there had been no response to the letter of dismissal nor had the Claimant provided the requested login details. The Respondent decided notwithstanding this that they would not interfere with the decision to pay the Claimant in lieu of notice (page 259).
- 13.35 The Claimant appealed against dismissal by letter of the 6 September 2016 (page 260), a letter which centred on complaints about the lack of process surrounding the Claimant’s dismissal and a failure to follow the ACAS Code. No mention of whistleblowing was to be found in it. The Respondent took the view that they did not need to process this appeal and there was no response to it.

The Law

14. The relevant law is to be found in sections 43A, 43B and 43C of the Employment Rights Act 1996, as well as Section 103A.
15. The Tribunal was reminded of a number of authorities in relation to whistleblowing and the general principles to be drawn from them were not controversial. First, the Tribunal was reminded that where, as in this case, the Claimant lacks the requisite continuous service to bring a claim for unfair dismissal, the burden of proof is on her to show the reason for dismissal was that she had made a protected disclosure contrary to Section 103A of the Act. (*Ross v Eddie Stobart Limited (UKEAT/0068/13)*).
16. The Tribunal was also provided with and read copies of *Kuzel v Roach Products Limited [2008] IRLR* , *Blackbay Ventures Limited v Gahir [2014] IRLR 416*, *Royal Mail Group Limited v Jhuti [2016] IRLR 854* and *Chesterton Global Limited v Nurmohamed [2017] IRLR 837*.
17. The Respondent accepted that, in accordance with the principle in *Jhuti*, if the Claimant had made protected disclosures, and if that had been the

reason that Skornik had recommended her dismissal, then the Respondent would be liable under Section 103A of the Act. The Respondent further accepted that, if the Claimant was right that she had made complaints about a solicitor or firm of solicitors, reasonably believing that they amounted to breaches of the criminal law or fraud then, whether they did as a matter of fact or law amount to such breaches, they would be capable of fulfilling the relevant public interest test as set out in *Chesterton*.

18. The only alleged protected disclosure that the Respondent denied was capable of being in the public interest was the allegation that the Claimant had disclosed issues about Mr Londono's behaviour which tended to show a potential breach of health and safety. These, the Respondent said, were private complaints of the Claimant not material to a wider group. The Respondent also accepted that if the Claimant was right and she had made disclosures to Mr Arenas and her employer in the form of Mr Juan Carlos Alvarez then these would again be qualifying in the sense of having been complaints about conduct to the appropriate persons.

Conclusions

19. The Tribunal started its consideration by asking whether or not the Claimant had made disclosures which, in her reasonable belief, were in the public interest and tended to show either that:-
 - a criminal offence had been committed (the opening post and alleged fraud disclosures at 12.1-12.4 above);
 - a person had failed or was likely to fail to comply with a legal obligation (the overcharging allegation – 12.6); or
 - the health or safety of any individual had been or was likely to be endangered (12.5), or that information tending to show any of those matters was likely to be concealed.
20. The Tribunal did find that the Claimant had raised concerns with Mr Arenas on more than one occasion that post was being opened by other people than her that was destined for the Respondent. The Tribunal could not accept, however, that such complaints tended to show that there was a criminal breach of the Post Office Act as the Claimant alleged. This was because the Respondent was the client of Skornik and had chosen to domicile its company in the premises of Skornik and made this its registered address. There was a legal retainer between Skornik and the Respondent pursuant to which the Respondent was under a contractual and regulatory obligation to conduct the Respondent's affairs relating to tax, employment and corporate governance. There was no suggestion that the Respondent had any ulterior motive for opening mail addressed to the Respondent other than its desire to perform its retained services to its client, the Respondent. The Tribunal did not accept that the Claimant reasonably believed at the time that anything else was the case. The Tribunal found that any complaints the Claimant made about this activity related purely to her own personal position as the employee of the Respondent and her sensitivities about her role. At no time did the Claimant raise these matters with Mr Arenas because she believed,

reasonably or otherwise, that there was any criminal activity taking place or being concealed.

21. The Tribunal did not find that the Claimant had proved that any form of disclosure to the Respondent directly in the form of Mr Juan Carlos Alvarez had taken place.
22. Whilst the Tribunal did accept that the Claimant had complained about being asked to print and sign a covering letter on or about 13 July 2016 to Mr Arenas, the Tribunal was not satisfied that this was a complaint which tended to show the breach of a legal obligation, and particularly the allegation of fraud which the Claimant put forward before the Tribunal. The Tribunal struggled to understand the basis for this allegation. The Claimant was simply asked to print out a covering letter and, if necessary, to sign the name of the law firm above it. She was given full authority by a partner in the law firm to do that and was familiar with this occurrence from her previous work as an intern. This practice happens in law firms up and down the country on a daily basis. The Claimant did not consider this to have been fraud, nor did the Tribunal find that she believed reasonably or otherwise it to be so at the time. Her reason for raising this issue with Mr Arenas was because she was cross with the way Mr Londono spoke to her, did not think it was her job to do it and was tired of working for Skornik on what she perceived to be unpaid administrative tasks.
23. The Claimant did not complain about Mr Londono's behaviour to Mr Arenas following the drawer incident. She later complained about the way Mr Londono had treated her but did not do so in any way to reflect the fact that she believed, reasonably or otherwise, that her health and safety was at risk. She was angry with Mr Londono and did not believe he should have spoken to her as he did but the Tribunal found that she was not fearful of him nor did she think her health and safety was at risk. After the initial incident relating to the drawer, she came back into work and worked with Mr Londono in a closed space, asking him again for help when it came to simple queries such as the printing of the letter on 13 July 2016. The Tribunal did not find that there was any risk to the Claimant's health and safety but rather that she had been involved in an argument with a colleague at work, during which she too had been very assertive.
24. Once again, the Tribunal could not accept that the "letter-opening" complaints tended to show a breach of contract or a legal duty. In talking to Mr Arenas about Mr Moral's letter handling, the Claimant's sole concern was to protect her job and prevent Mr Moral opening letters that she thought she was paid to open. Any suggestion that a solicitor charges its client for processing correspondence on its behalf cannot reasonably tend to show a breach of the client retainer. Indeed, it is clear from the retainer that the Respondent had with Skornik that just such services had in fact been commissioned and were to be paid for.

25. For all these reasons the Tribunal concluded that there had been no qualifying or protected disclosures and the claim therefore could not succeed.
26. Finally, for the sake of completeness the Tribunal wishes to record its conclusions in relation to the reason for dismissal. Even if the Claimant had demonstrated that she had made qualifying and protected disclosures, the Tribunal would not have found that these were the reason for her dismissal. The Tribunal was eminently satisfied that the reason for dismissal was precisely that which Mr Arenas put in the letter of dismissal, namely that the Claimant was causing conflict with colleagues in the Skornik office and that, having attempted to mediate and prevent future conflicts, Mr Arenas had failed and felt forced to resort to removing her. The fairness or otherwise of this as a reason for dismissal did not fall to be determined but it was, the Tribunal found, quite genuinely the reason why Skornik recommended to the Respondent, and the Respondent accepted, that the Claimant's employment should be brought to an end. For all these reasons the Tribunal dismissed the claim.

Employment Judge Jones on 13 December 2017