



EMPLOYMENT TRIBUNALS

Claimant: Respondent:
Mr S Foster v Michael Rippington and Julie
Adams t/a Contact Security (a
firm)

Heard at: Reading On: 10, 11 and 12 December
2018

Before: Employment Judge George
Members: Miss SP Hughes and Mrs F Betts

Appearances

For the Claimant: Mr R McLean of Counsel
For the Respondent: Mr D Howells of Counsel

RESERVED JUDGMENT

1. The claim against Contact Security Limited was dismissed on 15 May 2018.
2. The claim of detriment on grounds of a protected disclosure is not well founded and is dismissed.
3. The claim of automatic unfair dismissal contrary to section 103A of the Employment Rights Act 1996 for the principal reason of protected disclosure is not well founded and is dismissed.
4. The claim of unfair dismissal is not well founded and is dismissed.
5. The claim of wrongful dismissal is not well founded and is dismissed.

REASONS

1. The Claimant presented his claim on 3 November 2017 after a period of early conciliation between 13 October 2017 and 17 October 2017. He was employed by a partnership run by Mr Rippington and Mrs Adams that traded under the name "Contact Security". However, he initially brought

claims against the partnership and the company called Contact Security Limited. He also brought a duplicate claim against the partnership.

2. The Respondents entered a response case and the claim was case managed at a preliminary hearing conducted by Employment Judge Vowles on 15 May 2018. The correct name of the Respondent was amended at that stage and the duplicate claim dismissed. Counsel for both parties before us, who also appeared at the preliminary hearing, agree that the claim was dismissed as against Contact Security Limited at that preliminary hearing. However, it is not reflected in the minutes of the hearing.

The issues

3. At the preliminary hearing conducted by Employment Judge Vowles, there was an agreed list of issues and it appears at pages 42E to 42G of the joint bundle of documents. The Claimant brought four different claims:
 - 3.1. Detriment on grounds of protected disclosure contrary to section 47B of the Employment Rights Act 1996 (hereafter referred to as the ERA);
 - 3.2. Automatic unfair dismissal on the basis that the reason or principal reason for the dismissal was a protected disclosure contrary to section 103A of the ERA;
 - 3.3. Unfair dismissal contrary to section 98(4) of the ERA; and
 - 3.4. Wrongful dismissal.
4. Before we heard any evidence, it was confirmed by Mr McLean on behalf of the Claimant, that his client only argued that the disclosures of information that he had made were protected because they fell within section 43B(1)(d) of the ERA. His client no longer argued that the disclosures tended to show that a criminal offence had been committed, that the Respondent was failing to comply with a legal obligation or that any of the above matters was being concealed. Therefore, we do not need to decide whether the grounds set out in the list of issues at 1, 2 and 4 as reasons why the disclosures were qualifying disclosures were in fact made out in this case.
5. In closing submissions, following the evidence, Mr McLean said that the Claimant no longer argued that the first four alleged protected disclosures set out in the list of issues were qualifying disclosures under section 43B and therefore we did not have to decide whether that was the case. The emails referred to in those sections were still relevant background.

6. It also became clear during the course of the hearing that the Claimant argued that there were two additional areas in respect of which the procedure followed was unfair or which gave rise to unfairness in his dismissal. Taking into account those issues which we do not have to decide and the matters which were argued before us in the hearing, the issues which we needed to decide are as follows.
7. Did the Claimant make the following disclosures about the safety gates to be installed at Woodberry Downs:
 - 7.1. In emails dated:
 - (a) 4 September 2017 to Nick Rees;
 - (b) 8 September 2017 to Julie Adams;
 - (c) 11 September 2017 to Julie Adams and Mike Rippington;
 - (d) 12 September 2017 to Julie Adams;
 - (e) 13 September 2017 to Julie Adams; (f) 15 September 2017 to Julie Adams.
 - 7.2. In each case, did the Claimant have a reasonable belief that the disclosures were made in the public interest and tended to show that the health and safety of the Claimant and the public has been, is being or is likely to be endangered as the method for fixing the gates suggested by the Respondent would not hold their weight?
8. Was the Claimant subjected to the following detriments on the ground that he made one or more protected disclosures:
 - 8.1. Continually to be asked to either install, sign off on, alternate or supervise a job which the Claimant had flagged was unsafe and that he wanted no part of;
 - 8.2. Being suspended from his job;
 - 8.3. Being subjected to an investigation into his conduct without due process and having his attendance required at two investigatory meetings;
 - 8.4. Being subjected to disciplinary proceedings unnecessarily;
 - 8.5. The Respondent company labelling the Claimant's conduct as gross misconduct when it was not;
 - 8.6. The Respondent failing to act upon disclosures and concerns raised by the Claimant;

- 8.7. The Respondent failing to conduct a meaningful investigation into the disclosures raised by the Claimant.
9. Was the fact that the Claimant made a protected disclosure or disclosures the reason or the principal reason for his dismissal:
 - 9.1. If not, what was the reason for the Claimant's dismissal?
 - 9.2. Was it a potentially fair reason?
 - 9.3. If so, was the dismissal:
 - (a) Substantively fair; and (b) Procedurally fair?
 - 9.4. In particular, did any of the following instances of unfairness occur:
 - (a) A biased investigatory meeting;
 - (b) A failure to adequately investigate the Claimant's disclosures?
 - (c) Combining the investigation into the Claimant's disclosures with the investigation into his conduct;
 - (d) The same person investigating the concerns as to conduct playing an active role in the disciplinary process and final decision;
 - (e) A failure to update the Claimant while suspended and failure to make clear it was not considered disciplinary action¹
 - (f) Summary dismissal being far in excess of what would be deemed an appropriate sanction;
 - (g) An overall failure to comply with the ACAS Code of Practice;
²
 - (h) An unreasonably quick process;
 - (i) A failure to consider alternative sanctions.
10. If the Claimant's dismissal was unfair, what loss has he suffered because of his dismissal?
11. Is the Claimant entitled to an award of injury to feelings due to the detriment suffered as a result of the above disclosures?
12. Is the Claimant entitled to an uplift due to a breach of the ACAS Code or Practice?
13. At the beginning of the hearing, it was agreed between the representatives that the decision of the Tribunal should be on liability only in the first instance. In other words, we did not need to make a decision at this stage on whether there should be deductions from any compensation payable because of contributory conduct or to take account of the likelihood of a fair

dismissal taking place in any event (pursuant to the principles set out in Polkey v A E Dayton Services Limited [1987] IRLR 503).

14. In relation to the wrongful dismissal claim, the principal issue for us to decide was whether the Claimant was guilty of gross misconduct which had entitled the Respondent to terminate his employment without notice.

¹ This argument was not actively pursued by the Claimant, quite rightly in our view based upon the evidence we have heard.

² The allegation that there was a failure to comply with the ACAS Code of Practice is set out in paragraph 27 of the Claimant's witness statement. It is clear that the alleged breach is that the same individuals investigated the concerns and played an active role in the disciplinary process although slightly expanded to refer to the composite roles of Mrs Adams and Mr Rippington in investigating and deciding the disciplinary action. In substance this is therefore the same allegation as set out in paragraph 9.4(d).

Findings of Fact

15. At the hearing, we had the benefit of an agreed bundle of documents that ran to some 340 pages. Page references in this judgment refer to the page numbers in that bundle. We also had an agreed chronology and opening notes prepared by both Counsel.
16. Mr McLean, on behalf of the Claimant, provided us with a copy of the report in the case of Fecitt v NHS Manchester [2011] EWCA Civ 1190, [2012] I.R.L.R. 64 CA. In his closing submissions he also relied upon Norbrook Laboratories (GB) Ltd v Shaw [2014] ICR 540 EAT. The Respondent's Counsel provided us with a copy of his speaking notes and also relied on the authorities of Chesterton Global Ltd v Nurmohamed [2017] EWCA Civ 979 CA, Kilrairie v London Borough of Wandsworth [2018] EWCA Civ 1439 CA and Cavendish Monroe v Geduld [2010] I.C.R. 325 EAT.
17. The Claimant gave evidence in support of his claim and was cross-examined on his witness statement. The Respondents both gave evidence and were cross-examined on the witness statements that they had prepared or had been prepared on their behalf.
18. The Claimant's continuous employment with the Respondent started on 1 April 2014 and a new contract took effect on 1 August 2016 (page 49). It shows that his job title was Gate Maintenance, Service & Installation Engineer. His job description at page 55A clearly states "Install gates/automation, access control, door entry systems to specified standards" and the Claimant accepted when it was shown to him in cross-examination that it did include the installation of gates as well as their automation. However, it is common ground that the majority of work was installation of automation but that at on occasion he did install gates either

by re-hanging them or by installing new ones. In addition to a salary, the Claimant had the benefit of commission (see page 52) and that included by the time of his dismissal, 20% commission on all gate work which we understand to be 20% of the contract price.

19. The Claimant had received training in powered gates safety which was paid for by the Respondent: see the certificate issued by DHF at page 235. DHF stands for the Door and Hardware Federation. This certificate indicates that the Claimant successfully completed the powered gates safety diploma training course on 18 and 19 May 2016. This certified him as being someone who was authorised to sign off on the safety of gates. The content of the course appears in a booklet (page 311 and following).
20. During the course, the Claimant was told of the serious consequences that could occur if gates were installed and not secured or were not installed safely. He has taken us, in particular, to a press cutting at page 238 which describes a workman being jailed for manslaughter by gross negligence for installing a security gate that fell and crushed a woman who was passing by. We accept that there can be serious consequences if a security gate has not been properly installed and that these can potentially include injury to members of the public. We also accept that the potential for such consequences were matters of concern to the Claimant who rightly took safety very seriously.
21. Part of the DHF training was on the industry standard EN12604 which is described at page 316. This is the standard for the structural integrity of a gate and the supporting elements (which might more commonly be described as the gateposts):

“For a support element to be considered strong enough not to fail, it will need to be able to safely withstand 3.5 times the load that it will actually bear in normal use without structural failure and be prevented from unscrewing or becoming otherwise unattached, e.g. locknuts or split pins”.
22. The training materials then go on to say that care should be taken in choosing the correct anchor for the location, material and load. The Claimant’s evidence was that DHF regarded chemical anchors as a last resort if other suitable methods were not available. The diploma materials do not back up that opinion. Different methods are suitable for different locations and materials but our conclusion is that DHF regard chemical anchor as an appropriate safe method of anchoring gates or gate hinges into a support provide that care is taken to follow the manufacturer’s instructions. That was accepted by the Claimant in cross-examination who agreed that whether chemical anchors were a suitable choice was based upon variables such as weight, the dimensions of the gate, forces on the anchor during automation, the size of the fixing rods, the depths to which the fixing rods were drilled and the number of fixings.

23. The dispute between the Claimant and Respondent was principally focused upon a job at Woodberry Down carpark. The Claimant accepted that he would have been able to obtain the data sheets for the product to be used on a that job and could have analysed the appropriateness of the proposed method. Indeed, it became clear that, on his evidence, he had done so.
24. One occasion when he had re-hung a gate was at Sylvatica in Boars Hill. The gate had fallen because the brick pillar support had not been strong enough (see correspondence at pages 268-277). Mr Rippington explained why it was his opinion that the Claimant was responsible but at the time no action was taken against him and those documents do not indicate that anybody was seeking to allocate blame. However, we accept that this incident was playing on the Claimant's mind subsequently.
25. Mr Rippington and Mrs Adams, the Respondents, are partners trading under the style "Contact Security". Mr Rippington is also a director of Contact Security Solutions Limited alongside his son, Luke LewisRippington. We shall refer to the company as "Solutions". The partnership on occasions did work for Solutions as a subcontractor on jobs for which Solutions had contracted. One such job was the Woodberry Down car park (see Mrs Adams' statement, para 7). Our conclusion on the nature of the working relationship between the partnership and the company is that there was not always clarity as between the two trading entities about the work that partnership was expected to do as a subcontractor for Solutions. This was a source of frustration for the Claimant, who was employed by the partnership.
26. Solutions were invited by Brenbar Electrical (the lead contractor) to supply and install entrance gates to the carpark on this commercial contract (see page 55D). Mrs Adams quoted to Solutions for the installation of automation by the partnership. It is clear from para 9 of her statement that, in the first instance, it was automation only that she had quoted for. In January 2017, Solutions quoted to Brenbar Electrical for the supply and installation of gates which were to be purchased by Solutions. They offered a discount if the main contractor wished to install the gates. A revised quote dated 5 April 2017 was also to supply and install the gates. These quotations were prepared before the site visit by the Claimant on behalf of the partnership which took place on 25 April 2017 (see page 63).
27. Immediately following the site visit (see email of 27 April 2017 at page 76), the Claimant emailed to say that they should have had the site visit first, i.e. before the quotation. Furthermore, it seems to have been identified that fixing the pillars from which the gates were to be hung into the ground was something which should have been done by the building contractors. To judge by pages 76 and 77 which was sent on 27 April, neither the Claimant nor Mrs Adams understood that the partnership was to be going to be

responsible for hanging the gates at that point. Indeed, Mrs Adams said that she was “not sure” if Solutions were expected to fit them.

28. The Claimant relied upon correspondence in this exchange as evidence that it had been identified at that point that the design of or method for fixing the gates was not safe. In particular, he sought to rely upon a reference in an email from Nick Rees (at page 62) which appeared to show his opinion that the site was a health and safety nightmare. However, it seems to us on a fair reading of that email that Mr Rees was not saying that the design of the gates was not safe or that the method for fixing the gates was not safe. He was saying that the site posed health and safety challenges which needed to be addressed in the manner suggested.

29. As we say, it appears that at about the end of April neither the Claimant nor Mrs Adams understood that the partnership was to be expected to hang the gates. The Claimant did not say at that point in the planning that hanging the gates required particular fixings and he did not comment on the method. Furthermore, on 2 May (see page 64), at a time before he knew that the partnership was definitely going to have to hang the gates he emailed saying:

“The only thing we need to make you aware of is fitting the gates. This will not be as straightforward due to the concrete structural wall they are fitted too [sic].

I think if we get the builders to fit the posts, we can then hang them, but we may need three blokes on site on the first day to lift them on?

Also, we then need Ross to fit the brackets on the gates when they are being made otherwise we will have issues with hot works etc?”

30. The reference to “Ross” is to the manufacturer of the gates. This email led the Respondent to believe that the Claimant considered hanging the gates to be within the capability of the partnership. He raised no objections at this stage. If we look at the Claimant’s paragraph 6, he alleges that he raised concerns about the installation of the gates in April 2017 but the email of 2 May that followed a site meeting suggests that while he said that fitting the gates was not straightforward, he was not saying that any particular method was unsafe or that another method was desirable. In the end the chosen method was by drilling holes into the gateposts and fixing the metal mounts on which the gates would be hung into those holes by a combination of rods and chemical fixings.

31. By 6 June (see page 78), the Claimant was refusing to hang the gates and no satisfactory explanation was given in cross-examination for why he had changed his mind. The Claimant completed the risk assessment connected with the gates in operation. He was concerned that the assessment was

premature, but our experience is that a risk assessment develops as time passes and should be revisited. There was nothing inappropriate about him being asked to complete it when he was.

32. When the Claimant said on 4 September (see page 92) that he had said from day 1 that the partnership should not hang the gates, that is inconsistent with his email of 2 May. In the email at page 92, we have the only written explanation of the alternative method of fixing that it is accepted the Claimant put forward. We have listened to what both parties had to say about that and accept Mr Rippington's comment that the alternative method of fixing would have been unattractive and spoiled the look of the gates.
33. In a further email on 4 September (see page 95), the Claimant asked what was happening with the job at Woodberry Down after Mrs Adams had booked him to attend on site the following day. We accept that this caught him by surprise, and it sparked an email discussion. Nick Rees, the site manager, replied in general terms about the arrangements for the following day's work (see page 92) and the Claimant replied in an email timed at 8:44 in the morning (also on page 92) which is relied upon as having been a protected disclosure:

"I have said from day 1 we should not hang these gates. Yet it has been ignored time and time again. This is not because i'm Being [sic] awkward, or negative, The size and weight of these gates, the posts need to be braced around/through the concrete, 8 bolts really will just pull straight out when the gates starts getting force from the motors, or any pushing etc.

To be having these discussions the day before we go when I have said the same thing since April time is really unprofessional from our side.

I'm sorry but I'm not being responsible for those gates being hung, if they come up and fall down on something/someone because of poor fixings then maybe you guys may listen."

34. Mrs Adams forwarded to the Claimant an email from the gate manufacturer to the Claimant in which they said: "We would recommend use of chemical fixings minimum stud size M12" (See page 94). The particular chemical fixings which the Respondent proposed to use was manufactured by ChemFix.
35. Notwithstanding this email from the gate manufacturer, the Claimant said (at paragraph 11 of his witness statement) that he believed in his professional opinion that ChemFix would not be strong enough to support the gates. Furthermore, he thought that:

"even if it did hold the gates that there would be so many factors dependant on the gates holding correctly including but not limited to whether the holes

had been drilled exactly straight, whether there was any dust in the holes, the temperature, etc in order to be safe, the gates would need drilling into the concrete and braced with metal plates just as the other gates owned by the client had been hung.”

36. The next exchange between the parties was on 8 September which starts as an exchange about other site-related challenges (see page 97, email timed at 13:23 from Mrs Adams). At 13:47, the Claimant emailed Mrs Adams and what he said can be summarised as:
- (a) At the site visit, he had previously said that Contact Security should not hang the gates. (We comment that this is not consistent with his email of 2 May.)
 - (b) That he had spoken to DHF about their recommendations on the fixings and has got calculations on those. However, he does not say what those calculations were and nor is he asked for them.
 - (c) He complains about a lack of research by the partnership.
 - (d) And he says that he will not hang the gates: “I will fight to the death on this”.
 - (e) He says that he does not want the responsibility of commissioning something that is held together by ChemFix.
37. Mrs Adams accepted that by this email and the prior one, the Claimant had made clear that his view was that the proposed fixing method including the use of ChemFix was not strong enough to hold gates of this weight and that there was a risk of them falling and injuring someone if the fixings failed. This email was a response to that from Mrs Adams sent at

13:32 which we regard as having been conciliatory in tone. By it, she was saying that she was not expecting him to do something that was not safe and neither would Mr Rippington. She suggested that the Claimant talk to Mr Rippington as he often had good ideas.

38. The next email about this matter is at page 99 and dated 11 September. In it, Mr Rippington emailed the site manager, Mr Rees, and copied his email to the Claimant. Mr Rippington stated that the Respondent intends to use ChemFix and a threaded rod but says that the contractor is to drill the holes (rather than the Claimant) and the Claimant is to mark the location of those holes.
39. The Claimant responded on 11 September at 12:25 and in that response he engaged with the issues and made practical suggestions of the things that should be borne in mind. For example, he said "don't drill in the same place from either side". He did repeat that he does not believe that ChemFix is the right way to do it and says that it is pointless taking the gates there until the posts are 100% set because they need to be set before thinking of hanging the gates.
40. On 12 September (page 100), Mrs Adams then set out a staged plan for hanging the gates including that the ChemFix was to be applied on Thursday and the gates hung on Friday. She stated that the Claimant is expected to supervise where the holes are to be drilled and the builders will assist with gates being hung. She also says that if the Claimant does not feel happy in signing off the gates due to safety, then he should not do so and she would speak with the site manager and someone else would have to.
41. The Claimant's response is abrupt at 12:25. He says that he will not supervise the drilling and complains that his recommendations have been ignored and he will have nothing to do with it. This contrasts with his email of the previous day that engages with the problems.
42. On 12 September, Mr Rippington had emailed the Claimant (see page 101) timed at 1:36. In the email which, according to the Claimant's paragraph 14 he received despite it not appearing on the face of it to have been directed to him, Mr Rippington addressed the Claimant's concerns. He said:
 - (a) That the gate-makers recommend 12mm rods drilled 120mm into the piers but that they are planning to drill 170mm into the piers as suggested by ChemFix who were the manufacturers of the chemical anchor.

- (b) ChemFix were confident that two fixings were sufficient but the Respondent was proposing to use eight. (Mr Rippington describes this in his evidence as being over-engineering.)
 - (c) Mr Rippington agreed that the Claimant should do no more work for Solutions in the future in order to take account of the Claimant's frustration with the way that the contracting process had developed.
43. We accept that this email was a genuine attempt to address the Claimant's concerns which were accepted to be valid ones. It does not, to our mind, suggest an intention on the part of the Respondent as at the 12 September to terminate the Claimant's employment. We also think that the concession that the Claimant personally should not do any work on contracts between the partnerships and Solutions was a generous one in the circumstances. The Claimant replied by refusing to help with the supervision of hanging the gates (see page 102) and he disputed that it would have been possible for someone else to sign off the work (see his paragraph 28).
44. Mrs Adams countered that assertion in her evidence by saying that the Respondent had had to find someone else to sign the gate off when ultimately the Claimant had refused to supervise the work. For that reason, we prefer her evidence and we accept that it would have been possible for the Claimant to, for example, fit the automation, but not sign the gate off. We consider that this offer was another example of the Respondent trying to address the Claimant's concerns.
45. At page 103, Mrs Adams wrote acknowledging the Claimant's anger and accepting that he had advised that they should not hang the gates. However, she pointed out that the simple fact was that the Respondent had quoted to do so. The Claimant complains that by this email he was being unfairly pressured but we see nothing improper in Mrs Adams reminding him that he was the gate engineer and that he stood to earn commission by completing the job. Her tone is that of someone asking the Claimant to do something rather than dictating to him and she appealed to his sense of loyalty to the company. She asked him to call to discuss the situation. The Claimant responded by the email timed at 9:58 on page 103. In that, he claimed, incorrectly, that until a few days previously there had been agreement that the Respondent would not hang the gates. He refused to hang or automate the gates that he felt would not be fixed properly or strong enough and he said that as a DHF-trained member, he believed:

"that the gates will not be safely fitted in the manner in which you are asking me to do so... that I feel the fixings added with the size and weight of the gates added with the Newton force supplied by the motors will not be strong enough."

46. When later the same day (page 106) he continued to make clear that he would not work on the system, Mrs Adams warned him that disciplinary action might result if he continues to refuse (see her email at page 105 timed at 16:40). He said in response that he was aware of that.
47. Following that, Mrs Adams invited the Claimant to an investigation meeting to be held on 14 September at 10:00 am. She explained in paragraph 27 of her witness statement that he was their only employee capable of carrying out the work; he was the only trained gate engineer.
48. An investigatory meeting took place on 14 September that was conducted by both partners. Mrs Adams' role in the partnership included doing quotes, payroll, accounts, keeping the paperwork and running the office. She is not herself an engineer. Mr Rippington is an electrical engineer of many years' experience and has been working in the security gates business since 1986. He has attended training courses run by manufacturers of gates. We accept unreservedly that he is at least as well aware of the standards enforced by the industry body as the Claimant. He was independently able to judge the reasonableness of the concerns being expressed by the Claimant. Mrs Adams would not be able to do so of her own knowledge although understandably she relied upon Mr Rippington's expertise in this respect. There are no minutes of the investigatory meeting on 14 September.
49. The Claimant's account, set out at paragraph 18 of his statement, was that he was repeatedly asked if he would carry out the work to hang and automate the gates. Mrs Adams said in her paragraph 29 that they asked him if he would be willing to do so if DHF confirmed that it was safe to follow the method that they proposed. She accepted that he had been asked repeatedly if he would carry out work on the gates. In response to this request, the Claimant confirmed that he would still be unwilling to carry out the gate automation despite the method of fixing being agreed by DHF by an email of 14 September timed at 11:01 at page 109. The Claimant responded duly confirming that it was his opinion that the method of fitting the gates was unsafe and therefore he would not be undertaking any works at Woodberry Down.
50. It seems to us that it was necessary for the Respondent to seek this confirmation from the Claimant because this was the final, categorical refusal by him to carry out the work notwithstanding the attempt that the Respondent had made to persuade him that carrying out the work was in fact safe. Notwithstanding the Claimant's clear statement that it would make no difference to his decision, the Respondent did contact DHF after the investigation meeting. We are satisfied that that they did so because they still hoped that the Claimant could be persuaded to do the work.

51. The Claimant was suspended on full pay on 14 September (see pages 110-111). DHF responded to Mr Rippington on 14 September (see page 113) and it was sent on to the Claimant the following day. The Claimant was given the ChemFix data (which appears at pages 119-123), probably at the investigation meeting on 14 September. The email from DHF said that they did not have the ChemFix figures for the strength of their product but had done a calculation on the basis of an alternative chemical anchor product called SPIT. DHF therefore were making a presumption that SPIT and ChemFix were products that had broadly similar strength. SPIT was accepted by the Claimant to be a large manufacturer of chemical anchors.
52. In his cross-examination, the Claimant accepted DHF's that figures set out at page 113 produced a load-bearing capacity per fixing of more than was needed to support each gate under industry standards. He did no competing analysis after receiving those figures including no analysis to substitute the ChemFix data (which had been used by analogy) for the SPIT data.
53. The Claimant accepted in cross-examination that his concern came down to his opinion that the risk factors associated with applying ChemFix in accordance with the manufacturer's instructions could not be adequately controlled. Those risk factors concerned the accuracy of drilling and cleaning the holes into the supports, together with the temperature at the time of insertion of the chemical anchor and the curing time. The risk factors are not to do with the location or nature of the site. It is therefore illogical for him to say that he is better able to judge how likely the risk factors would be to adversely affect the strength of these fixings because of one visit to the site than were DHF.
54. The Claimant produced nothing different to explain his continued resistance with reference to any evidence. Even his email of page 115 dated 15 September 2017, which sets out a summary of his concerns, does not include a copy of his calculations. In that email, he criticised the DHF evidence on the basis that it was vague and estimated. We accept that the figures given were approximate but the presumption underpinning the approximation seems reasonable and has proved to have been reasonable if one looks at the ChemFix figures. Such a significant margin of error as is disclosed by the DHF calculation means that it was acceptable that they were not precise. The available ChemFix figures suggest that the assumption made by DHF were justified and the Claimant did not do a recalculation to show otherwise whether in that 15 September email or at all. Furthermore, in his criticism of the DHF evidence the Claimant mentioned the control of risk factors which are minimised to an acceptable level of risk if the chemical anchor is used in accordance with the manufacturer's instructions. There was no reason to think that the fixings would not be fitted in accordance with the manufacturer's instructions as detailed on page 120. There could be human error as there

could be human error involved in any method but absent that error the risk factors would be effectively accounted for.

55. There were other objections which the Claimant persisted in. He set them out in his 15 September email (page 115) and they were covered in a further investigation meeting on 19 September (see the transcript at page 213A-E). The Claimant did not provide any different objections to the task that he was being asked to do in the investigation meeting of 19 September. He was given an investigatory report (at page 215) in which it is clear to us that the Respondent engaged with the alternative way suggested by the Claimant to hang the gates.
56. The Claimant was then referred to a disciplinary hearing which took place on 21 September. That hearing was very short. The record of it is at page 225A. It appears to have started at 10.00 am and, after approximately 10 minutes there was an adjournment before the partners returned at 10:12 in order to announce their decision to dismiss him. The whole meeting took 13 minutes. The Claimant did not change his mind; he was asked if he had anything further to say in response to the accusation that he was refusing to carry out the instruction to install and automate the gates at Woodberry Down. He said that he did not. He was still relying on his personal opinion that the method chosen for fixing the gate was not safe.
57. The decision to dismiss was communicated orally at the meeting and then in writing (page 226) where the reasons for dismissal were said to be:

"Repeatedly and deliberately refuse to obey reasonable instructions from Contact Security Management, namely carry out the Gate Installation and Automation at Woodberry Down (Breach of Contract Gross Misconduct Offence)."
58. He was summarily dismissed and his last working day was 21 September. However, the Respondent paid him commission that was owed to him at that point even though as the Claimant accepted they were not contractually obliged to do. The Claimant did not appeal.

The Law

59. The structure of the protection against detriment and dismissal by reason of protected disclosures provides that a disclosure is protected if it is a qualifying disclosure within the meaning of s.43B ERA and is made by the claimant in one of the circumstances provided for in s.43C ERA.
60. Section 43B(1), as amended with effect from 25 June 2013, reads as follows – so far as relevant for the present case,

“In this Part a ‘qualifying disclosure’ means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following —

...

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

...”

61. The case of Geduld, relied on by the Respondent, is authority for the proposition that there is a distinction between “information” and an “allegation” and that it is only when there has been a disclosure of information that there is protection under the Act. More than one communication can be read together as a qualifying disclosure: Norbrook Laboratories. Geduld has been revisited in Kilrairie where Sales LJ explained that if the judgment in Geduld was relied upon as authority for a rigid dichotomy between “information” and “allegation” that was not what had been intended. As he put it in paragraphs 35 and 36,

“35. ...In order for a statement or disclosure to be a qualifying disclosure according to this language, it has to have a sufficient factual content and specificity such as is capable of tending to show one of the matters listed in subsection (1). ...

36. Whether an identified statement or disclosure in any particular case does meet that standard will be a matter for evaluative judgment by a tribunal in the light of all the facts of the case. It is a question which is likely to be closely aligned with the other requirement set out in section 43B(1), namely that the worker making the disclosure should have the reasonable belief that the information he discloses does tend to show one of the listed matters. As explained by Underhill LJ in [Nurmohammed], this has both a subjective and an objective element. If the worker subjectively believes that the information he discloses does tend to show one of the listed matters and the statement or disclosure he makes has a sufficient factual content and specificity such that it is capable of tending to show that listed matter, it is likely that his belief will be a reasonable belief.”

62. The structure of s.43B(1) therefore means that the tribunal has to ask itself whether the worker subjectively believes that the disclosure of information, if any, is in the public interest and then, separately, whether it is reasonable for the worker to hold that belief. Similarly, we need to ask ourselves whether the worker genuinely believes that the information, if any, tends to show that one of the subsections is engaged and then whether it is reasonable for them to believe that.
63. The reference to Nurmohammed is to Chesterton Global Ltd v Nurmohammed [2017] I.R.L.R. 837 CA, where the Court of Appeal gave

guidance to the correct approach to the requirement that the Claimant reasonably believed the disclosure to have been made in the public interest at paragraphs 27 to 31 of the judgment:

63.1. The tribunal has to ask (a) whether the worker believed, at the time that he or she was making it, that the disclosure was in the public interest and (b) whether, if so, that belief was reasonable.

63.2. Element (b) in that exercise requires the tribunal to recognise, as in the case of any other reasonableness review, that there may be more than one reasonable view as to whether a particular disclosure was in the public interest; and that is perhaps particularly so given that that question is of its nature so broad-textured.

63.3. The tribunal should be careful not to substitute its own view of whether the disclosure was in the public interest for that of the worker. That does not mean that it is illegitimate for the tribunal to form its own view on that question, as part of its thinking – that is indeed often difficult to avoid – but only that that view is not as such determinative.

63.4. The necessary belief is simply that the disclosure is in the public interest. The particular reasons why the worker believes that to be so are not of the essence. That means that a disclosure does not cease to qualify simply because the worker seeks to justify it after the event by reference to specific matters which the tribunal finds were not in his or her head at the time that he or she made it. Of course, if he or she cannot give credible reasons for why he or she thought at the time that the disclosure was in the public interest, that may cast doubt on whether he or she really thought so at all; but the significance is evidential not substantive. Likewise, in principle a tribunal might find that the particular reasons why the worker believed the disclosure to be in the public interest did not reasonably justify his or her belief, but nevertheless find it to have been reasonable for different reasons which he or she had not articulated to herself at the time: all that matters is that his/her (subjective) belief was (objectively) reasonable.

63.5. 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. Lord Justice Underhill stated that he was inclined to think that the belief does not in fact have to form any part of the worker's motivation – the phrase 'in the belief' is not the same as 'motivated by the belief'; but that it was hard to see that the point would arise in practice, since where a worker believes that a disclosure is in the public interest it would be odd if that did not form at least some part of their motivation in making it.

64. If the worker has made a protected disclosure then they are protected from detriment and dismissal by s.47B and s.103A of the ERA respectively. So far as is relevant, s.47B provides that:

“(1) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure.”

65. Section 103A, so far as is relevant, provides 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 a protected disclosure"

66. This involves a subjective inquiry into the mental processes of the person or persons who took the decision to dismiss. The classic formulation is that of Cairns LJ in Abernethy v Mott Hay and Anderson [1974] ICR 323 at p. 330 B-C:

"A reason for the dismissal of an employee is a set of facts known to the employer, or it may be of beliefs held by him which cause him to dismiss the employee."

The reason for the dismissal is thus not necessarily the same as something which starts in motion a chain of events which leads to dismissal.

67. The legal burden of proving the principle reason for the dismissal is on the employer although the claimant may bear an evidential burden: See Kuzel v Roche Products Ltd [2008] IRLR 534 CA at paragraphs 56 to 59

"... There is specific provision requiring the employer to show the reason or principal reason for dismissal. The employer knows better than anyone else in the world why he dismissed the complainant. ...

57

I agree that when an employee positively asserts that there was a different and inadmissible reason for his dismissal, he must produce some evidence supporting the positive case, such as making protected disclosures. This does not mean, however, that, in order to succeed in an unfair dismissal claim, the employee has to discharge the burden of proving that the dismissal was for that different reason. It is sufficient for the employee to challenge the evidence produced by the employer to show the reason advanced by him for the dismissal and to produce some evidence of a different reason.

58

Having heard the evidence of both sides relating to the reason for dismissal it will then be for the ET to consider the evidence as a whole and to make findings of primary fact on the basis of direct evidence or by reasonable inferences from primary facts established by the evidence or not contested in the evidence.

59

The ET must then decide what was the reason or principal reason for the dismissal of the claimant on the basis that it was for the employer to show what the reason was. If the employer does not show to the satisfaction of the ET that the reason was what he asserted it was, it is open to the ET to find that the reason was what the employee asserted it was. But it is not correct to say, either as a matter of law or logic, that the ET must find that, if the reason was not that asserted by the employer, then it must have been for the reason asserted by the employee. That may often be the outcome in practice, but it is not necessarily so.”

68. As can be seen from the quotations from the relevant sections, the test of causation is different when one is considering unlawful detriment contrary to s.47B ERA to that applicable to automatically unfair dismissal contrary to s.103A ERA. Section 47B will be infringed if the protected disclosure materially influences (in the sense of being more than a trivial influence) the employer's treatment of the whistleblower: Fecitt.
69. When considering so-called “ordinary” unfair contrary to s.98(4) of the ERA, it is for the respondent to show the reason for the dismissal and that it is a reason falling within s.98(2). In this case the Respondents rely on conduct which is a potentially fair reason within s.98(2).
70. If the tribunal is satisfied that the respondent has proved a potentially fair reason for dismissal, then we must go on to consider whether the decision to dismiss the employee was fair or unfair. That depends on whether in all the circumstances the respondent acted reasonably or unreasonably in treating that reason as a sufficient reason for dismissing the employee.
71. When the employee’s conduct is said to be the reason for dismissal then we find guidance for the approach we should take to that task in the case of British Homes Stores v Burchall [1980] ICR 303 EAT and other subsequent cases which built upon the test which has become known as the “Burchall test”. We need to be satisfied that before deciding to dismiss the employer had formed a genuine belief in the employee’s guilt. However, in order for it to be reasonable for the employer to treat the conduct as sufficient reason to dismiss the employer must have had in mind reasonable grounds for that belief and at the stage that the belief was formed the employer must have carried out as much investigation as was reasonable in the circumstances.
72. We must ask ourselves whether the conduct of the respondent fell within what has been described as the “range of reasonable responses”. It is not whether we would have reached the same conclusion as the employers in question, but whether their conclusion or decision was one within the range of reasonable responses to the employee’s conduct. The same is true of

the employer's conduct of their investigation into the claimant's alleged misconduct. The question for us is whether the investigation was within the range of reasonable responses which a reasonable employer might have adopted: J Sainsbury plc v Hitt [2003] ICR 111, CA.

73. When considering a wrongful dismissal claim the situation is different in that the tribunal must actually consider whether or not the claimant was in fundamental breach of contract. We must therefore consider whether or not the Claimant was guilty of gross misconduct in order to decide the wrongful dismissal claim. If the Claimant was in fundamental breach of contract, if he had committed gross misconduct then that would justify the Respondent in terminating his contract of employment without notice and the Claimant's complaint of wrongful dismissal would fail. Otherwise the Respondent would be in breach of contract in failing to give notice of termination of employment.

Conclusions on the Issues

Was there a disclosure of information that amounted to a qualifying disclosure?

74. The first written communication which is now relied on is the email of 4 September 2017 (page 92 – see paragraphs 5, 7.1.a. and 33 above). The alleged disclosures 6, 7 and 8 (pages 96, 99 and 100 – see paragraphs 7.1.b to d and 36, 39 and 41 above) do not in our view contain information. Page 96 does not contain information at all; it is a statement of the Claimant's position. Page 99 is an email by which the Claimant advises the Respondent on the method that he considers to be appropriate for fixing the gates; and page 100 is simply a communication dated 12 September of the Claimant's refusal to be involved.
75. The email of 13 September 2017 (page 103 – see paragraph 7.1.(e) and 45 above) does contain information as does that on page 92 (see paragraph 33).
76. We have considered the cases of Kilraine and Norbrook Laboratories and, in our view, those two emails, whether taken together or separately, contain information that tends to show that if the gates at Woodberry Down are hung in the manner proposed by the Respondent, the strengths of the fixings would be inadequate to support the weight of the gates and the force of the motors. That information discloses a risk that the gates will fall and that someone either a member of the public, an employee or other contractor will be injured.
77. The email (page 115 – see paragraph 54 above) does not contain information: it is critiquing the information provided by the Respondents. If the Claimant had provided calculations, that would have been information but page 115 shows that he is genuinely worried that his misjudgement

resulted in the gates at Sylvatica blowing off and this we conclude was at the back of his mind when refusing to be involved in hanging the gates at Woodberry Down notwithstanding the evidence-based assurances given to him by his employer.

78. It was accepted by Mrs Adams that the Claimant genuinely believed that the method of hanging the gate was unsafe although it did not appear to us that Mr Rippington shared that acceptance. Our conclusion is that there may have been other factors involved in his refusal including frustration at the way that the relationship between the partnership and the company meant that the work that he personally would be required to carry out was not clear from the outset. However, we accept that he genuinely believed that the method by which it was proposed to hang the gates and fix the gate hinges to the supporting posts was unsafe.
79. The Claimant genuinely believed that there was a realistic risk that the gate might fail and if it did so, it might fall and injure a member of the public. We therefore accept that he genuinely believed it to be in the public interest that he tell his employers of his concerns. He also attempted to persuade them to adopt a method that he regarded as being more secure.
80. We then go on to consider the reasonableness of those beliefs at the time that the statements were made. Our conclusions are that it is the statements contained in the emails of 4 September and 13 September which contain information which tends to show that the health and safety of an individual is being put at risk, has been put at risk or is likely to be put at risk.
81. By 13 September, the Claimant had had a conversation with Mr Rippington on the 11th and that led to the latter's email at page 101. Consequently, our conclusion is that by the date of the email of 13 September, the Claimant knew that the method of fixing the gate included using eight fixings; he knew that they were to be drilled to a depth of 170mm rather than 120mm; he knew that Mr Rippington, whose opinion he ought reasonably to have respected, had spoken to ChemFix, the manufacturers of the chemical anchor and that the deeper drilling depth was suggested by them and he knew that the gate manufacturers had recommended the use of the chemical anchor.
82. At this point, he did not actually have available to him the information from DHF (at page 113) or the ChemFix data (at page 119). However, he accepted that the ChemFix figures were freely available and that he would have had access to them had he looked for them. The Claimant claimed to have done analysis and in cross-examination he accepted the suggestion that it was his fear of human error in the application of ChemFix, not the inherent weakness of the product that was at the base of his concern.

83. When judging the reasonableness of his belief, we have to take into account his position, his experience and his training. In our view, based on what he knew or had available to him at the time he made the statements in the emails of 4 September and 13 September, his belief that the method of fixing was unsafe was not a reasonable belief. It follows from that that it was not reasonable for him to believe that it was in the public interest for him to bring these matters to the attention of his employers. Consequently, the statutory test set by section 43B(1)(d) is not made out and these were not qualifying disclosures. As a result, they do amount to protected disclosures under section 43C although they were made to his employer.
84. Notwithstanding our conclusion that the Claimant did not make protected disclosures, we go on to consider whether the alleged detriments did amount to detriments and whether they were on grounds of the communication of information in those emails.
85. The Respondent accepted that as a matter of fact, the Claimant's allegation of detriments that appear at numbers 2 (suspension), 3 (the investigation process), 4 (the disciplinary proceedings) and 5 (being accused of gross misconduct) happened and could reasonably be regarded as detrimental. In setting them out in this way, we have simplified the tendentious language used in the list of issues because the Respondent does not for example accept that the Claimant was subjected to an investigatory process without due process or subjected to disciplinary proceedings unnecessarily.

Detriment No 1

86. The Respondent argues in respect of alleged detriment number 1 that it is no detriment to an employee to be continually asked to do something that is the reasonable request of the employer. Our conclusion is that the Claimant was being repeatedly asked to do something that he unreasonably but genuinely thought unsafe. We tend to think that that would not be a detriment on the basis that an unjustified sense of grievance is not the same as a detriment. However, it is clear that the reason that the Claimant was asked repeatedly to be involved in hanging and installing the automation on the gates was that the job needed to be done and he was the only gate engineer who worked for the company.

Detriment No 6

87. In relation to alleged detriment number 6 that the Respondent failed to act upon the disclosures and concerns raised by the Claimant, in our view, the Respondent clearly addressed the Claimant's concerns and therefore this is not made out in the facts (see in particular paragraphs 37, 38, 40, 42 and 43),

Detriment No 7

88. So far as alleged detriment number 7 is concerned, we reject the allegation that there was a lack of meaningful investigation into the matters raised with the Claimant. The Respondent contacted the independent professional body and asked for their advice. They contacted the manufacturer of the chemical anchor and the gate manufacturer. The Respondent investigated every point raised by the Claimant and made significant attempts to find a solution to the impasse. We therefore find that the Claimant has not made out that he was subjected to this alleged detriment.
89. Moving on to causation, the way in which it was argued that there was a causative link between the making of the disclosure and the dismissal was somewhat difficult to follow. Mr McLean agreed that his oral explanation of the argument had been accurately set out by Mr Howells, the Respondent's representative, in paragraph 19 of his speaking note. That describes the following chain:
- The Claimant disclosed information (allegedly) tending to show that a person's health or safety would be endangered by the fixing of the gate by the Respondent's proposed method,
 - The Respondent failed to address the Claimant's concern and persisted in asking that the work be carried out in accordance with the method of which the Claimant disapproved,
 - The Claimant refused to carry out the work on the ground that the Respondent had not addressed his concerns,
 - The Respondent dismissed the Claimant for his refusal to carry out the work and therefore dismissed him on the grounds that they had not addressed his concerns and therefore on grounds of the concerns themselves. Mr Howells was using the word "concerns" as shorthand for the statements of information that the Claimant has relied on as being protected disclosures.
90. This line of argument by the Claimant seems to us to be fallacious. The Respondent did address the Claimant's concerns and therefore that line of reasoning fails. Furthermore, the connection between the Claimant's statements that the weight of the gates is too heavy for the strength of the fixings is that the Claimant's reason for making that statement for making what he alleges to have been a protected disclosure and the Claimant's reason for refusing to carry out the work were the same. However, when considering whether the claim of detriment on grounds of protected disclosure has been made out, what the Tribunal must focus on

is the motivation for the decision. We need to consider what was in the mind of the Respondent and specifically in the minds of Mrs Adams and Mr Rippington in deciding to suspend him, subject him to an investigation and subject him to disciplinary proceedings. It is clear that the reason why they did these things was that he was refusing to follow their instructions and that was accepted by the Claimant. Therefore, it is not that the alleged disclosures motivated the Respondent to act as they did but that the Claimant's belief motivated him to make the disclosures and also motivated him to behave in a way that caused him to be disciplined.

91. Under the provisions of section 47B of the Employment Rights Act, causation is expressed to be on the ground of the protected disclosure and therefore it is necessary for the disclosure to be an effective cause of the actions but not necessarily the main or principal one. The contrary is true under section 103A of the Employment Rights Act where it is necessary for us to be satisfied that the reason or principal reason for the dismissal was the disclosure and for reasons which applied in relation to the detriment claim, the arguments on causation do not even come close to succeeding under section 47 or 103A.
92. We then move on to the ordinary unfair dismissal claim. The reason put forward by the Respondent is that of conduct and it was accepted by the Claimant that that was the reason why they dismissed him. We therefore conclude that the Respondent has shown that they dismissed for the potentially fair reason of conduct and we need to go on to consider whether the decision to dismiss was fair or unfair in all the circumstances. Those circumstances should include the size of the employer, the size of the partnership and the allegation of duplication of roles.
93. The ACAS Code of Practice on Disciplinary and Grievance Procedures 2015 provides as follows:

Paragraph 5:

It is important to carry out necessary investigations for potential disciplinary matters without unreasonable delay to establish the facts of the case. In some cases, this will require the holding of an investigatory meeting with the employee before proceeding to any disciplinary hearing. In others, the investigatory stage will be the collation of evidence by the employer for use of any disciplinary hearing.

Paragraph 6:

In misconduct cases, where practicable, different people should carry out the investigation and disciplinary hearing.”

94. It has been pointed out by the Claimant that the disciplinary procedure applicable to his employment included provision for an outside investigator to be appointed if necessary. See page 219 where it says that the

company: "may use an outside consultant to provide impartiality". The Claimant was offered the right to be accompanied.

95. The test that we need to apply in this situation is that of the range of reasonable responses. The factors that we think are relevant to considering whether no reasonable employer in the situation that this employer was in would have failed to instruct an outside consultant or otherwise separate the responsibility for investigation and decision-making between the two partners include the following. Had the partnership called in an outside consultant, they would have had to investigate technical evidence. In order to do so, they would have had to speak to Mr Rippington because it was his judgment on the technical matters that was effectively set against the Claimant's opinions and he would therefore not have been excluded from the investigation process in any event. An outside investigator would be likely to have accepted what he said in view of his experience and in view of the detailed evidence that he had provided.
96. On the other hand, taking into account Mrs Adams' position, it was she who the Claimant rightly points out had been involved in communications with him about whether he was willing to carry out the work and the quotation at an early stage. She would also have been a necessary witness.
97. In an employer of this size where both partners are so intimately involved in the business it seems to us to have been totally impracticable to suggest that they might not be involved in the investigation and yet make a decision on the disciplinary outcome itself.
98. At the disciplinary hearing, the partners gave the Claimant the opportunity to change his mind about whether he was willing to do the work. Had he done so, we consider that they would not have dismissed him and therefore they did put forward alternatives to dismissal, albeit ones that required the Claimant to change his mind.
99. This was a small partnership; the knowledge in the minds of the partners and of the work that they carried out in their business was something that it is not practicable to separate out from the decision-making process and therefore we consider that it was right for them to take the decision and not to hive off to anybody else the investigation of these accusations and in these particular circumstances, the combination of the investigation and the disciplinary role in the body of the partners was within the range of reasonable responses.
100. It is also alleged by the Claimant that the timing of the hearings meant that the process was unfairly expedited. We look at the two investigatory meetings together because having considered it carefully we accept that the Respondent by the time of the second investigatory meeting was still

hoping to persuade the Claimant to change his mind. We have also considered the Claimant's email at page 115. Although there was relatively short notice given to the Claimant in particular of the first investigatory meeting, taking the process as a whole, the Claimant clearly did have time to prepare his explanations to why he was unwilling to carry out the work. We think it probable that the Respondent was under some pressure of time to get the job completed and the Claimant did not object at the time.

101. Up to the point of the investigatory meeting, the Respondents were still hoping to change the Claimant's mind and persuade him that the method that they had chosen to fix the gates was safe. They were not going to change their own minds about the way to fix the gates, but their explanations have persuaded us that the view they took of the right method was a reasonable one and was evidence-based. They made genuine attempts to allay the Claimant's concerns and we therefore conclude that the allegation that there was a biased investigation meeting is not made out.
102. The next complaint about the process is that the Respondent combined the investigation into the Claimant's disclosures with an investigation into his conduct. Our view is that there was an inextricable link between the concerns expressed by the Claimant and his conduct because the concerns were his reason for refusing to do the work. It would not have been possible for the Respondent to investigate the allegation of him refusing to carry out their instructions without engaging with the reason that he put forward for that refusal and therefore not only is it not unfair but it was necessary for them to combine an investigation into his disclosures with an investigation into his conduct.
103. We have considered carefully the argument that the Respondent did not at point of dismissal consider whether a lesser sanction could have been imposed: whether a warning could have been imposed. Mrs Adams' evidence was that there would have been a detrimental effect on staff morale and on the authority of the partners had they allowed the Claimant effectively to dictate to them the method by which they carried out work and forced them to use a method that they regarded as being ugly and unnecessarily complicated based on their reasonable evaluation of the evidence. Furthermore, she said that it would be impossible if employees were permitted to simply force the employer to find somebody else to do their work on particular aspects of a job for which they had quoted. We bear in mind that it is not for the tribunal to substitute its view for that of the employer. The reasons she gave seemed to us to be valid and we have concluded that it was within the range of reasonable responses to dismiss the Claimant for repeated unreasonable refusals to carry out a management instruction even though he genuinely believed that the method of fixing the gates that he was being required to use was unsafe because that belief was not a reasonable one; it was not evidentially based

and the Respondent had taken considerable care to seek to persuade him that his view was contrary to the evidence.

104. They had also taken considerable care to minimise his involvement and to seek to reassure him that he would not be held culpable were there in fact to be health and safety problems arising from the hanging of these gates. The consequence of his refusal was a cost to the company involved in engaging somebody else to do the work and in those circumstances, we consider that it cannot be said that no reasonable employer would have decided to dismiss an employee in this position. The unfair dismissal claim is dismissed.
105. We then need to go on to consider whether the actions of the Claimant amounted to gross misconduct justifying the decision to terminate his employment summarily and taking into account the matters that we set out at paragraph 103 above, we accept that there is a breach going to the root of the contract where an employee repeatedly refuses to carry out the employer's reasonable instruction despite all reasonable attempts having been made by that employer to dissuade the employee of their genuinely held but unreasonable belief that they are right. Given our findings of fact, the wrongful dismissal claim fails and is dismissed.

Employment Judge George

Date: ...22 February 2019

Sent to the parties on: 26 February 2019

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For the Tribunals Office