EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Timothy Deegan	v	Hertfordshire County Council

Heard at: Cambridge

On: 20 and 21 January 2023 in person and on 31 January 2023 in chambers.

Before: Employment Judge de Silva KC, Ms L Feavearyear and Mr C Grant

Appearances

For the Claimant: Oliver Isaacs, Counsel

For the Respondent: Nicholas Bidnell-Edwards, Counsel

RESERVED JUDGMENT

1. By consent, Hertfordshire County Council is substituted as Respondent.

2. The unanimous judgment of the Employment Tribunal is that:

   (1) The Claimant's claim under section 44 of the Employment Rights Act 1996 is well founded.

   (2) The Claimant's claim under section 146 of the Trade Union and Labour Recognition (Consolidation) Act 1992 is dismissed.

   (3) The Respondent is ordered to pay to the Claimant compensation in the sum of six thousand pounds in respect of his claim under section 44 of the Employment Rights Act 1996.

REASONS

THE PROCEEDINGS

1. By Claim Form presented on 21 July 2021, the Claimant brought claims under section 44 of the Employment Rights Act 1996 **("the ERA")**, which deals with health and safety detriments, and section 146 of Trade Union and Labour Relations (Consolidation) Act 1992 (**"TULRCA"**), which deals with trade union detriments, in relation to a first written warning he received on 31 March 2021. The claim was made against 'Hertfordshire Fire & Rescue Service' but it was agreed by the parties at the final hearing that the correct Respondent was Hertfordshire County Council and that Hertfordshire County Council should be substituted as Respondent.

2. At the outset of the final hearing, which was listed for two days, the parties agreed that the Tribunal would deal with remedy (if necessary) at the same time as liability in its judgment. The Tribunal heard evidence from the Claimant, from Mr Chris Bigland (Deputy Chief Officer of Bedfordshire Fire & Rescue) who dealt with the disciplinary hearing and Mr Mark Kemp (Executive Director for Environment and Transport) who dealt with the disciplinary appeal hearing. Mr Isaacs confirmed at the hearing that no allegation of unlawful conduct was made in relation to Mr Kemp's decision on the appeal, the claim being limited to the warning given by Mr Bigland.

3. Each witness provided a written statement, cross-referenced to a bundle of documents. The witnesses were all cross-examined. The Tribunal read the documents in the bundle that there were referred to. The Tribunal heard oral submissions and then commenced its deliberations in the afternoon of the second day. As it was unable to complete its deliberations that day, it informed the parties that it would reserve its judgment. The Tribunal then met remotely for deliberation on 31 January 2023.

4. The Tribunal records its gratitude to both counsel and to the witnesses for the professional and courteous way in which the final hearing was conducted.

FINDINGS OF FACT

The Parties

5. The Claimant worked for Hertfordshire Fire & Rescue Service within the Respondent as a firefighter working on a whole time basis from 17 November 1997. From around four years before the events in issue, he worked as the Fire

Brigade Union (**"FBU"**) Health & Safety Representative for Hertfordshire Fire & Rescue Service. It is not in dispute that his duties in this role included:

a. Investigating potential hazards and dangerous occurrence in the workplace and examining the causes of accidents in the workplace;

b. Investigating complaints by the employees he represented relating to the employee's health, safety or welfare at work;

c. Making representations to the Respondent on matters arising out of the above;

d. Making representations to the Respondent on general matters affecting health, safety or the welfare at work of the employees at the workplace;

e. Carrying out inspections;

f. Representing members in respect of consultation with HSE inspectors and any other enforcing authority;

g. Receiving information from inspectors;

h. Attending meetings in his capacity as a safety representative in connection with the above functions.

Vision 4

6. In November 2015, the London Fire Brigade had started using Vision 4, a system used in the fire control room for taking 999 calls and mobilising fire appliances. Four fire services, Hertfordshire Fire & Rescue, Humberside Fire & Rescue, Norfolk Fire & Rescue and Lincolnshire Fire & Rescue (who are in what is known as the East Coast Consortium) also decided to implement the Vision 4 system and that Hertfordshire Fire & Rescue would be the first of these to implement this. Vision 4 went live in Hertfordshire in November 2017.

7. It is not in dispute between the parties that there were significant issues with Vision 4 (although the precise scope and nature of these issues is not agreed by the Respondent and the details are not directly relevant to the present claim).

8. On 24 December 2017, the Claimant issued a Safety Critical Notice, which is an improvement notice issued to managers by an accredited representative of the FBU registering the union's position that an employer is not complying with health and safety legislation in relation to an identified workplace hazard.

9. As a result of his health and safety role, the Claimant had access to information about health and safety at the Respondent, for example from 2019 he was emailed at his FBU address with alerts from Hertfordshire Fire & Rescue's Sphera (online health and safety reporting) system which detailed faults and he was also given access by Mr Bigland to the Respondent's system which contained information, including information about faults with the Vision 4 system.

Events in January/February 2020

10. It is again not in dispute between the parties that there were ongoing issues with Vision 4 although again the precise scope and nature of these is not agreed. On 27 January 2020, there was a serious issue with Vision 4 that affected both Hertfordshire Fire & Rescue and Humberside Fire & Rescue which was also using Vision 4 by this time.

11. The Claimant, together with the health and safety representatives in the other fire services in the East Coast Consortium were considering issuing a joint Safety Critical Notice concerning Vision 4.

12. Around 28 January 2020, the Claimant sought advice from John Blakemore, FBU Health and Safety Representative for the Eastern Region, who was a more senior colleague at the FBU. The Claimant described him as his line manager for FBU purposes and this is accepted by the Respondent. Mr Blakemore was employed by Bedfordshire Fire & Rescue.

13. In order to provide evidence to support the issuing of the proposed Safety Critical Notice, on 1 February 2020, the Claimant sent to Mr Blakemore by secure email at the FBU a number of documents that related to vision 4. The email was not put before the Tribunal. It is agreed between the parties that what was sent was:

    a. 23 pdf printouts from the Respondent's Sphera system;

    b. Two spreadsheets which contained feedback information about Vision 4, including about faults.

14. These were all documents that the Claimant had created or obtained himself. Some but not all of the Sphera printouts were put before the Tribunal. None of these had been sent to the Claimant although it is not in dispute that he was permitted himself to have and see them. The spreadsheets were not before the Tribunal. One of the Sphera printouts gives the first name of a user of Vision 4 within Hertfordshire Fire & Rescue. The report states that their leaning in to read the small text on the screen was giving the user upper back pain.

15. On 2 February 2020, the FCU health and safety representatives for the four East Coast Consortium services (including the Claimant) issued a Safety Critical Notice to the four East Coast Consortium services (including Hertfordshire Fire & Rescue).

16. On 7 February 2020, Mr Blakemore sent to John-Joe Pekszyc (Group Commander, Bedfordshire Fire & Rescue) what he described as *"some information"* which it appears were the documents sent to him by the Claimant on 1 February 2020. In his email, Mr Blakemore suggested that Group Commander Pekszyc may wish to consider some of the attached items when considering future systems. At that time Bedfordshire Fire & Rescue were considering procuring Vision 4. The Claimant had no part in sending the documents to Mr Pekszyc.

17. Mr Pekszyc forwarded Mr Blakemore's email to Paula Stevenson, Station Commander in Hertfordshire Fire & Rescue Service. He said that he was concerned that documentation had individuals' names on them. He said that the information had been deleted from Bedfordshire Fire & Rescue Service's system. Ms Stevenson forwarded the email to Andy Hall, Group Commander in Hertfordshire Fire & Rescue Service.

18. On 11 February 2020, Mr Hall spoke with the Claimant by phone about sending the documents to Mr Blakemore. On 13 February 2020, he sent an email to the Claimant stating that the Claimant had confirmed on the phone call that he had sent numerous pdf's of Sphera events and two spreadsheet to Mr Blakemore. He said that the matter was being investigated. Although it is not recorded in the email, it is not in dispute that the Claimant gave the explanation to Mr Hall in the phone call that the documents had been shared with FBU by sharing it with him and that he was just liaising with his line manager, i.e. Mr Blakemore.

19. Also on 13 February 2020, Darryl Keen, Chief Fire Officer, replied to the Safety Critical Notice of 2 February 2020 stating among other things that he had to express his disappointment at receiving it so close to a major step in the programme, less than 24 hours' notice before a planned go-live which he said was not helpful to any of the parties involved and did not allow a realistic timescale for dialogue or for confirmation of understanding of what was a very complex system. When it was put to Mr Bigland that he had seen this document before it was sent, Mr Bigland said that he could not recall but the Tribunal finds that he did see it given his role and his involvement in the issues concerning Vision 4 at that time.

20. On 15 February 2020, the Claimant replied to Mr Hall saying that he would engage with any investigations once he had received advice. The FBU's advice (which is addressed in further detail below) was provided in a letter dated 13

March 2020, the same date as the letter referred to below which set out the disciplinary allegations and started the disciplinary process.

Disciplinary Investigation

21. After a further exchange of correspondence between them, on 4 March 2020, Mr Hall told the Claimant that he was recommending that there were sufficient grounds to warrant a disciplinary investigation.

22. By letter of 13 March 2020, titled "Allegations of Gross Misconduct" Mr Bigland put two disciplinary allegations to the Claimant:

    a. That he shared documents outside the organisation without permission of the service which was beyond his remit and purpose as a Brigade Union Official;

    b. That he shared personal data without consent of the service breaching the General Data Protection Regulation 1998.

23. His letter stated that a possible consequence of the investigation could be a final written warning or result in his dismissal.

24. The Respondent's Disciplinary Toolkit (which was not originally in the bundle and is not referred to in Mr Bigland's witness statement) has a list of "Misconduct" matters which includes *"Misuse of equipment, materials and information, e.g. … Repeated breaches of cyber security e.g. unsafe internet usage such as downloading malicious content or clicking on unknown links on compromised websites. Opening documents, unauthorised data sharing/entry, clicking on links or running executions from phishing emails"*.

25. It also has a list of has a list of "Gross Misconduct" matters which includes (emphasis added) *"<u>Serious</u> misuse of equipment, materials and information, e.g. … Repeated breaches of cyber security e.g. unsafe internet usage such as downloading malicious content or clicking on unknown links on compromised websites. Opening documents, unauthorised data sharing/entry, clicking on links or running executions from phishing emails"*. That is to say that the Gross Misconduct example has the same wording save that it applies to <u>serious</u> misuse.

26. By letter of 22 May 2020, Mr Bigland set out an additional allegation to the Claimant i.e. that he had shared commercially sensitive data without permission to do so.

27. The investigation was carried out by Chris Welsh, Investigating Officer. On 9 July 2020, he interviewed the Claimant. The note of the meeting records that the Claimant said that he had been given access to the information in question by Mr Bigland (and that a comment by Mr Hall that the Claimant had said that he had asked the Chief Fire Officer, Mr Keen, for permission to share the documents was untrue). He said that the whole matter was a personal attack on him for raising a Safety Critical Notice.

28. The Claimant said that he had not shared the documents outside the organisation as he was working for the FBU. He also said that the public interest exception to the GDPR was engaged. He further stated that he did not want to use the matter as a stick to beat the service with but he did with Capita (the provider of Vision 4) and that it was cheaper for Capita to lose money rather than resolve the issues.

29. As part of the investigation, questions were put to Simon Banks, a legal officer at the Respondent. His replies were sent to Mr Welsh on 17 November 2020. The first question he answered was *"Could John Blakemore be considered a part of [Hertfordshire County Council] through his representation of FBU members within [Hertfordshire Fire & Rescue]. If not what is John's status in relation to HCC/HFRS and does this status allow the sharing and access of HCC documents"*. Mr Banks started his answer by saying *"No-Mr Blakemore is not an employee of HCC"*.

30. Mr Banks was also asked *"Are there any exemptions that would allow Tim Deegan as H&S Rep to not adhere to GDPR and Data Protection policy"*. He replied in the negative but added *"That said there are provisions within the Data Protection Act that allow for data to be processed for health and safety reasons"*. Later on in his answers, he said that he had not had the chance to review the Data Protection Act to set out the relevant exceptions but would do so as soon as possible.

31. When asked whether the Excel spreadsheets had commercially sensitive information, Mr Banks' answer started by saying that he needed to see the information to be sure.

32. Mr Welsh's investigation report was dated 25 November 2020. It stated (apparently in reference to the Sphera pdf summarised above) that one pdf contained special category data which was personal data that needs more protection because it is sensitive. It said that the spreadsheets contained names of and addresses of staff. The Claimant, who created the spreadsheets, said that the documents did not contain addresses. We accept this and there is no direct evidence to the contrary (either the documents themselves or the direct evidence of anyone who had read them).

33. Mr Welsh noted that Elaine Dunnicliffe, Data Protection Officer, had said that the level of risk was low because there was a fairly small number of individual names and addresses and the actions of the FBU resulted in a low risk of misuse of the data. The report also stated that the Claimant had said that the information had been shared for the purpose of an investigation. It further said that the Claimant had said that he had been given permission to do this by the Chief Fire Officer, Mr Keen. As set out above the Claimant had said in his investigative interview that this was not the case.

34. During the course of the investigation, Mr Welsh had been sent a letter from Tam McFarlane of the FBU setting out the outcome of what was described as a data breach investigation and the conclusion that the Claimant *"has conducted himself in line with FBU policy and our guidelines regarding GDPR"*. However, he did not refer to this in his report.

Disciplinary Hearing and Warning

35. The report was sent to Mr Bigland and he convened a disciplinary hearing on 17 March 2021. At the start of the meeting 17 March 2021, the Claimant shared the note from Tam McFarlane of the FBU.

36. By letter dated 31 March 2021, Mr Bigland gave the Claimant a notice of first written warning. The letter was structured into two main parts. The first section, which is about 10 pages long, sets out a summary of the evidence given in the disciplinary hearing (which in turn cross refers to earlier evidence). Mr Bigland could not recall who had drafted the various passages in this first section, him or HR. Although it was submitted on behalf of the Respondent that this section in some way set out Mr Bigland's reasoning, it does not. It is simply a summary of what was said, without analysis at that point.

37. The second section of the letter, around a page and a half long, is stated to set out the evidence that Mr Bigland relied on in support of his conclusion that the original offence of gross misconduct be mitigated to serious misconduct. In relation to the first disciplinary allegation, he said that the Claimant did not seek or have permission to share the documents outside the Respondent. In relation to the second allegation, he said that the data protection team had concluded that a breach, though minor, had occurred. In relation to the third (additional) allegation he said that it was clear that commercially sensitive information had been shared. He referred to the Claimant's comment about costing Capita and said that he was more concerned that his considerations might have been about Bedfordshire Fire & Rescue and Capita than the SCN on 2 February 2020. He concluded that there was frustration on the Claimant's part about Capita and an attempt to discredit Capita. He also referred to the Respondent reviewing its policies.

38. The Claimant was given the right of appeal which he exercised. The appeal was heard by Mr Kemp who dismissed the appeal. As stated above, there is no claim before the Tribunal about Mr Kemp's handling of the appeal or his appeal decision.

RELEVANT LAW

39. Section 44 of the ERA states:

> ***"44 Health and safety cases.***
> *(1)An employee 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—*
> *(a)having been designated by the employer to carry out activities in connection with preventing or reducing risks to health and safety at work, the employee carried out (or proposed to carry out) any such activities,*
> *(b)being a representative of workers on matters of health and safety at work or member of a safety committee—*
> *(i)in accordance with arrangements established under or by virtue of any enactment, or*
> *(ii)by reason of being acknowledged as such by the employer,*
> *the employee performed (or proposed to perform) any functions as such a representative or a member of such a committee,"*

40. Section 146 of TULRCA states:

> ***"****A worker has the right not to be subjected to any detriment as an individual by any act, or any deliberate failure to act, by his employer if the act or failure takes place for the sole or main purpose of—*
> *…*
> *(b)preventing or deterring him from taking part in the activities of an independent trade union at an appropriate time, or penalising him for doing so, … ".*

41. In ***Morrison v Metrolink*** [2019] ICR 90, the Court of Appeal drew a distinction at paragraph 15 between dismissal for carrying out trade union activities and dismissal for misconduct occurring in the context of such activities and quoted from ***Lyon v St James Press*** [1976] ICR 413 EAT in which it was held that the special protection given to trade union activities should not be allowed to operate as an excuse for conduct which would ordinarily justify dismissal. It referred to ***Mihaj v Sodexho*** [2014] ICR 25 which noted that there would be cases where the things in question were a reason for dismissal which was distinct from trade union activities and that the reference in that case to the

employee's acts which were *"wholly unreasonable, extraneous or malicious"* captured the distinction without being definitive.

42. In ***Bolton School v Evans*** [2007] IRLR 40, a whistleblowing detriment case which was also referred to in ***Morrison***, the Court of Appeal held that a claimant's hacking into a computer system was not distinct from the disclosure of information itself and that the reason for a warning was a belief that it had committed an act of misconduct rather than the disclosure itself.

SUMMARY OF THE PARTIES' POSITIONS

The Claimant's Position

43. As set out above the alleged detriment was the warning from Mr Bigland by letter dated 31 March 2021.

44. So far as the claim under section 44 of the ERA is concerned, the Claimant alleges that the detriment was on the ground that:

    a. He had carried out activities in connection with preventing or reducing risks, i.e. the Safety Critical Notice of 2 February 2020 and his investigation which led to this (section 44(1)(a) ERA);

    b. He had performed functions as a health and safety representative, i.e. the Safety Critical Notice of 2 February 2020 and his investigation which led to this (section 44(1)(b) ERA).

45. As for the section 146 TURLCA claim, the Claimant alleged that he was prevented from taking part in union activities, i.e. the Safety Critical Notice of 2 February 2020 and his investigation which led to this, or was penalised for these.

46. The Claimant pointed to various failures in the investigation process which show that Mr Bigland was motivated by the fact of the Claimant carrying out his health and safety and union functions which can be distinguished from the grounds relied on by the Respondent, for example alleged data breaches and alleged misuse of confidential information. It referred to the burden of proof on the Respondent in relation to both heads of claim to establish the reason for the treatment but submitted that the Tribunal should determine the case on the evidence of Mr Bigland's reasoning rather than on the basis of the Respondent's burden of proof.

The Respondent's Position

47. The Respondent accepted that the Claimant carried out activities in connection with preventing or reducing risks and that he had performed functions as a health and safety representative for the purposes of section 44 of the ERA. It also admits that he took part in trade union activities. It correctly accepts that the warning of 31 March 2021 was a detriment and therefore submits that the key issue is causation. It to submitted that the Tribunal should decide the case based on the evidence as to Mr Bigland's reasoning rather than on the basis of question of the burden of proof.

48. It pointed out the difference between the test of causation in section 44 of the ERA/ *"materially influenced"*, and section 146 of TURLCA, *"sole or main reason"* (which as Mr Bidnell-Edwards points out, is akin to the wording in the unfair dismissal provisions of the ERA). The Claimant agreed with this.

49. The Respondent submitted that the evidence showed that the warning was given for the reasons put forward by the Respondent and there was no evidence of any ulterior motive. It submitted that the evidence supports its case that there was a data breach and misuse of confidential information by the Claimant and he admitted a degree of wrongdoing on his part (e.g. admitting that he would have done things differently). It noted that the warning of 31 March 2021 was in fact a downgrading of the potential sanction in the disciplinary warning letter dated 13 March 2020 which showed that there was no hostility to the Claimant and an openness to considering mitigating factors.

CONCLUSIONS

Conclusions about Mr Bigland

50. In the view of the Employment Tribunal, Mr Bigland's decision to class the alleged misconduct as gross misconduct was without justification. There was no good reason to classify the conduct as serious misuse of information etc (as example of gross misconduct) in particular as the definition of ordinary misconduct included misuse of information such as repeated breaches of cybersecurity and unauthorised data sharing which applied here. No credible factor which would have taken the conduct from ordinary misconduct to serious misconduct was put forward.

51. Strikingly, Mr Bigland did not at any time read the documents in which were said to have been disclosed in breach of the GDPR or as misuse of commercially sensitive information. He could have done so at any point throughout the process in order to ascertain the seriousness of the alleged breaches (for example, to determine what the allegedly sensitive information was that had been referred to or what addresses if any had been disclosed) but he chose not to do so.

52. When it was put to him in cross-examination, Mr Bigland accepted that it was appropriate for the unions to be involved in the serious safety issues relating to Vision 4 but he qualified his answer by emphasising that the Respondent was dealing with the Vision 4 issues and did not need the assistance of the union at that time. It is clear that Mr Bigland shared the view of the Chief Fire Officer stated on 15 February 2020 that it was disappointing that the FBU had sent the SCN in particular at the time it did, when he perceived that the Respondent had the matter in hand.

53. Furthermore, it is clear on the evidence that the key points that the Claimant was putting forward throughout the disciplinary process was that he was authorised in his role to share the documents with his line manager and that there was no GDPR breach because of public interest exemptions to this. However, Mr Bigland did not engage with either of these points at all in his warning letter. In fact his reasoning on the issue of authorisation was that the Claimant wrongly said that he had been given permission to send the documents by the Chief Fire Officer. In fact, as set out above, the Claimant had made clear in his investigative meeting that he was not saying this at all.

54. So far as the GDPR position was concerned, at the time of the disciplinary hearing, the legal position was at best unclear. Mr Banks, the legal officer, had advised that there may be a health and safety exemption to the Data Protection Act and had also said that he had not had a chance to review the exemptions in the Data Protection Act. However, no further advice was sought from him by Mr Bigland or anyone else.

55. Mr Bigland also said in his letter that he was concerned that some of the Claimant's considerations might have been more about Bedfordshire Fire & Rescue and Capita than the SCN on 2 February 2020 and also that there was an attempt to discredit Capita. Such adverse comments about the Claimant were not supported by the Claimant's comments about Capita at his investigative meeting and it is striking that Mr Bigland made so much of a passing comment about Capita when he had singularly failed to deal with the fundamental arguments that the Claimant had put forward in the investigative and disciplinary process.

56. We have concluded that the finding section of the letter, while downgrading the sanction, makes unsupported negative comments about the Claimant while essentially ignoring what the Claimant was saying in his defence.

57. His conclusion that the Claimant was more concerned about Bedfordshire Fire & Rescue is wholly unsupported. There was no suggestion (let alone any evidence) that the Claimant had sent the documents to Mr Blakemore with a view to him sending it to Bedfordshire Fire & Rescue.

58. We do not accept the Respondent's submission that the fact that Mr Bigland had downgraded the sanction from dismissal to first written warning was to Mr Bigland's credit. It was of course Mr Bigland himself who decided at the outset, that dismissal was a potential sanction (unjustifiably as set out above) and even a first written warning was unjustifiable in light of his failure to engage properly with the case put forward by the Claimant. He could alternatively have dealt with the matter informally (and written warning is not the lowest sanction, there was also the option of a verbal warning).

59. We also considered the submission of the Claimant that Mr Bigland's failure to recuse himself (given his involvement in the issue of authorisation of the Claimant) or to deal with the Claimant's allegation that he was being victimised indicated that he was hostile to the Claimant. We do not believe that these matters were indicative of this and note that the Claimant went along with the disciplinary processes, supported by the FBU. We also accepted Mr Bigland's evidence that he had added the allegation about sharing sensitive commercial data on 22 May 2020 simply because he had omitted to do so in his letter of 13 March 2020.

Conclusions on Claim under Section 44 ERA

60. For the reasons set out at paragraphs 50 to 58 above, while we accept that Mr Bigland was concerned about the data protection issues and potential misuse of commercially sensitive data, we have concluded that his decision to give a written warning was materially influenced by the Claimant's involvement in sending the Safety Critical Notice and the investigation which led to this.

61. In light of the matters set out above, his conduct of the disciplinary process and his disciplinary conclusions demonstrate a hostility to the Claimant and an unwillingness to engage with the Claimant, the only plausible explanation for which is that he was unhappy about the Claimant's investigation and his sending, with others, the SCN of 2 February 2020.

62. We accept that Mr Bigland was genuinely concerned about the potential safety issues relating to Vision 4 but his decision was influenced by his view that the Respondent was dealing with this and that the FBU's involvement in this was unwelcome and unnecessary (as articulated in the letter from Mr Keen dated 13 February 2020).

Conclusions of Claim under Section 146 TULRCA

63. The Tribunal does not accept that the sole or principal reason for the warning was deterring the Claimant from carrying out Trade Union activities or penalising him from this. Although his decision to give the warning was materially influenced by the Claimant's investigation and his involvement in the 2 February 2020 Safety Critical Notice, we accept that Mr Bigland's was concerned about GDPR and misuse of commercially sensitive information.

64. The evidence before Mr Bigland was that documents had been sent outside the organisation, in that documents generated or obtained by the Claimant had been sent to Mr Blakemore by the Claimant and the spreadsheets were to a degree commercially sensitive in that they contained information about faults. We also note that the investigative report provided to Mr Bigland sought to make a case that the Claimant had been in breach.

65. Therefore, the claim under section 146 of TURLCA fails.

REMEDY

66. Section 49(2) of the ERA states that the amount of compensation awarded shall be such as the Tribunal considers just and equitable in all the circumstances having regard to (a) the infringement to which the complaint relates and (b) any loss which is attributable to the act or failure to act, which infringed the complainant's right.

67. The Claimant claims £9,100 for injury to feelings. This sum is at the top of the lower ***Vento*** band, as revised. This band is appropriate for less serious cases, such as where the act is a one-off occurrence. The Tribunal reminds itself that:

    a. Injury to feelings awards are compensatory and should be just to both parties. They should compensate fully without punishing the perpetrator;

    b. Awards should not be too low as this would diminish respect for the policy of the legislation;

    c. Awards should be restrained as excessive awards could be seen as a way to untaxed riches;

    d. Tribunals should take into account the value in everyday life of the sum they have in mind, by reference to purchasing power or by reference to earnings, although there is no information before this Tribunal about the Claimant's earnings, for example the relevant boxes in the Claim Form and the Response were left blank;

e. Tribunals should bear in mind the need for public respect for the level of awards made.

68. The Claimant here was a longstanding employee who was treated unlawfully in relation to an important role that he plainly took very seriously. The warning undermined him in that important role and we accept the Claimant's evidence that he was very upset to be punished for what he believed to be the performance of his duties as a health and safety representative.

69. The warning was a single event although the disciplinary process lasted several months. The Tribunal agrees that the award should be in the lower ***Vento*** band but does not consider it should be in the upper range of that band. As set out above, it should not be so low that it diminishes respect for the policy of the legislation nor so high as to be seen as a way to untaxed riches.

70. In all the circumstances, the Tribunal considers that an award for injury to feelings of £6,000 compensates the Claimant for his loss and it makes an award in this sum. No further sums are claimed by the Claimant.

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Employment Judge de Silva KC

Date: 31/1/2023

Sent to the parties on: 9/2/2023

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For the Tribunal Office

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