EMPLOYMENT TRIBUNALS

Claimant: Mr M Griffiths

Respondent: B A Shorthouse Limited

FINAL HEARING

Heard at: Birmingham

On: 3 to 5 & (deliberations in private) 6 June 2024

Before: Employment Judge Camp
Mr I Morrison
Mr T Liburd

Appearances
For the Claimant: Mr T Sheppard, counsel
For the Respondent: Miss M McGee, counsel

RESERVED JUDGMENT

The Claimant's entire claim, which consists of complaints of detriment for making protected disclosures and a complaint that he was unfairly dismissed because he made protected disclosures, fails and is dismissed.

REASONS

Introduction & background

1. The Respondent is a skip hire and haulage company. The Claimant was one of its lorry drivers. He mainly drove a so called 'ro-ro' lorry, which is a particular type of skip lorry. He was employed from September 2021 until his resignation with effect on 3 March 2023.

2. The claim form was presented on 14 February 2023 following early conciliation from 7 December 2022 to 17 January 2023. The claim has been distilled and clarified since then. As put forward and pursued at this final hearing, it is purely a 'whistleblowing' claim, consisting of complaints that the Claimant was automatically unfairly constructively dismissed pursuant to section 103A of the Employment Rights Act 1996 ("ERA") and was, in accordance with ERA section 47B, subjected to detriments on the ground that he made protected disclosures, in emails of 15 and 23 September 2022.

3. For convenience sake, we shall refer to these two emails as the first PID email and the second PID email, even though our ultimate decision is that in neither of them did the Claimant make a protected disclosure.

4. At the relevant time – broadly August 2022 to February 2023 – there was one other skip lorry driver called Ross. The Respondent also had three other drivers, who were tipper lorry drivers and who worked from a different part of the Respondent's premises from the Claimant and Ross. The Claimant and Ross drove from what is being referred to as the "yard". This was the main part of the Respondent's premises, which are in Bridgnorth. In the yard, there are, amongst other things, skips and what are known as bins, which are the large skip-like containers that are taken on the back of the ro-ro lorry the Claimant drove. The Claimant occasionally drove other lorries as well for the Respondent.

5. In the yard, there was a two-storey portacabin (or two portacabins, one stacked on top of the other). The ground floor was a rest-room-come-canteen area with toilet facilities attached. The first floor was the Respondent's offices. Two people worked in the office day to day. They were Angela Walford, who was the Respondent's company secretary and – with her business and romantic partner, Mark Shorthouse – part owner. She effectively ran the admin side of the business. Working with her in the office was Donna McCrossan. She doesn't seem to have had a job title other than "office staff". She dealt with, amongst other things, invoicing, bookkeeping, answering calls and payroll.

6. Meaning no discourtesy to either of them, we shall refer to them as Angela and Donna, consistent with how they were referred to during this hearing. Angela was the line manager of all staff, including the Claimant.

7. There were two men employed to work in the yard as yard operatives: Jack and Kris.

8. The Claimant's case evolved somewhat during this hearing, and has ended up being to the effect that most of the detriments to which the Claimant was subjected were inflicted by Ross, Kris, and Jack, but that Angela was directly responsible for some and was indirectly responsible for the detriments inflicted by Jack, Ross and Kris because she permitted them to take place and was ultimately responsible for all staff. It also seems to be being suggested, at least to some extent, that she deliberately omitted to take any steps to stop other staff from subjecting the Claimant to detriments. Nevertheless, the claim that is before the Tribunal is about the particular things that were allegedly done to the Claimant, rather than about any alleged deliberate omission to stop people from doing those things to the Claimant.

Issues

9. Near the start of this final hearing, the parties confirmed that the issues were broadly as set out in the written record of the preliminary hearing that took place on 21 July 2023 before Employment Judge Choudry (to which we refer), with some small amendments. In particular, it was confirmed that the alleged detriments were those labelled (a) to (j) on the third page of the written record of that preliminary hearing, together with, in addition, a detriment consisting of "*failure to pay the*

Claimant's pension contributions" between October 2022 and the Claimant's resignation.

The law

10. There does not appear to be much if any controversy about the law we have to apply. Both sides' counsel prepared written closing submissions and both sets of submissions contain a legal summary, which we adopt: paragraphs 8 to 22 of Mr Sheppard's submissions (for the Claimant) and paragraphs 3 to 7 of Miss McGee's submissions (for the Respondent).

11. One of the two main issues that have in practice arisen for us is: did the first and/or the second PID emails contain one or more qualifying disclosures, in accordance with ERA section 43B? If they did, then the Claimant made protected disclosures, because they were both sent to the Respondent, the Claimant's employer.

12. For there to be a qualifying disclosure, there must be:

    12.1 a disclosure of information by the Claimant;

    12.2 the Claimant must believe when making the disclosure that it tends to show at least one of the things set out in subsections (a) to (f) of ERA section 43B(1). In the present case, the focus has been on subsection (b) – "*that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject*" – and subsection (d) – "*that the health or safety of any individual has been, is being or is likely to be endangered*";

    12.3 the Claimant must also when making the disclosure believe that it is made in the public interest;

    12.4 those beliefs of the Claimant must be objectively reasonable.

13. The main reason for our decision, below, that no relevant qualifying and protected disclosures were made is that we do not think the Claimant believed, still less believed reasonably, that the disclosures of information he was making in the first and second PID emails were made in the public interest. On that issue, the legal authority we have found most helpful is **Chesterton Global Limited v Nurmohamed** [2018] ICR 731, CA.

14. The other issue on which our overall decision is mainly based is the question of whether detriments to which the Claimant was subjected were done "*on the grounds that*" the claimant made a protected disclosure, in accordance with ERA section 43B, taking into account ERA section 48(2). On that issue, we have taken particular account of: **NHS Manchester v Fecitt** [2011] EWCA Civ 1190; and **Ibekwe v Sussex Partnership NHS Foundation Trust** [2014] UKEAT 0072_14_2011, in which HH Judge Peter Clark endorsed an Employment Tribunal's statement of the law relating to the burden of proof under ERA section 48(2) along these lines: where, following the making of a protected disclosure, the claimant is subjected to a detriment and there is no substantial evidence explaining the reason why the employee was subjected to that detriment, the claimant does not win by default; there remains an evidential burden on the

claimant to establish a causal link between the making of the protected disclosure and the detriment.

15. We also note, in relation to whether or not something constitutes a detriment, **St Helens MBC v Derbyshire** [2007] UKHL 16, in light of which we understand the position to be as follows:

    15.1 the test is an objective one – would a reasonable employee, in the Claimant's position, consider the treatment to be to his detriment?

    15.2 another way of putting the same objective test is to ask: did the Claimant honestly and reasonably believe the treatment to be to his detriment?

The facts

16. The bulk of this decision will consist of us, first, analysing the two PID emails and deciding whether or not either of them contains any qualifying disclosures. We shall then go through the alleged detriments one by one, making necessary findings of fact along the way in terms of what happened, but with a particular focus on whether there was a causal link between any detriment and either of the emails that are alleged to be or to contain protected disclosures.

17. The evidence before us consisted of written and oral witness evidence from the Claimant, from Angela and from Donna. In addition, there was a 550 page file or 'bundle' of documents (including its index). In the usual way, it was impossible in the time available for us to read all of the documents in the bundle. Apart from Tribunal documentation – in particular the claim form details of claim, the written record of the preliminary hearing we have referred to already, and a set of further and better particulars produced by the Claimant in the run-up to that preliminary hearing, it is safe to assume only that we have read those documents to which we were referred in the witness statements and/or to which we were taken during the hearing.

18. There are agreed cast list and chronology documents, attached to these Reasons (from page 25) and to which we refer. Between them, they provide a more than adequate outline of the basic facts.

19. The key events took place between 14 and 26 September 2022.

20. On 14 September 2022, the Claimant was, unusually for him, driving a tipper truck. It was normally driven by someone called Colin, but he was away. It was a Scania vehicle and on 14 September 2022, the Claimant was tasked with driving the vehicle for its routine six weekly inspection by the Scania mechanics at their Telford premises. He had, though, a few deliveries to do on the way there. He duly did those deliveries and took the vehicle to Scania. He was driven back to the Respondent's premises by Angela.

21. The vehicle was inspected by Scania between 14 and 15 September 2022. Angela drove the Claimant back to Scania on the morning of the 15th and dropped him off. It turned out there was a problem with the vehicle. The Claimant phoned Angela and she returned to Scania's premises as the vehicle needed some repairs. What ended up happening was that those repairs were done by the

Respondent at its own premises. The Claimant did not drive the vehicle back to the Respondent's premises. Instead, he was driven back by Angela and the vehicle was driven by a Scania manager from their premises to the Respondent's premises.

22. The Claimant took the rest of 15 September 2022 off and was given the whole of the 16th off. On 15 September 2022, he emailed Angela and it is this email that is relied on as the first protected disclosure (or as containing the first protected disclosures): the first PID email.

23. The Claimant was in the Territorial Army (TA) and from 19 to 23 September 2022 was off work on a TA course. Emails were exchanged between the Claimant and Angela between 15 and 23 September 2022. These included, on 23 September 2022, the second email relied on by the Claimant as containing qualifying disclosures: the second PID email.

24. The Respondent's lorries, including in particular the lorry the Claimant drove on 14 September 2022, have so called 'defect books'. It is the legal duty of every driver to inspect their vehicle before they start driving it in the morning and to note whether or not there are defects and if there are defects to record them. On 14 to 15 September 2023, the Claimant had noted that the vehicle had some defects (or what he considered to be defects) and he also noted that Colin had not been filling out the defect book properly. There is reference to this in the PID emails.

25. The Claimant's case is that everything changed from his return to work on 26 September 2022 onwards. There is a list of detrimental treatment to which he alleges he was subject, which we have already referred to.

26. Matters seem somewhat to have come to a head on 21 November 2022, when there was some sort of altercation between the Claimant and Ross. Ross complained about the Claimant to Angela and Angela formally notified the Claimant that a complaint had been made against him and that there would be an investigation. The Claimant, with assistance from a trade union representative, then prepared a grievance in which he raised some of the matters which have been raised in these proceedings. Although the grievance letter is dated 26 November 2022, it was not in fact submitted to the Respondent until 5 December 2022.

27. In the meantime, the Claimant had complained to the police about one of the things in his grievance and in his claim: that some of the materials in one of the skips, namely tailors dummies or mannequins, had been dressed in what looked like army uniforms (possibly from a World War re-enactment occasion that happened locally) and one of them had been stabbed with screwdrivers and other tools; and there was also some fake blood, from what we understand. These dressed up and, as it were, accessorised tailors dummies have been referred to in these proceedings as 'effigies' and there is a picture of them at page 87 of the bundle. The police immediately decided that no crime had been committed, but they did email the Respondent over the weekend of 3 and 4 December 2022, so Angela was aware of the issue before 5 December 2022.

28. The Claimant went off sick in the afternoon of Tuesday, 6 December 2022. He remained off sick until his resignation. On the 6th, according to the Claimant, a

number of things had happened. In no particular order: when inspecting his vehicle before starting his driving for the day, he noticed that one of the tyres was flat and he believes that it had been let down deliberately; somebody put up a hand-painted sign, which the Claimant describes as a "*billboard*", saying something like "don't sound your horn" and colleagues were then apparently sounding their horns continuously for a short period. The Claimant took this to be directed at him, in response to his grievance, because there had apparently been an incident on or around 10 October 2022 where he had complained to Ross about Ross sounding his horn unnecessarily when he went into the yard.

29. On 6 and 7 December 2022, there was an exchange of emails between Angela and the Claimant in which Angela acknowledged receipt of the Claimant's grievance and asked the Claimant to accept that she would conduct the grievance meeting, to which the Claimant replied stating that she couldn't conduct the grievance meeting because the grievance concerned her and "*your company*". The Claimant's email went on to ask Angela to appoint an independent individual to deal with the grievance, inviting them to contact his trade union representative, and stating "*this has been noted and all appropriate forms have been sent to ACAS for a completion within three months minus one day starting from 06/12/2022.*"

30. The ACAS early conciliation of process was in fact started on 7 December 2022 and the early conciliation certificate was issued on 17 January 2023. (No point has been taken by the Respondent about the fact that the early conciliation process finished well before the Claimant's resignation, nor about the fact that the Claimant has been, or was, pursuing a number of allegations that do not appear in the claim form in circumstances where the Claimant hasn't been given permission to amend). There was a grievance investigation conducted by an HR company called Triangle HR, which involved Nikki Hall of Triangle HR interviewing most of the Respondent's staff, including the Claimant, Angela, Donna, Ross, Kris and Jack. There was a grievance outcome, upholding the grievance in part, and an appeal outcome, but all of that post-dated the Claimant's resignation and no complaint in respect of anything that post-dates the resignation is being pursued.

31. The Claimant resigned by an email on 17 February 2023, giving two weeks' notice expiring on 3 March 2023. The explanation given for the resignation in the email is: "*You will be aware of my reasons for leaving my employment as detailed in my grievance letter. In addition to this today, I have received a letter to advise that you have not been paying my pension contributions since October last year. I have also not received payslips during my employment.*" The resignation came three days after the Claimant had presented his claim form.

32. The reference in the Claimant's resignation email to pension contributions not having been paid is correct. The Respondent concedes that it did not pay the Claimant's pension contributions from October 2022. The Respondent's case is that no one's pension contributions were paid from October 2022, due to an oversight by Angela. The Respondent notes that from late 2022 until early 2023, Angela was preoccupied with her terminally ill father, who sadly died in February 2023.

The PID emails

33. We agree with the submissions made on the Claimant's behalf that it is necessary to examine the PID emails in their proper context. That context is the events of 14 and 15 September 2022.

34. Different accounts have been given by the Claimant at different times as to what happened on 14 September 2022. The account given in his oral witness evidence at this hearing, however, was that he had no problems with the vehicle during the morning and in fact no issues at all until he was delivering his third load. He was going down a hill and it didn't feel right, but after he got to the bottom of the hill, it felt fine again. He was still getting used to the vehicle and he wasn't sure whether what he had experienced going down the hill, in particular that the brake didn't 'sit right', was a real problem or was just him not being used to the vehicle. The limit of his concern at that point in time was that there might be a problem, but he wasn't sure. As the vehicle was going into Scania for its routine six week check anyway, he asked them, when he arrived there to drop off the vehicle, if they would have a look at the brakes. From the way he described it in his oral evidence, it sounded to us as if it was almost an aside. In any event, looking at the brakes would necessarily be part of the six weekly check. In accordance with his oral evidence, there was nothing remarkable or noteworthy about what happened on 14 September 2022, nor about what he said to Scania on that date.

35. By way of contrast with his oral evidence, the way the Claimant put matters in his witness statement gave the impression that there definitely was a problem on 14 September 2022, albeit not at that stage a particularly major one: "*Whilst I was driving the vehicle I noticed that the brakes felt a little funny but having regularly driven various vehicles, I am aware that sometimes brakes can feel different on different vehicles. My foot felt too flat on the brake. Initially I thought this was just a case of getting used to driving a different vehicle but as the day carried on, this did not ease*".

36. There is a striking difference between the Claimant's oral evidence and what he wrote in the first PID email. "*I strongly feel upset and concerned in being in a difficult position to drive a faulty vehicle. Driving to Waresley yesterday I felt I was going to crash or come off the road after passing Shatterford towards Kidderminster, hence why I personally spoke to Scania about the brakes. As I was braking downhill my foot was flat and firm on the pedal and I felt scared and at one point I thought I was going to crash.*"

37. We note two things about that. The first is that what he wrote in the first PID email was a significantly exaggerated account of what had happened on 14 September 2022, contradicted even by the Claimant's own evidence, both orally and in writing. The second thing we note is that, in the context, the point in time at which the Claimant refers to "*being in a difficult position to drive a faulty vehicle*" in the first PID email (and we note he doesn't use the phrase 'put in a difficult position' but simply "*being in a difficult position*") is on that date and not 15 September 2022.

38. We also note that if it were the case that on the 14th the Claimant had been seriously concerned about the vehicle's brakes to anything like the extent he suggests in his first PID email, he would have raised it with Angela in those terms

on the day, and it would have been a big issue on that date. He suggested in his oral evidence (something not previously suggested by him, and which we are not satisfied is accurate) that he had mentioned to her when he got into the car on the 14th that he had asked Scania to look at the brakes, but even he does not suggest that he raised a serious concern about the brakes on that day with her or with anyone else. If he had done that, she would undoubtedly have remembered; and it would have been a major part of his case all along.

39. The vehicle was evidently tested and inspected on 14 September 2022. Even if we did not have an inspection sheet with that date on it, or if we accepted the allegations the Claimant seems to be making about that inspection sheet's authenticity, we note that the Claimant arrived at Scania in Telford around 7.30 am on 15 September 2022. It is highly unlikely that the vehicle would have been tested and inspected on that day before then. Someone – a mechanic, we think – initially spoke to the Claimant about the vehicle on the 15th, but we do not know whether that someone was the same individual who did the inspection and testing the previous day; and therefore whether that individual had first-hand knowledge of what he was telling the Claimant.

40. There was clearly some confusion about what the Claimant was told by the mechanic on the 15th. We know this because (as the Claimant himself confirmed in his oral evidence), when he spoke to Angela on that day by phone, he told her that he had been told by a mechanic that it had failed its MOT. The vehicle was not in for an MOT and the mechanic would surely have known that, so the Claimant must be mistaken about that at least. We do, however, accept the Claimant was shown various defects in the vehicle by the mechanic, including in particular that one of the eight brakes on the vehicle had failed and was leaking hydraulic fluid.

41. We can see from the inspection sheet dated 14 September 2022 that one of the brakes was inoperative. We have been asked to find on the basis of that evidence that the vehicle was not roadworthy and was "VOR'd" (VOR = vehicle off road). In the absence of expert evidence on the point, we decline that invitation. We note the Claimant himself gave evidence that if it had been VOR'd, this would explicitly be stated on the inspection sheet. More significantly, the vehicle was driven back by a manager from Scania that same day, so that the repairs that were necessary for the vehicle to be used safely on the road when laden could be undertaken. We think it is highly unlikely that they would have done that if they thought it was so unsafe that it needed to be VOR'd. We accept the Respondent's evidence that what Scania told Angela on the 15th was that the vehicle was fine to be driven from Telford back to Bridgnorth unloaded, but needed to be repaired and was not safe to be driven with a 32 tonne load.

42. It is reasonably clear that the Claimant believed the vehicle had been VOR'd on 15 September 2022. If he hadn't believed that, he would not have telephoned Angela to tell her so. He had no incentive to lie to her about this at that stage. So far as concerns what the Claimant was actually told on the 15th by the mechanic, there are a number of possibilities. They include that he had made an assumption that it had been VOR'd because one of the brakes had failed, in the same way that he seems to have made an assumption that it had failed a (non-existent) MOT.

43. We heard evidence about the contents of the conversation between Angela and the Claimant on the 15th when he phoned her to tell her there was a problem with the vehicle. We accept her evidence that she was given contradictory and confusing information by the Claimant. We have already noted that he had told her it had failed an MOT when it hadn't in fact had an MOT. He initially said all the brakes had failed, before saying in fact only one brake had failed. He also said it had been VOR'd, which subsequently turned out not to be the case.

44. Angela accepts that she was abrupt with the Claimant over the phone in this conversation. This was mostly because she was – understandably, given that the vehicle had passed its MOT only five or six weeks earlier – annoyed about the situation rather than because she was annoyed with the Claimant, although him giving her contradictory and confusing information may also have irritated her to some extent. She returned to Scania Telford to see what the situation was and to pick up the Claimant if the vehicle had indeed been VOR'd. When she got there, she apologised to him for the way she had spoken to him. In his oral evidence, he said something to the effect that he had accepted her apology and considered the matter closed at that point. However, we don't think that was actually the case. From the phone conversation onwards, if not before, the Claimant was overanxious about the situation and in particular seems to have convinced himself that Angela was very angry with him indeed. That feeling and that belief affected his perception of events from then onwards.

45. What happened next is, taking into account the parties' differing perspectives, largely common ground. Angela wanted to find out for herself what the true situation was. Particularly given that the Claimant had provided her with confusing, contradictory and – to her certain knowledge – at least partially inaccurate information (i.e. about the MOT), she did not want the Claimant involved, 'hovering in the background' and (as she put it in oral oral evidence) 'butting in'. In our view, that was understandable and entirely reasonable. The Claimant did not take the hint, so she was in the end forced to be fairly firm with him when asking him not to accompany her to speak to Scania staff. This seems to have added to the Claimant's perception that he was in trouble.

46. It turned out that the vehicle had not been VOR'd and that it could be driven back. A member of Scania staff called Katie was sent to tell the Claimant that it was safe to drive back, but he made it clear to Katie that he was uncomfortable driving IT back. In particular, he said he would not drive it unless Scania provided him with some sort of pass certificate. We are not entirely sure what it was the Claimant meant or wanted, but if it was a piece of paper saying that all of the brakes were functioning properly, that was clearly not something Scania could provide, given that one of the brakes was inoperative. Scania offered to drive the vehicle back if the Claimant wasn't happy to do so. In those circumstances, Angela accepted their offer. At no stage did Angela ask him to drive back or put him under pressure to do so. Moreover, she had told the Claimant that she would not let him drive a faulty vehicle and that she had no problem at all with what he had done.

47. In his witness statement at paragraph 26, the Claimant states, "*I was completely shocked that it was expected that I would drive the vehicle once I had been told it was VOR'd*." That is not true. As the Claimant himself conceded during cross-

examination, no one was expecting him to drive the vehicle on 15 September 2022 if he didn't want to.

48. Nevertheless, the Claimant seems genuinely to have felt himself to be under pressure to drive the vehicle, but it was not pressure put on him by the Respondent. In addition, he thought – wrongly – that Angela was angry at him because he wouldn't drive the vehicle. This is probably why later, as we shall explain shortly, he was at such pains to say that he had never refused to drive the vehicle. The reality was that he had refused to drive the vehicle, but we don't think Angela had any problem with this. Why would she, given that Scania were driving it back for her? Again, though, the Claimant's beliefs about what Angela thought and felt affected his own perceptions of reality. It is human nature that we tend to perceive what we expect to see. For example, the Claimant suggests that Angela shouted at him to get in the car. We think it more likely that she simply called out to him to do so, because he was some distance away from her and that because he thought she was cross with him, he perceived it as her angrily shouting at him.

49. We can see just how overanxious the Claimant was at this time by how he behaved during the journey home. The first thing he said when he got in the car was that he was going home and that he didn't need to be paid for working that day. This was out of the blue and not in response to any criticism of him from Angela. He described a "*tense*" atmosphere in the car, but he doesn't say that she said anything negative towards him at all. On the contrary, he accepts she told him (again) that she didn't have a problem with what he had done that day. He also accepts that during the drive home, he asked her several times to stop the car and let him out. He said he was "*so frustrated*" and he "*wanted to be on his own*". This was 12 miles from home, when they were travelling along a major country road. He was proposing to walk back home and/or call a taxi or a friend to give him a lift. This was an extreme and disproportionate reaction to what had occurred, even on the Claimant's own version of events.

50. When they got back to Bridgnorth (the Respondent's premises), there is broad agreement that what happened was as set out in the Claimant's witness statement: "*As I got out of the car, she asked me if I would be working the following day and she would need to know by 2pm.*" During cross-examination, Angela explained the reason she wanted to know by 2pm was that she might need a driver the following day and so would need to make arrangements for an alternative driver if the Claimant wasn't going to be available. The Claimant in his statement continues: "*I told her that I would be working and she told me not to give her an immediate answer. I felt as though she did not want me to work.*"

51. We note two things about that. The first is that it shows Angela's concern for the Claimant, in that the reason she said what she said was that the Claimant's behaviour and him saying he was going to go home showed that he was upset and stressed and she wanted him to take the day off, for his benefit. Secondly, the Claimant had – on the basis of nothing that was objectively of any substance – jumped to the conclusion that Angela did not want him to be employed by the Respondent. The phrase "*she did not want me to work*" is by itself ambiguous, but that the Claimant didn't just mean he thought that she didn't want him to work on the 16th, but that she didn't want him to work for the Respondent at all, is confirmed by something he wrote in an email that he sent her on the 16th: "*I really*

enjoy my job and value everyone I work with and would still like to be employed." Angela had said and done nothing that would cause the Claimant reasonably to think she wanted him out of the job completely.

52. A further insight into the Claimant's mindset on the 15th is provided by the fact that when he got out of Angela's car at the end of the journey (from Angela's witness statement), "*he … proceeded to place £10.00 in my middle consulate* [sic]*. I asked what it was for and he said "I would have to pay for a taxi to get back".*" Angela goes on to say this was, "*very strange as I take and collect my drivers from the garage all the time and have never once asked them to pay me to do so as they are carrying out company duties.*"

53. That is the context within which the alleged protected disclosures were made.

54. We turn, then, to the first PID email. It was sent relatively early in the morning of 15 September 2022, at a time when the Claimant was evidently still upset and anxious. We shall now go through it bit by bit, analysing what information was disclosed in it.

> *… I strongly feel upset and concerned and being in a difficult position to drive a faulty vehicle. Driving to Waverley yesterday I felt I was going to crash or come off the road after passing Shatterford towards Kidderminster, hence why I personally spoke to Scania about the brakes. As I was braking downhill, my foot was flat and firm on the pedal and I felt scared and at one point I thought I was going to crash. …*

55. Breaking that down, based on findings we have already made, what the Claimant meant by "*driving a faulty vehicle*" was that he had to drive a vehicle that turned out to be faulty when it was inspected by Scania on 14 September 2022. That was, of course, information that Angela already had. It would not have come as a surprise or as a concern to her. Everyone agrees it was faulty. Even the Claimant is not suggesting the Respondent knew it was faulty, in the sense of having any serious faults, before it was inspected.

56. "*I felt I was going to crash*" – that is simply untrue. The Claimant confirmed in his oral evidence what he actually thought on the 14th, namely that there might be a fault with the vehicle; and there might not. Insofar as the Claimant is suggesting that when he emailed about how he (supposedly) felt he was going to crash, he was making a disclosure of information that he believed tended to show a health and safety danger[1], and reasonably so, we don't accept that. As he was knowingly giving false information, he can't genuinely have believed any such thing.

57. The fact that that part of the first PID email did not contain such a disclosure of information is not by itself particularly important. This is because there <u>was</u> information in the two PID emails which did, in the Claimant's reasonable belief, tend to show a health and safety danger, namely the fact that he had been driving a fully laden lorry on 14 September 2020 with a non-functioning brake. The importance of it is that it poses the question: why would the Claimant provide

[1] We are using "*a health and safety danger*" (and similar phrases) as shorthand for "*that the health or safety of any individual has been, is being or is likely to be endangered*" in accordance with ERA section 43B(1)(d).

information in this email that he knew to be untrue? The answer to that question is relevant to whether the Claimant believed that he was making disclosures in the public interest.

58. There is an absence of any evidence as to what the Claimant felt about the public interest when he was writing either PID email. We do not know what was going on in his own mind, even according to him. It was not part of his evidence in chief, in his witness statement; and he was not asked about it in cross-examination. This was presumably a deliberate – and legitimate – tactic by Respondent's counsel, who would not have wanted to help the Claimant fill a hole in his evidence. We can therefore only speculate as to what his subjective motivation was when he was writing either of these PID emails.

59. Speculating as best we can, the only plausible reason we can come up with for why the Claimant would provide false information in the first PID email is that he believed his job was at risk, that he was writing this email in order – from his point of view – to justify his actions on the morning of the 15th and to protect his own position. We do not think that any broader, public interest entered into his head.

60. Continuing to go through the first PID email:

    60.1 "*I didn't feel confident enough to drive even after the second inspection*" – that is not a disclosure of information about anything relevant other than the Claimant's state of mind;

    60.2 "*I have a duty of care to myself and other road users*" – it is trite to say that the Claimant had a duty of care. A declaration that a duty of care exists is not information that tends to show anything that might constitute a protected disclosure; and nobody could reasonably believe that it did;

    60.3 "*I would like to think Colin has reported similar defects like myself yesterday that Scania have been able to detect*" – Angela conceded during cross-examination that the Claimant was implying by this that Colin hadn't recorded defects in the defects book as he should have done. She also accepted that Colin not doing that would potentially be a breach of a legal obligation[2]. We therefore accept that in this email, the Claimant disclosed information which he genuinely and reasonably believed tended to show breach of a legal obligation. The more important question is: why was the Claimant writing that? Particularly given the absence of evidence from the Claimant to the effect that he believed he was making that disclosure in the public interest, but in any event, we think the reason he was writing this was his perception that the Respondent was blaming him for something, and he was trying to deflect blame from himself onto Colin. We are, again, not satisfied that he had any thoughts about the public interest;

    60.4 "*Having spoken to a Scania mechanic, he clearly said brakes failed (VOR) and unroadworthy especially the near side second wheel*" – potentially, that showed that the vehicle had been in a dangerous state (unbeknownst to anyone at the time) on the 14th. But once again, if we ask ourselves, "why

[2] "*breach of a legal obligation*" is shorthand for "*that a person has failed, is failing or isl likely to fail to comply with any legal obligation to which he is subject*" in ERA section 43B(1)(b).

is he writing this?", we give the same answer: he believed he was being criticised for not driving the vehicle back from Scania and that his job was potentially at risk because of this; and he was explaining himself in an attempt to – as he saw it – shore up his own position.

61. In summary and in conclusion, when he sent the first PID email the Claimant was not making any protected disclosures because we are not satisfied that the Claimant, at the time he sent it, believed to any extent that he was doing so in the public interest, let alone reasonably so.

62. We move on to the second PID email. This was sent on 23 September 2022, over a week after the first PID email, but before the Claimant returned to work after the 15th. It was his first opportunity to put in writing the things that he had apparently wanted to discuss at a meeting. On 16 September 2022, the Claimant had emailed Angela asking to meet with her or speak with her, "*If I can I would like to sort this out this morning face to face or over the phone.*" Angela had responded stating, "*I do not feel that a meeting would be productive at the moment … If you feel you have any concerns then could you please email me and I will look at them next week while you are off work.*" The Claimant confirmed in his evidence that the second PID email was a direct response to that, and that he was taking it as an opportunity to raise in writing the things that he had wanted to discuss with Angela on the 16th. The second PID email therefore tells us what those things were.

63. In his oral evidence, the Claimant suggested that he had wanted to talk about alleged health and safety incidents earlier in the year. We don't accept that was the case, because he did not in the second PID email mention anything other than the events of 14 and 15 September 2022.

64. The second PID email begins: "*I was really keen to meet with you on Friday to discuss and iron out any points and have a happy meaningful discussion moving forward. Having read your email, I'm not sure what to expect going forward when I come back to work on Monday.*" This shows that the Claimant still thought on 23 September 2022 that the Respondent, and more specifically Angela, considered he had done something seriously wrong and that there would be adverse consequences for him arising out of events of 14 to 15 September 2022 on his return to work. The Claimant believed this notwithstanding Angela telling him on the 15th that there wasn't a problem and her stating to him in an email of the 16th, "*as clarified by myself during the journey back to Bridgnorth we do not have any issue with the events of yesterday*" and her writing to him in an email of 20 September 2022, "*I stated at the time we had no issue with this and have further clarified this in my previous email to you. I hope you can now accept that everything regarding this matter is ok from our point of view and hope the matter can now be drawn to a close.*"

65. The parties' differing perspectives are clearly set out in these emails. From the Respondent's point of view, the matter was closed. From the Claimant's point of view, it wasn't. Bearing in mind where the Claimant was coming from, he made clear at the start of the second PID email what his motivation was for writing it: to justify his own actions, in order to ward off a (in reality non-existent) threat to his job.

66. Looking at the substance of what was disclosed in the second PID email that was potentially part of a qualifying / protected disclosure, the first bit of information was a repetition by the Claimant of his mistaken belief that the vehicle had been VOR'd on 15 September 2022. This was information that could tend to show a health and safety danger – specifically that the Claimant's own health and safety had been at risk on the 14th. To an extent, the notion that it had been at risk is undermined by what follows in the second PID email: "*Before you arrived at the garage, I had a further discussion with the mechanic about any major impacts of me driving it back to Bridgnorth. On the basis from his advice I felt confident to drive back as he said "he would if it was him"… Just to clarify, at no point I mentioned to anyone I wasn't going to drive or refuse to take the vehicle back to Bridgnorth. You assumed otherwise and quickly demanded I got into your car.*"

67. What the Claimant was suggesting here was that he was perfectly willing to drive the vehicle back to Bridgnorth and the reason he didn't was that Angela assumed he was unwilling to do so and "*demanded I got into* [her] *car*" to drive him home. That was untrue. It was untrue on the basis of the Claimant's own evidence in these proceedings. It is contradicted by – amongst other things – what he himself had written only eight days earlier, in the first PID email: "*As a professional driver, I didn't feel comfortable enough to drive even after the second inspection.*"

68. This – once again – begs the question, why was the Claimant writing something he knew wasn't true? And once again, our answer is: self-exculpation; he thought he was being criticised for not driving the vehicle home and he wanted to suggest that he was happy to do that, and that he was only prevented from doing that by Angela's assumption.

69. The second PID email continues: "*Regard the clarity for all BA Shorthouse drivers is to ensure they are filling out their defect books correctly and recording any defects they find to the best of their ability. All I'm merely pointing out is making sure we are all inputting the information for defects that can be repaired swiftly. On this case, Colin had not put any defect on his book, very low adblue, no screenwash and vehicle was not loaded*" [sic]. This is the same disclosure about a potential breach of a legal obligation (and, conceivably, risk to health and safety) that was made in the first PID email, but made more explicit.

70. We note, in passing as it were, that the specific 'defects' mentioned in this part of the email would not in fact be classed as defects at all and would not need to be recorded in the defects book.

71. Speculating, as we cannot avoid doing, as to the reasons why the Claimant wanted to raise this concern with the Respondent a second time, given the context, the likely ones do not include him thinking to any significant extent that he was making it in the public interest. Yet again, the most likely explanation for him doing so was to deflect supposed criticism of his actions by Angela / the Respondent. In particular, from what the Claimant wrote later in the second PID email – "*No one should … be put into positions of taking risks. Let's say had took the vehicle back to Bridgnorth …*" – the Claimant was still suggesting, inaccurately, that he had been expected to drive the vehicle back and that the Respondent had a problem with him not doing so.

72. The Claimant then in the email invented a hypothetical scenario where he drove the vehicle back "*and the brakes failed for instance either I killed or injured a family in car. It's me who would be in front of the judge in court, it is me who loses his licence. The employer would have some responsibility, but you can replace me and carry on, my kids would be the ones who would suffer visiting me in prison.*" This was not disclosure of information about anything constituting a qualifying disclosure. It was just an example of catastrophic thinking. Somewhat ironically, in the same email, the Claimant had suggested that it was the Respondent rather than he himself who had "*blown* [things] *way out of proportion*".

73. In conclusion, as with the first PID email, the second PID email did not contain qualifying / protected disclosures. Insofar as the Claimant disclosed information that he reasonably believed tended to show breach of a legal obligation and/or danger to health and safety, we are not satisfied that he believed, let alone reasonably believed, that doing so was in the public interest. It follows that all of the Claimant's complaints fail.

The reason for the detriments

74. We shall now, for the sake of completeness, look at the remaining issues as if we had found that the two PID emails contained qualifying / protected disclosures.

75. There is some factual dispute that arises in terms of the alleged detriments, which we shall attempt to resolve to the extent that we can. The central question we are asking ourselves, though, is (making full allowance for how ERA section 48(2) affects the burden of proof): are we satisfied that the reason for any detriments to which the Claimant was subjected was, to a material – i.e. more than trivial – extent, that he disclosed the information contained in the PID emails?

76. In a case of this kind, it is instructive to take a step back and to ask ourselves: do these particular disclosures provide a plausible basis for those accused of subjecting the Claimant to detriments for making them to want to 'do him down'? Protected disclosures come in all shapes and sizes. It is not necessarily the case – not remotely – that whenever anyone discloses information that tends to show one of the things listed in subsections (a) to (f) of ERA section 43B(1), this makes it likely that someone will want to persecute them, let alone that someone might want to subject them to the particular detriments with which the case is concerned.

77. In our experience, if whistleblowers are persecuted, it is almost always for one of two reasons: *either*

    77.1 they have caused some inconvenience or embarrassment or something of that kind by blowing the whistle and the person subjecting them to detriment is punishing them and/or making an example of them, perhaps with a view to making their working life a misery and persuading them to leave, and/or to discourage other potential whistleblowers; *or*

    77.2 they have blown the whistle to a certain level and the person subjecting them to detriment is doing so by way of threat, with a view to dissuading them from blowing the whistle again and/or to other people such as senior managers within a company or the regulatory authorities, and/or (depending on the circumstances) undermining their credibility so that if they do raise

their concerns with a regulator or similar, their concerns are less likely to be taken seriously.

78. The person who the Claimant paints as the principal 'villain of the piece', as it were, is Angela. We start, then, by asking ourselves: why would she – plausibly – want to punish the Claimant for writing these emails? Even if the Claimant were right – and he isn't – that she was annoyed about him being unwilling to drive the vehicles back on 15 September 2022, if that were the reason for subsequent mistreatment, the claim would fail. It would fail because if she was annoyed with the Claimant about this, she was annoyed before she received either PID email and that annoyance was generated by the fact of the Claimant not driving the vehicle back rather than by any disclosure of information.

79. There are broadly three issues raised in the PID emails that are potentially relevant disclosures: the fact that a faulty vehicle was on the road on 14 September 2022; the false allegation that the Respondent wanted the Claimant to drive the vehicle back in an unsafe state and put him under pressure to do so; and the undisputed fact that Colin had not recorded defects in the defect book.

80. The first of those things was no secret, nor was it in any way an inconvenient or embarrassing truth that the Respondent wanted covered up. All that happened was that the vehicle went in for its six-weekly inspection and turned out to have a defect. The Claimant has not alleged in these proceedings that someone at the Respondent knew the brake was faulty before this was reported to Angela on 15 September 2022.

81. In relation to the second of those things, it is, as we have already made clear, simply untrue (as the Claimant tacitly conceded in his own oral evidence) that the Respondent was expecting or asking the Claimant to drive a vehicle back in an unsafe state or was putting him under pressure to do so.

82. The third of those things relates to a failure by a single named individual – Colin - and was immediately addressed, without any fuss. What Angela did was speak to the drivers on or shortly after 26 September 2022 to remind them of the need to record things in the defect books. She did this in an entirely appropriate way, by speaking to the tipper drivers en masse and then speaking individually to Ross. She did so without naming the Claimant, and we don't see how the other drivers or the two yard operatives would have known or worked out that the Claimant wasn't also spoken to. She did not name the Claimant, and she did not particularly take anyone to task, as we understand it. It was simply a reminder of something that they needed to do; it was not, in other words, a 'big deal'.

83. The Claimant was not making any threats to the Respondent. He wrote nothing suggesting it was something he was wanting or thinking about taking further by, for example, reporting the Respondent to a regulator or anything of that kind.

84. In short, the PID emails did not and would not have caused Angela any difficulty or inconvenience or embarrassment, nor would they have been a source of any concern to her or to the Respondent. It is highly improbable, in those circumstances, that they would have motivated her, consciously or unconsciously, to want to punish the Claimant.

85. The Claimant's broad case, as presented at this hearing, is that the PID emails caused Angela concerns because they showed him to be, in her mind, a health and safety 'busybody'. There is no substantial basis in the evidence for that allegation. As far as we can tell, it comes purely from the Claimant's imagination.

86. If Angela had wanted to do the Claimant down, he had significantly less than two years' service with the Respondent. This was a small company, without elaborate disciplinary and grievance procedures, and we have no doubt that if she had been annoyed with the Claimant because of the contents of the PID emails, she could and would very easily simply have dismissed him well before he resigned.

87. So far as concerns the possible motivations of other staff, the individuals accused of subjecting the Claimant to detriments are Ross, Kris and Jack. The latter two admitted to being the individuals responsible for the mannequins and another alleged detriment, where a pretend plastic gravestone and a pair of wellies were left in a kind of tableau. As best we can tell, none of the tipper drivers, Colin included, were or were alleged to have been involved. Certainly, we are not satisfied that they were involved.

88. The evidence suggests that the only people who ever saw the emails themselves were Angela, Donna and Mark Shorthouse. We have no good reason to think that any of those three individuals told anyone else about the substantive contents of the emails. We struggle to see why they would have or might have done so.

89. In order for the claim to succeed, we therefore need to create a plausible scenario in which the substantive contents of the PID emails were communicated to Ross, Kris and/or Jack so as to cause them to want to get at the Claimant.

90. We bear in mind that the individual who had been identified by the Claimant as not having filled in his defect book was Colin. As a tipper-truck driver, he did not work in the yard with Ross, Kris or Jack, nor is it alleged that he was part of the 'banter culture' that evidently existed in the yard, nor, as we have already said, is it alleged that he was responsible for any of the alleged detriments.

91. During the hearing, the Claimant's case developed so that the main basis for his argument that there was causation between the detriments he was allegedly subjected to by Ross, Kris and Jack and the PID emails was that they would been able to work out that it was the Claimant who had caused drivers to be be reminded of their obligation to record things in the defect books and that this set them against the Claimant.

92. We think it is only Colin who would have been at all likely to work out that it was the Claimant who was responsible for the other drivers being reminded by Angela to complete their defect books. The drivers were reminded more than a week after 15 September 2022 and on a day when the Claimant was working. There is nothing in the evidence to support a finding that they would have known the Claimant was not also spoken to. The reason why Colin might have been in a different position from the others is that Colin would know he had not filled out his defect book and he would presumably also know that the Claimant had recently used his vehicle and potentially seen that Colin had not filled out his defect book.

93. Even in relation to Colin, we are not satisfied on the balance of probabilities that he knew or strongly suspected the Claimant was responsible for Angela reminding drivers of their obligations in relation to defects. We note that, based on what he told Nicky Hall during the grievance investigation, Colin didn't even know there had been any incident involving the Claimant on 15 September 2022, as he was not around that day. We had no witness evidence from Colin, but there is no particular reason to doubt the truth of what he told Nicky Hall in this respect.

94. In order for anyone other than Colin to be likely to have found out or worked out that the Claimant was responsible for drivers being reminded of their duty to complete defect books, Colin would have to have told them. There is no evidence that he did that and we think it unlikely that he did. We note it is not suggested that he was taken to task for not completing the defect book, and he himself took no detrimental action against the Claimant, he did not work with the Claimant, and the evidence does not suggest that he had anything against the Claimant at all at any stage. Why would he tell three people – Ross, Kris, and Jack – who he didn't routinely work with about his own mistake of not filling out the defect book?

95. We therefore find that Kris, Jack and Ross did not know that the Claimant had disclosed the information he disclosed in the PID emails, in that they did not see the emails, they were not told about their substantive contents, and they did not know and had no reason to suspect that it was the Claimant who was responsible for Ross and the other drivers being reminded of their obligations. Moreover, we have no good reason to think that Ross would have had any problem with Angela reminding him to complete his defect book; nor that Kris and Jack, who were not drivers, would even have known that the drivers had been spoken to.

96. It follows that the reason for any detriment the Claimant was subjected to after 15 September 2022 by Kris, Jack and/or Ross was not and cannot have been the Claimant making the disclosures of information relied on as protected disclosures, because they were completely unaware of them.

97. We also accept the submission by the Respondent to the effect that even if the reason for mistreatment was colleagues thinking the Claimant might in some way be responsible for them (or, in the case of Kris and Jack, others) being reminded of the need to complete defect books, this would not mean that, as a matter of law, the reason for mistreatment was the making of the disclosures. Knowing that someone has said or possibly written something which results in you being reminded to do something you are legally required to do is a world away from knowing the substantive contents of whatever it is that that someone said or wrote. It is equally far away from the reason for that mistreatment being the substantive contents of the disclosures.

The detriments

98. The alleged detriments can broadly be split into two categories: something definitely happened, and the primary question is why did it happen; allegations in relation to which there is a real question as to whether anything of any significance occurred at all.

99. Chronologically, the first alleged detriment is, "*The refusal by management to meet with the Claimant*".

100. There is no dispute as to what happened, and we have set out the relevant email exchange, in paragraph 62 above. The reason Angela thought it would not be productive for her and the Claimant to meet was that the Claimant had just, the previous day, gone home in a state and she had given him the day off, on full pay, so the Claimant could clear his head. She thought it would be helpful for the Claimant just to focus on his TA course that he was going on the following week and she hoped he would return to work on 26 September 2022, after the course, refreshed and that there would be no further difficulties.

101. The allegation that she didn't want to meet with the Claimant because he had raised protected disclosures in the first PID email makes no sense. It makes no sense because she explicitly suggested that he raise his concerns in writing. If she was worried about the Claimant raising things in writing, and it is a central plank of the Claimant's case that she was, the last thing she would be doing would be encouraging him to do precisely that. An informal meeting with the Claimant, as he seemed to want, would be much better were she wanting to 'hush things up', as the Claimant seems to be alleging.

102. The chronologically next alleged detriment is "*The Claimant's colleagues refusing to speak to him*".

103. This allegation principally relates to Angela. We think this is an instance of the Claimant's behaviour towards others, and his perception of how they were towards him, being affected by his own state of mind and in particular by his expectation of mistreatment when he returned to work on 26 September 2022. Even the Claimant is not, in fact, alleging that colleagues refused to speak to him. Instead, his true case, as revealed during this hearing, is that he perceived that colleagues generally and particularly Angela spoke with him less than they had formerly done. If there was a change in the extent of verbal communication between the Claimant and others after 15 September 2022, we are not satisfied that this was down to anything Angela and the Claimant's colleagues did, still less that it had anything to do with his disclosures. This detriment is not made out on the facts. Any change in the way in which the Claimant and his colleagues, including Angela, interacted with each other was not because of the information disclosed in the PID emails.

104. There is a complaint of detriment about, "*The effigies made by the Claimant's colleagues in relation to the gravestone and mannequin*".

105. At page 86 of the bundle, there is a picture of the plastic gravestone and wellies as they appeared on 17 October 2022. We are not satisfied that they were put there to get at the Claimant. They were arranged in a tableau in the run up to Halloween for Halloween. The fact that the gravestone and wellies appeared a couple of weeks before Halloween does not make it unlikely that they were genuine Halloween 'decorations', as the Claimant has been suggesting. Halloween has changed from being a single day to almost being a 'season', like Christmas and it is commonplace to see just that kind of thing in people's front gardens from mid-October. They were not a detriment to which the Claimant was subjected, in that they were not aimed and him and it was unreasonable for him to consider them to be to his detriment; and the reason they were put there was nothing to do with the PID emails or their contents.

106. So far as concerns the mannequins, it is possible that they were directed towards the Claimant, given that colleagues were aware he was in the Territorial Army, something he made no secret of. We do, though, note, that Ross also had a military background. If they were directed towards the Claimant, it was most likely a joke taken too far and may have reflected certain colleagues' – Jack and Kris – possible dislike of the Claimant. As to why colleagues might have disliked the Claimant, not even the Claimant himself could explain this, but given the findings we have already made, it was not, directly or indirectly, the PID emails or their contents.

107. We would add it is highly improbable that the mannequins were meant as a threat to the Claimant, let alone to his family (as he seems now to be alleging). He did not take any action to remove them or to report them to anyone until after he was told that he was facing a possible disciplinary investigation about what had happened on 21 November 2022. In addition, we accept Angela's evidence that she did not know about the mannequins until the Respondent was emailed by the police on 3 or 4 December 2022, following the Claimant's complaint to the police. Having heard her evidence about the layout of the yard, the whereabouts of the skip where the mannequins were and her movements generally, we do not agree with the Claimant that she must have seen the mannequins. We think the Claimant gives that evidence because the mannequins have assumed an enormous significance in his own mind, in circumstances where others would not find them particularly remarkable.

108. The Claimant makes a complaint of detriment about his "*colleagues swerving his vehicle*". This relates to the incident between the Claimant and Ross on 21 November 2022, and is about Ross's alleged conduct. That incident caused Ross to make a complaint against the Claimant and, clearly, Ross's version of events is different from the Claimant's. This is a further thing the Claimant did not raise with the Respondent until after he was notified of the possibility of disciplinary action and of the fact that the individual whose complaint had led to that possibility was Ross.

109. The Claimant suggests in his statement, at paragraph 61, that he was reprimanded in the letter of 22 November 2022 from Angela notifying him that a complaint had been made. This is inaccurate The letter is a straightforward, neutral and unobjectionable one telling him about an allegation that had been made against him and that it would be investigated.

110. It is quite impossible for us to get to the bottom of precisely what occurred on 21 November 2022. The evidence about this the Claimant has given to this Tribunal is inevitably coloured by his subjective perceptions and expectations at the time, and by the fact that he has brought a Tribunal claim about it. Whatever happened, there is nothing of substance to support his suggestion that it had something to do with his disclosures.

111. A complaint is made about the "*removal of air from the Claimant's tyres*". This concerns events of 6 December 2022 (see paragraph 28 above). We are not satisfied that anyone did anything to the Claimant's tyres or tyre. If someone did let down his tyres, or one of them, it was not because of protected disclosures that they knew nothing about and that did not concern them.

112. A complaint is made about, "*A toy gun being placed in the restroom*". This is a complaint about a Nerf gun which was left on its side in the restroom. We have seen a picture of it *in situ*. It was in the communal staff restroom used by a number of people. We can see no objective basis for the Claimant's belief that it was placed facing the door as a threat to him personally. It was not a detriment to the Claimant because it was unreasonable for him to consider it as such (to the extent that he did), no one put it there to get at the Claimant, and it was not put there because of anything to do with any disclosures of information by the Claimant.

113. Another complaint is about, "*Items being thrown at the Claimant's vehicle*".

114. In light of the Claimant's own oral evidence, what actually occurred was not people throwing items at the Claimant's vehicle but, instead, one or two individuals mucking around in the yard with items from skips. For example, Kris tended to knock golf balls into the back of the Claimant's vehicle using a golf club. There was also one instance of someone throwing a cricket ball and it landing close to the Claimant. We are not satisfied that anyone was trying to get at the Claimant; they were simply clowning around. The reason they were clowning around was because, we assume, they enjoyed doing that kind of thing for its own sake. It certainly had nothing to do with the PID emails and/or their contents.

115. In the list of issues, there is a complaint about, "*The continued intimidation by the Claimant's colleagues*". We are not entirely sure what this is about if it is about something other than the specific things we have already dealt with, but we assume it concerns other things mentioned in evidence.

116. One of those things is about, on or around 5 or 6 December 2022, someone having put a sign on the weighbridge stating "*overweight*" or "*you are overweight*". We genuinely do not understand why the Claimant thinks this was directed at him. We can see no basis for him to think that, still less for him to think that it had something to do with his alleged protected disclosures.

117. The other thing this "*continued intimidation*" complaint might be about is about the sign that appeared around 6 December 2022 saying something to the effect that drivers shouldn't beep their horns and the fact that drivers did beep their horns, all together, that day. As mentioned above, the Claimant's case is that this was a direct response to him lodging his grievance. The Claimant is almost certainly mistaken about this, for a number of reasons, not the least of which is that he didn't mention anything about people beeping their horns in his grievance. We think the sign and people beeping their horns was most likely a 'dig' at Ross, who was apparently in the habit of sounding his horn excessively. Once again, we can't see why the Claimant thinks it was a dig at him, and we are very far from satisfied that it was.

118. There is a complaint about, "*The isolation of the Claimant due to smoking in communal areas*". The Claimant's own evidence is that people smoking in communal areas (and in vehicles) was something that occurred throughout his employment. When this was put to him, he sought to suggest that it had got worse after 15 September 2022, but we are not satisfied that was actually the case for a number of reasons, including the fact that he alleged it got worse after that date for the first time during oral evidence at this hearing. The Claimant also suggested at one stage during his oral evidence that there were multiple incidents of

colleagues deliberately filling up the restroom with smoke such that he would be met by a wall of smoke when he opened the door, but it subsequently became clear that there was a single incident where this allegedly happened, which may or may not have been after 15 September 2022. There is nothing in the evidence to link the three individuals accused of being responsible for this alleged detriment (Ross, Kris and Jack) to the making of disclosures in the PID emails.

119. The Claimant's penultimate complaint is about, "*The way the Claimant's grievance was dealt with*". We remain rather unsure about precisely what the Claimant was alleging here and we reminded counsel of the need to put the Claimant's case, so that everyone knew precisely what it was. The first thing that was put to Angela was a criticism of her for proposing to deal with the grievance herself, in her email to the Claimant of 6 December 2022. It was suggested to her that the reason she had done this was to ensure that there were no adverse findings against her and the Respondents. If this was so – and we don't think it was – the 'reason for the treatment' would not be the making of protected disclosures. We also note that it was not put to her that the reason she had proposed dealing with it by herself was because of the alleged protected disclosures. We accept her evidence that she simply made a mistake when she proposed this, because the Respondent is a small company without a dedicated HR function and she lacks specialist HR training and knowledge.

120. The second suggestion that seems to be being made here is that there was undue delay in appointing Triangle HR and that that delay was deliberate. That allegation was not contained in the further and better particulars, nor in the claim form, nor even in the Claimant's witness statement. It is questionable whether there was any complaint to that effect before the Tribunal. Be that as it may, there are a number of reasons why, even if such a complaint were properly before the Tribunal (and if protected disclosures had been made), it would fail. First, we do not accept that there was undue delay. Angela did not receive the email from the Claimant saying that she ought to appoint an independent individual until the evening of 7 December 2022. At the time, she was preoccupied with her terminally ill father and was mostly out of the office. There was also Christmas, where the Respondent's operation shut down for a week or two. In any event, what would Angela have to gain by delaying Triangle HR's appointment by a couple of weeks? There would have been no reason for her to react to the alleged protected disclosures by waiting a couple of weeks to appoint an independent investigator to this grievance. We also note that the Claimant complains, in relation to the period after Triangle HR was appointed, January / February 2023, that they proceeded with undue haste. It seems to us that the Claimant is trying to have it both ways.

121. The third suggestion made in relation to this starts with a criticism of the way in which Triangle HR proceeded and in particular an allegation that they insufficiently took into account the fact that the Claimant was unwell. He is also criticising them for the way in which questions were asked of him by them during the grievance process and he, in addition, says he feels they were biased against him. The factual basis of the allegation that all this was connected to the disclosures is opaque. Insofar as we can understand what it is, it seems to be that, in some unspecified way and at some unspecified time, Angela influenced Triangle HR to

behave in a particular way. There is literally no evidential basis for that allegation and we are entirely satisfied that she did not do this.

122. The last detriment complaint is about the "*Failure to pay the claimant's pension contributions*". This is a wholly unmeritorious allegation. The Claimant is in no position to dispute the Respondent's witnesses' evidence that no pension contributions were made for any staff who had opted into the pension scheme due to a mistake by Angela. It was not even put to Donna that she was not telling the truth in the evidence she gave to the effect that her pension contributions were not paid either. Plainly, this was not something directed at the Claimant, let alone directed at him because of his two innocuous PID emails of September 2022.

Time limits

123. Because all of the detriment complaints have failed on their merits, it is unnecessary for us to look at time limits. We do, however, note that as freestanding complaints, a number of the detriment complaints were out of time, i.e. brought outside of the primary time limit in ERA section 48(3) of 3 months plus any extension for early conciliation. (The only way they might have been presented within the primary time limit would have been if complaints about things that happened later had succeeded and if we had found that they were part of a "*series of similar acts or failures*"). There is no substantial evidential basis for us to find that it was "*not reasonably practicable*" for the Claimant to present these out of time complaints in time.

Dismissal

124. Finally, there is the complaint that the Claimant was constructively dismissed and that the principal reason for dismissal was that he made protected disclosures.

125. This complaint necessarily fails on the basis of our above finding that no protected disclosures were made. In addition, we have found that none of the things the Claimant relies as forming part of an alleged course of conduct calculated or likely to destroy or seriously to damage the relationship of trust and confidence between employer and employee had anything to do with disclosures of the information contained in the PID letters.

126. In any event, we are not satisfied that the Claimant was constructively dismissed as a matter of law. There are only two things which in our view could be part of a breach of trust and confidence. They are what happened with the mannequins and the non-payment of pension contributions. The mannequins were in place from late October 2022 and the Claimant did nothing about them until December 2022. We don't think they would in and of themselves have breached trust and confidence, but insofar as they did, we think that breach had been affirmed by the time the Claimant resigned.

127. So far as concerns the pension contributions, the Claimant has not disclosed the letter which he received apparently telling him they hadn't been paid, but we accept that non-payment of pension contributions would be a breach of contract, albeit not, in the particular circumstances of this case, a fundamental one; and we accept that it would be capable of being a final straw as a matter of law (see **Omilaju v Waltham Forest London Borough Council** [2005] EWCA Civ 1493

and **Kaur v Leeds Teaching Hospitals NHS Trust** [2018] EWCA Civ 978 at paragraphs 39 to 46). We are not satisfied that even taking the mannequins and pension contributions together as one, there was an un-affirmed breach of trust and confidence on 17 February 2023 for the Claimant to 'accept' by resigning.

128. Moreover, the principal reason for the things the Claimant was resigning in response to – what the Claimant said in his grievance letter, non payment of pension contributions and the Claimant not receiving payslips – was not disclosures of information made in the PID letters.

Summary & conclusion

129. All of the Claimant's complaints fail because:

129.1 the two emails relied on as protected disclosures do not contain any qualifying disclosures;

129.2 the reason for the alleged detriments to which the Claimant was subjected and for the things he resigned in response to was not him making any disclosures of information in those emails.

Employment Judge Camp

23rd August 2024

IN THE MIDLANDS WEST EMPLOYMENT TRIBUNAL

BETWEEN:

MARK GRIFFITHS

Claimant

-and-

B A SHORTHOUSE LIMITED

Respondent

CAST LIST

Name	Job Title
Witnesses	
Mark Griffiths	Driver
Donna McCrossan	Office Staff
Angela Walford	Director and Company Secretary – C's line manager
Parties who are referenced but are not witnesses	
Jack Brennan	Yard Operative
Ross Gale	Driver
Kris Heath	Yard Operative
Mark Shorthouse	Director

IN THE MIDLANDS WEST EMPLOYMENT TRIBUNAL

BETWEEN:

MARK GRIFFITHS

Claimant

-and-

B A SHORTHOUSE LIMITED

Respondent

CHRONOLOGY

Date	Event
27 September 2021	Mark Griffiths commenced employment with B A Shorthouse Limited.
August 2022	The Claimant alleges that Ross Gale came into the yard beeping his horn at MG.
14 September 2022	The Claimant is asked by the Respondent to deliver a vehicle to Scania for service.
15 September 2022	The Claimant attends Scania to collect the vehicle with Angela Walford. The Claimant alleges that he was told that the vehicle was not safe to drive. The Claimant emails AW regarding the events of the day [93] The Claimant alleges this is their first protected disclosure.
16 September 2022	MG requested a meeting with AW, but he was informed by AW that a face to face meeting would not be productive for either party.
23 September 2022	The Claimant alleges that he made his second protected disclosure by way of an email to AW [104] Document “detailed brake test results” is produced [196]
26 September 2022	MG returned to work.
10 October 2022	. RG texted MG “I am not impressed… enjoy your course”.
17 October 2022	A mock gravestone was placed against the skip within the yard and a pair of boots were placed next to the gravestone to look as though someone was lying underneath the skip.
18 October 2022	The Claimant alleges that he approached DM to discuss how he was feeling.

22 October 2022	Two mannequins were dressed in army uniform and placed in the a skip. One of the mannequins had weapons placed in its chest.
Between 17 October 2002 to 21 November 2022	C alleges that RH would swerve his vehicle towards MG and on one occasion he hit MG's wing mirror
2 November 2022	A bra and scarf were added to the mannequins. A toy gun was placed in the restroom facing towards the door.
21 November 2022	A wooden box was placed on the weighbridge, the box stated "overweight". Incident between RG and MG begins and RG raises complaint against MG.
22 November 2022	MG is advised of the complaint.
29 November 2022	The mannequin was removed and replaced with a toy military land rover.
3 December 2022	MG reported the mannequin to the police. Police contacted AW via email.
4 December 2022	MG issues grievance
6 December 2022	MG notices his tyre is flat.
Between 26 September 2022 to 6 December 2022	MG's alleges colleagues would throw golf balls, cricket balls or stones at his truck when he left the yard.
6 January 2023	The Respondent Company appointed an HR Company (Triangle HR) to deal with the grievance. MG provided a sick note.
7 January 2023	MG was contacted by Triangle HR and was invited to attend a grievance hearing on 16 January 2023. MG was required to confirm his attendance by 11 January 2023.
9 January 2023	MG confirmed receipt of letter, he confirmed he has forwarded to his union rep.
12 January 2023	Triangle HR contacted MG to confirm if he will be attending the hearing.
13 January 2023	A further reminder was sent by Triangle HR to MG regarding if he will be attending the hearing.
15 January 2023	MG responded to the email stating that he believed the emails to be from a solicitor and his union rep advised he would deal with it.
19 January 2023	First Grievance hearing adjourned.
23 January 2023	MG raised further grievance in relation to his treatment during the grievance and matters pertaining to first grievance.
27 January 2023	Second Grievance hearing took place with MG's union rep.
20 February 2023	MG resigned [154]
3 March 2023	MG final day of employment.
7 March 2023	Grievance Outcome

14 March 2023	Grievance Appeal Letter
28 March 2023	Appeal meeting was held.
9 January 2024	RG contacts Claimant.