



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr K Obakpolor

**Respondent:** City & Essex Ltd

**Heard at:** London Central

**On:** 22-24 October 2019

**Before Tribunal Panel:** Employment Judge Henderson  
Ms T Breslin  
Ms L Jones

## Representation

**Claimant:** Mrs H Adejumo (Counsel)

**Respondent:** Mrs S Hookway (Finance Director of Respondent)

# RESERVED JUDGMENT

**It is the unanimous decision of the Tribunal that:**

- 1. The claimant had one contract of employment with the respondent which terminated (upon the claimant's resignation) on 29 September 2018. There is no dismissal by the respondent;**
- 2. Accordingly, the claimant's claims for ordinary dismissal (section 98 Employment Rights Act 1996 (the ERA)) and automatically unfair dismissal (section 103A ERA) fail, and are dismissed;**
- 3. The claimant did not make a public interest disclosure in accordance with sections 43B-43H ERA;**
- 4. Accordingly, the claimant's claim for detriment under section 47B ERA fails and is dismissed;**
- 5. NOTE: The provisional date for a remedies hearing of 23 January 2020 is not needed and is accordingly vacated. The parties should not attend the Tribunal on that date.**

# REASONS

*In this Judgment and Reasons, certain names of the respondent's clients and individuals not directly involved in the case, have been anonymised.*

## Background

1. The ET 1 in this case was lodged on 16 July 2018. There was a Case Management Hearing before EJ Hodgson on 7 November 2018, which identified complaints of ordinary unfair dismissal (section 98 of the Employment Rights Act 1996 (the ERA)) and automatically unfair dismissal because of making a protected disclosure under section 103A ERA.
2. The case was listed for a three -day hearing in March 2019 before EJ Baty. However, at the commencement of that hearing he identified further issues which turned on the question of whether the claimant was employed by the respondent (as a cleaner) on one employment contract (under which he was required to work on various commercial contracts with the respondent's different clients) or whether he was employed by the respondent under several different employment contracts (each one in relation to each of the respondent's clients at whose sites the claimant worked).
3. This question was significant because in relation to the claimant's protected disclosure claim, it made the difference between the complaint being about an automatically unfair dismissal under section 103A ERA (if there were several different separate employment contracts each client) or a detriment complaint under section 47B ERA (if there was one single contract- the detriment being the removal of the claimant from the contract with client ID).
4. Further, if the issue of a detriment under section 47B were to be heard, this would have to be before a Full Panel and not before an EJ sitting alone. The hearing in March was postponed and EJ Baty carried out further Case Management, with the Full Merits Hearing re-listed for 22-24 October 2019.

## The Issues

5. At the commencement of the hearing, the tribunal clarified with the parties' representatives the issues for determination in this case. It was agreed that these were as set out in the Case Management Summary of EJ Baty on 26 March 2019, and were as follows:

### The employment contract

- a. Was the claimant employed by the respondent under one contract of employment and assigned/placed to work at the sites of different clients or was he employed under two or more separate contracts

of employment, each relating to work at a different client of the respondent?

- b. If there was more than one contract of employment, was the claimant dismissed by the respondent from the contract relating to the work for the client, ID on 25 April 2018? The claimant accepted that he had carried on working for the respondent as an employee for another client, NUK, until he resigned from this employment in September 2018. If the tribunal finds that the claimant was dismissed in April 2018, then the tribunal needs to consider issues of Ordinary and Automatically unfair dismissal set out below (if there is found to be a Public Interest Disclosure). If there was one contract of employment, then (if there is found to be a Public Interest Disclosure) the tribunal needs to consider the issue of detriment as set out below.

#### Unfair Dismissal (Ordinary) section 94 ERA

- c. Did the respondent dismiss the claimant for a potentially fair reason? The respondent says the reason was misconduct and poor performance;
- d. Did the respondent have a genuine and reasonably held belief that the alleged misconduct took place, following such investigation as was reasonable in all the circumstances?
- e. Was the dismissal procedurally unfair? The claimant said that the procedural unfairness was that he was not allowed to give evidence at the disciplinary hearing held on 25 April 2018, nor was he allowed to answer questions or explain his position or present his case in full.
- f. Was the decision to dismiss a fair sanction namely, was within the reasonable range of responses for a reasonable employer?
- g. If the dismissal was unfair should any adjustments to compensation be made either (i) because of contributory conduct on the part of the claimant or (ii) under the principles in **Polkey v AE Dayton Services Ltd [1988] ICR 142 HL** or (iii) because of any unreasonable failure to follow the ACAS Code on Disciplinary and Grievance Procedures 2015?

#### Public Interest Disclosure

- h. Did the claimant make a protected disclosure? Was there a disclosure of information (s.43B (1) ERA)? The alleged disclosure was made by the claimant, at the disciplinary hearing on 25 April 2018, when he alleged that X (an employee of the respondent's client, ID) had requested the claimant to join him in taking (and also to supply X with) cocaine on three occasions. The respondent accepts that the claimant made a disclosure in these terms at the disciplinary hearing.
- i. Did the claimant have a reasonable belief at the time he made the disclosure that the disclosure tended to show that a criminal offence had been committed and was being committed or was likely to be committed.? (section 43B (1) (a) ERA). This was disputed by the respondent.

j. Did the claimant have a reasonable belief at the time of making the disclosure that the disclosure was in the public interest? This was also disputed by the respondent.

k. It was accepted that the disclosure was made to the claimant's employer, namely the respondent. Given that the disclosure related to X, who was not an employee of the respondent, the question also arose under s43C (1) (b), that where the conduct related to a person other than the employer, whether the disclosure was made to that person or a person who has legal responsibility for them. This issue had not been raised in either of the earlier Case Management Hearings, but was raised with the parties by the EJ at this hearing.

If the claimant did make a protected disclosure, then the tribunal must consider,

#### Automatically Unfair Dismissal

l. Was the reason or principal reason for the claimant's dismissal by the respondent that he made the disclosure as referred to above? (section 103A ERA).

#### Detriment

m. Was the claimant subjected to any detriment by the respondent on the ground that the claimant made the protected disclosure referred to above? The claimant says that the detriment was his removal by the respondent from working on the ID contract. This resulted in a loss of hours (and therefore income earned) by the claimant, which was not replaced by the respondent from April to September 2018.

#### Remedy

n. The claimant was seeking compensation only. If the claim for ordinary unfair dismissal or automatically unfair dismissal succeeded, issues of remedy would be limited to compensation (basic and compensatory awards). If the detriment complaint succeeded remedy would be for compensation for loss of earnings and also a potential award for injury to feelings. However, it was agreed with the parties that the hearing would be for liability only, with remedy to follow if necessary.

### **Conduct of the Hearing**

6. Day 1: the tribunal agreed the issues with the parties and spent the morning reading into the documentation. There was an agreed bundle of documents and page references in this Judgment & Reasons are to that bundle. It was agreed that the hearing would be for liability only and that the respondent's evidence would be given first. On the afternoon of the first day the tribunal heard evidence from Mrs Sandra Dos Santos Ribeiro (Operations Director and the decision maker at the Disciplinary Hearing on 25 April 2018).

7. Day 2: the tribunal heard evidence from Andrew Bennett (Health & Safety/Compliance Manager and the Account Manager at ID) and also from Lisa Pursglove (Divisional Manager, who heard the claimant's appeal on 11 May 2018). The tribunal also heard evidence from the claimant, including lengthy (1.5 hours) supplementary questions from his counsel. The witnesses all adopted their written witness statements as their evidence in chief.
8. Day 3: the tribunal heard oral submissions from both parties. The decision was reserved and a provisional date was agreed with the parties for a remedies hearing (if needed) of 23 January 2020.

### Findings of Fact

9. The Tribunal heard detailed evidence from the witnesses, but will only make such findings of fact as are necessary to enable it to determine the issues as set out above.

### Was the claimant employed under one contract of employment?

10. There was no dispute between the parties that the claimant had been employed as a cleaning operative by the respondent from 16 May 2011. The relevant contractual documentation was at pages 64-70. It was accepted that the initial and main contract of employment (including Terms and Conditions) was at pages 64-67. The initial place of work was ID's premises and was for 40 hours (over 5 days) per week.
11. At page 68 there was a document headed "Changes to Terms of Employment Form (Contract Addendum)" and dated 17 December 2013. Underneath that heading there was a box containing the following wording, "*This document details changes that have been made to your Contract of Employment. The terms detailed below amend or vary the relevant terms and you should attach a copy of this Addendum to your Contract of Employment for your own reference*". This addendum showed the claimant working 18 hours a week (over 6 days-Monday to Saturday) at NUK's premises.
12. Underneath the section headed "Place of Work", there were two alternative options: the first read, "*the above is in addition to work you carry out at other locations*" - this option was selected by a tick on the document; the second option read, "*the above replaces existing hours worked at the location detailed*" - this option was not selected on this document. The document concluded with the words, "*I have read and understood the changes to my Contract of Employment as detailed above and accept that these change/vary the terms of my employment with City & Essex Ltd*" and was signed by the claimant on 17 December 2013.
13. The claimant said that he had two employment contracts with different clients of the respondent; one with ID and one with NUK. The claimant initially said in his oral evidence that he did not understand the reference to the Contract Addendum, that this had never been explained to him and

that he had not seen the relevant page. When it was put to him in cross-examination that he had signed the document at page 68, he accepted that this was his signature, but said that the page had never been given to him and had been retained by the respondent. The tribunal does not accept the claimant's evidence on this matter as credible.

14. The respondent said that the claimant had one employment contract, which was the cleaning industry standard. This had addendums, which showed variation as regards hours or locations or assignment to a different client. The contract was a carbonised document, which meant that the employee would always be given a carbon copy. Mrs Hookway said that the respondent ensured that employees read the contract before signing and they were specifically referred to the options on the addendum form. The respondent's interpretation of the employment contract is supported by the content of the documents referred to.
15. As there is a dispute in the evidence given by the parties, the tribunal must decide whose evidence it prefers, based on a balance of probabilities. The Tribunal prefers the respondent's evidence that there is one main contract of employment with changes to hours and/or locations of the client. This is supported by the documentation presented. At page 69, there is a Contract Addendum showing a change of location for ID. There is no change of the hours worked by the claimant or his pay rates, and the option, "the above replaces existing hours worked at the location detailed" is selected and the form is signed by the claimant and dated 1 October 2012.
16. At page 70 there is an older Contract Addendum, which shows that initially when he joined in May 2011, the claimant had worked 12.5 hours for another client, BNP. This selected the option "the above is in addition to work you carry out at other locations", and had been in addition to the work carried out for ID. This 12.5 hours for BNP had been replaced by 18 hours per week for NUK in December 2013 (as shown at page 68).

### **Conclusion – employment contract**

17. The tribunal finds that the claimant worked under one contract of employment with variations (Addendums) as regards his assignment to/placement with particular clients, showing changes of location and/or hours of work. There was no evidence presented to the tribunal that another main contract setting out the terms & conditions had been issued to the claimant. That single contract of employment continued until 29 September 2018 following the claimant's resignation. This is also supported by the claimant's P45 tax form (page 71) which shows the leaving date as 29 September 2018 and the acceptance by the claimant that he continued working for the respondent at NUK's site. There was no termination of the employment contract, and therefore no dismissal on 25 April 2018, but there was a variation to the contract of employment, in that the claimant was removed from working on the ID site.
18. The tribunal notes that the email sent to the claimant recording the outcome of the disciplinary meeting held on 25 April 2018 (page 185) says "*your employment at ID is terminated. We believe that your actions could*

*have resulted in a full termination of your contract with City & Essex but have made the decision to continue your employment at NUK and issue you instead with a Final Written Warning which will remain on your file for a period of 12 months.”* The tribunal accepts that the claimant may genuinely have been confused about the exact nature of the contractual addendums/variations, but the tribunal does not accept the claimant’s evidence that he was never given a copy of these documents. However, the wording of the disciplinary outcome is clear.

19. The tribunal finds that there was no dismissal of the claimant on 25 April 2018. Accordingly, the claimant cannot proceed with his claims for ordinary unfair dismissal or automatically unfair dismissal under sections 98 and 103A ERA, respectively.

#### Has a Public Interest Disclosure been made?

#### Disclosure of Information

20. The claimant made a disclosure of information at the disciplinary hearing on 25 April 2018; notes of that disciplinary meeting are at pages 187-191. The content of these minutes had been sent to the claimant and he had not challenged this until the tribunal hearing. The tribunal did not accept the claimant’s evidence that the notes were not a proper account of the meeting.
21. The disciplinary meeting was called to address complaints raised by X (as the Facilities Manager at ID’s site) about the claimant’s poor performance and his un-authorised absences. The first invitation to a disciplinary meeting had been made in February 2018, but there were numerous cancellations for various reasons (see paragraph 7 of Ms Ribeiro’s witness statement). The meeting was eventually held on 25 April 2018. At that meeting, after Ms Ribeiro (representing the respondent) had set out the details of the complaints made by X, the claimant stated (page 191) “is it appropriate for someone to offer me cocaine three times?”
22. Understandably, this led to further questions from Ms Ribeiro, who specifically noted that this was a “criminal matter”. The claimant said that before he (the claimant) had gone on holiday, X had asked the claimant to bring him some cocaine but when the claimant had returned from holiday X said not to worry. The claimant did not specify any dates as regards those incidents during the disciplinary meeting. However, the claimant did link X’s requests to him for cocaine and the claimant’s refusal, to X’s motivation in raising complaints against him. After Ms Ribeiro confirmed that she was terminating the claimant’s employment at ID’s site, the claimant said, “I will go to any lengths to get justice and pay any amount of money. Have you had any reports before he asked me for cocaine?” (page 190).
23. The claimant made no specific reference at the disciplinary hearing to matters affecting the public interest at large. Ms Ribeiro said in her evidence that she did not believe the claimant’s allegations and felt that he was simply attempting to defend himself against the disciplinary charges/complaints.

24. The tribunal notes that the evidence from the respondent's witnesses demonstrated a misconception of the nature of the public interest disclosure. They expressed the belief that in order for there to be a disclosure which would attract the "whistleblowing" protection:

- the respondent had to believe the truth of the disclosure;
- that the disclosure must be made in writing and be identified as being made in accordance with the respondent's whistleblowing policy;
- in order to be in the public interest, the disclosure had to relate to someone in a senior position or someone with responsibility for employees or vulnerable children or someone in a significant public office

The tribunal notes that all these assumptions made by the respondent are incorrect.

25. The tribunal finds that the claimant made a disclosure of information which he reasonably believed tended to show that a criminal offence had been committed, namely as regards the use/supply of class A drugs. This satisfies section 43B (1) (a) ERA.

Was the disclosure, in the reasonable belief of the claimant, made in the public interest?

26. The claimant was asked in supplemental questions why he made the disclosure. He said that he had made it in his best interests and that of others, because "I know what drugs can do to people", and having made the disclosure claimant said he expected the respondent to stop the disciplinary hearing and carry out an investigation. No such investigation was undertaken.

27. The claimant was asked in Tribunal questions about the timing of his encounters with X and the requests for cocaine. At paragraph 7 of the particulars of claim in the ET 1 (page 14) the claimant referred to being offered cocaine by X towards the end of 2017. He said at paragraph 8, that after he had "repeatedly refused" to take cocaine with X, X's attitude to the claimant had changed. The claimant did not specify the dates of his other repeated refusals in the ET1.

28. In his witness statement, the claimant said at paragraph 9, that the first occasion on which he had been offered cocaine by X, was on X's graduation day. The claimant said he could not recall the exact date of this event; however, he accepted Mr Bennett's clear recollection that X's graduation was on 23 October 2015, given that Mr Bennett had attended the graduation ceremony. At paragraph 10 of his witness statement, the claimant said that the second occasion of X offering him cocaine occurred a month later which would have been in November 2015. The third occasion was in May 2017, and the claimant said at paragraph 13 of his witness statement that following the last incident, X had stopped talking to him. The tribunal notes that the evidence given in the claimant's witness statement is inconsistent with the ET 1. Further, at the disciplinary hearing,



the claimant had given no specific dates but had referred to an occasion before and after the claimant's holiday.

29. The claimant was asked in cross-examination why, given that the first incident occurred in 2015, he had not raised his concerns about X earlier. In particular why he had not raised them prior to the disciplinary hearing in April 2018, some 2.5 years later. The claimant said that he had not done so, because Mr Bennett had warned him that X and ID were "powerful people" and crossing them could lead to the loss of a contract for the respondent. The claimant said that he could not report the incident to Mr Bennett as he was too close to X for him to do so.
30. The claimant was also asked in questions from the tribunal panel, why, bearing in mind the public interest involved, and the damage which he had said he knew drugs could do to society at large, he had not reported the incident earlier. The claimant said in response to this question that as at 2015, he had not read about drugs and so did not know how dangerous they were. He said he had later read books and watched YouTube videos which had educated him on the subject. He was asked if he had only realised the danger of taking drugs at the disciplinary meeting, and he said "no". The claimant also said that he did not have the opportunity to see Ms Ribeiro very often and the disciplinary meeting was his only opportunity to speak to her, as she was a more senior manager than Mr Bennett. The tribunal notes that Ms Ribeiro's evidence was that she attended the sites for which she was responsible (one of which was the NUK site where the claimant worked) at least twice a week and so the claimant would have had the opportunity to speak to her if he had wished to. The tribunal accepted Ms Ribeiro's evidence on this point.
31. In the course of tribunal questions, the claimant was referred to paragraph 9 of his witness statement when he said that following the first incident with X in October 2015, the claimant had been "very shocked". He was asked why this was, given his earlier evidence that at this stage, he had not been fully aware of how serious the impact of drugs could be. The claimant replied that where he came from cocaine was "a big word", by which he meant that it was a serious offence for which you could spend a long time in jail. This answer was wholly inconsistent with the claimant's earlier response and suggested that he was in fact fully aware of the seriousness of being offered drugs by X in October 2015. This meant that his explanations as to why he had not raised the disclosure at that time, namely because of X's position at the client, were not credible.
32. It was put to the claimant in cross-examination that as at October 2015, the Facilities Manager at the ID site was AC who had been in post until September 2016, when the role was taken over by X. The claimant was evasive in his responses but eventually accepted that X took over as Facilities Manager after AC left, although he insisted that X was in a "big position" even before then. This evidence would suggest that the claimant could have reported the two earlier incidents in 2015 to AC, at any time before she left in 2016.
33. The tribunal notes (as was put to the claimant in cross-examination) that the first invitation to a disciplinary meeting, which set out the relevant

complaints against the claimant, was dated 26 February 2018 (page 140) and stated that Ms Ribeiro would be holding the meeting. The claimant was asked why he had not raised the disclosure with Ms Ribeiro at that stage. The claimant said that the first meeting had been cancelled due to snow; then he had been on holiday; then he had been preparing for eye-surgery; that he had been busy and these were the reasons for his not disclosing earlier.

34. Even if that explanation were to be accepted, the claimant gave no explanation as to why he did not make his disclosure at the commencement of the disciplinary hearing in April 2018. He stated that he believed that X's complaints were motivated by the claimant's refusal to take cocaine with him, yet he did not say that at the beginning of the disciplinary meeting, but waited until after all the various complaints had been detailed and discussed. At the disciplinary meeting, when various complaints were raised with the claimant, he insisted that he had done nothing wrong. These would have been an appropriate opportunity for him to raise the disclosure.
35. Having considered the notes of the disciplinary meeting, the tribunal finds that the claimant had numerous opportunities when the complaints were being raised with him to make his disclosure. He did not do so. There was a point in the disciplinary meeting when Ms Ribeiro chastised him for being disrespectful to the client, when he referred to X as "that little boy". This would also have appeared to be an appropriate moment to raise the disclosures as regards X's conduct. However, the claimant did not make the allegations until after all the complaints have been raised with him and when the meeting appeared to be drawing to a close.
36. In her evidence, Ms Ribeiro said that she believed the claimant had made the allegations in an attempt to disrupt the disciplinary meeting and as "a last roll of dice". Ms Ribeiro also said that she was on site regularly (she had met the claimant every week for the last 6 years) and the claimant would have had every opportunity to raise the matter with her at any time, after the incidents had occurred.
37. The tribunal accepts that the allegations as described by the claimant could potentially be in the public interest as regards the serious impact of class A drugs on the community. However, given the findings of fact above and given the context of the disclosure and its timing, the tribunal finds that the claimant did not reasonably believe that he was making the disclosure in the public interest.
38. As regards timing: in the longer term, the claimant gave no credible explanation as to why he had not made the disclosure earlier: either at any time before September 2016, to AC prior to her leaving and prior to X becoming Facilities Manager; or to Ms Ribeiro at any time before the Disciplinary Meeting, given that she attended regularly on the NUK site; or in February 2018 when the first invitation to the disciplinary meeting (which outlined the complaints made by X) had been sent to him. On a short-term basis, the claimant gave no credible explanation as to why he had not made the disclosure at the commencement of, or earlier in the disciplinary meeting in April 2018.

39. The Tribunal notes the case of **Chesterton Global Ltd (and Verman) v Nurmohamed [2017] EWCA Civ 979** (Court of Appeal) which considered the “in the public interest” wording added to the relevant provisions of the ERA in 2013. The case noted that the former requirement of making the disclosure “in good faith” had been removed (also in June 2013), but that the Act allowed a reduction in compensation for unlawful detriment of up to 25% if a disclosure was not made in good faith. At paragraph 30 of his judgment, Underhill LJ said that while the worker must have a genuine (and reasonable) belief that the disclosure is in the public interest, that does not have to be his or her “predominant motive” in making it. He observed that the belief did not in fact have to form any part of the workers motivation, however, he also observed that in practice, where a worker believed that the disclosure was in the public interest it would be “odd if that did not form at least some part of their motivation in making it”.
40. In this case, given the claimant’s lack of credibility as regards his thought processes in making the disclosure, the tribunal finds that the public interest did not form any part of his motivation. However, if the tribunal were to be incorrect in its conclusion as regards the claimant’s reasonable belief in making the public interest, the disclosure does not meet the final requirement with regards to the identity of the person to whom the disclosure was made.

To whom was the disclosure made?

41. It was accepted that the disclosure had been made to the claimant’s employer, via Ms Ribeiro. However, given the subject matter of the disclosure, it was clear that the behaviour complained of related to X, who was not the employer, or an employee of the employer. Section 43C ERA requires that in such cases the disclosure should be made to that person or a person who has legal responsibility for him/her.
42. In this case that would be either directly to X or to a more senior manager of ID, such as AC prior to her departure in 2016. Therefore, the claimant has not made the disclosure to the correct person.

**Conclusion- public interest disclosure**

43. For the reasons set out above, the tribunal finds that there is no protected disclosure established by the claimant. Accordingly, the tribunal cannot consider the claim for detriment under section 47 ERA, and it is dismissed.
44. However, even if there had been a protected disclosure, the tribunal notes that given the claimant’s own evidence (supported by his counsel’s submissions) that Ms Ribeiro had made the decision to remove him from the ID contract before the disciplinary meeting and the meeting itself was a foregone conclusion, that removal could not have been motivated by the disclosure, which was made fairly late during the disciplinary meeting itself. Therefore, even if the claimant had succeeded in establishing that there was a protected disclosure, he would not have succeeded in making out the causal element of the detriment claim.

The claimant's credibility

45. In reaching its conclusions on the issues set out above, the tribunal took into account the claimant's lack of credibility generally during the course of the hearing. The claimant appeared evasive on several occasions when answering questions put to him. Further, he gave inconsistent evidence on numerous matters including:

- his knowledge as regards the seriousness of the impact of drugs;
- the timeline given by the claimant as to when the alleged incidents with X had occurred (see findings of fact above);
- his disciplinary record. The claimant had stated in his ET1 and his witness statement that he had a clean disciplinary record with no complaints or any adverse comments prior to those raised by X from October 17 onwards. When the claimant was taken in Tribunal questions to the various disciplinary matters listed by the respondent in the ET 3 (pages 31-32), he accepted that these were all (bar one) correct. These matters included several informal complaints but also two formal warnings. At best, the claimant's comments in his ET1 and witness statement were misleading; at worst, they were untrue;
- the claimant had initially said that he had never seen the Contract Addendum sheets, but when it was pointed out that he had signed and dated them, he then said that he had never been given a copy;
- the claimant maintained that X had made the complaints against him because of his refusal to take/supply cocaine with him. However, he subsequently said in his evidence that he believed the complaints about his unauthorised absence had arisen because the claimant's line manager, Mr Lopez had not properly communicated to X, the reasons for the claimant's absence;
- the claimant's evidence as to why the disciplinary hearing been postponed on numerous occasions from February 2018 to April 2018 was disingenuous and evasive. He was referred to paragraph 7 of Ms Ribeiro's witness statement which clearly set out the reasons for the various cancellations, but he consistently changed the subject and gave evasive answers when he was asked whether her record was correct.

46. These matters and others, meant that the tribunal could place little reliance on the evidence given by the claimant, especially where there was a dispute in the evidence.

General Comments to the Respondent

47. As the tribunal has not found in the claimant's favour, it is unable to make any formal recommendations in this case. However, the tribunal observed, having heard evidence from the respondent's witnesses, that there was a lack of clarity in communication between the respondent and its employees as regards the following:

- an exact and clearly expressed definition of unauthorised absence, which would ideally be included in an absence policy;
- consistency within the respondent's organisation as to the required methods of notification of absence;

- the strict contractual position as regards the assignment/placement of employees to specific clients of the respondent. Ambiguous references to addendums etc. should be avoided as far as possible;
  - implementing a system which would be able to record the fact that employees had seen new policies and procedures when accessing the employee portal.
48. The tribunal has not (as this was not required) made any findings of fact as regards the disciplinary and appeal processes adopted by the respondent. However, the tribunal notes that evidence from the respondent's witness (Mrs Pursglove) demonstrated that there were procedural irregularities particularly in relation to the appeal process. The appeal appears to have been conducted as neither a re-hearing nor a review, but as a requirement for the claimant to produce evidence to overturn the disciplinary decision. Further, Mrs Pursglove had said in her witness statement that she decided the appeal outcome, but said in her oral evidence that this was a joint decision with James Hookway.
49. The tribunal was also concerned at the lack of understanding demonstrated by the respondent's witnesses of the "whistleblowing" legislation and its implication for the organisation and its employees. The tribunal has set out above some of the misconceptions of the respondent's witnesses as regards the principles of public interest disclosure. The respondent may wish to consider obtaining further information about this legislation and possibly arrange some training for senior managers, which may serve to avoid further potential claims being brought to the tribunal.

Employment Judge

Date : 28 Oct 2019

JUDGMENT & REASONS SENT TO THE PARTIES ON

29/10/2019

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FOR THE TRIBUNAL OFFICE