



EMPLOYMENT TRIBUNALS

London South Employment Tribunal

11, 12, 13, 15, 18, 19 November 2024 (video)

Claimant: Peter McCullen

Respondent: University of Brighton

Before: Judge M Aspinall (sitting as an Employment Judge)
Mr S Sheath
Mr C Williams

Appearances: Mr P McCullen in person
Mr P Sangha, Counsel for Respondent

Judgment

On the claims presented, the Tribunal concludes that the complaints of whistleblowing detriment, automatic unfair dismissal, constructive unfair dismissal, and wrongful dismissal **are not well founded**. The respondent's conduct **did not amount to any breach of contract or breach of statutory employment rights** entitling the claimant to resign or to claim compensation. **All claims are dismissed** in their entirety.

Reasons

Background

1. The claimant was employed by the respondent university as a senior lecturer from 1991 until his resignation on 28th April 2022. For a period towards the end of his employment, he held the role of Deputy Head of School and had responsibilities related to quality assurance and examinations. He reverted to his role as a senior lecturer shortly before resigning.
2. The claimant initially worked under Professor Aidan Berry as Head of the Business School. When Professor Berry retired in 2015, Professor Toni Hilton was appointed as the new Head of School. Evidence indicated there were differences in management approach between Professor Berry and Professor Hilton.
3. In the summer of 2020, the Covid-19 pandemic impacted the university's end of year examinations. The claimant played a lead role for the Business School in implementing a 'no detriment' policy to ensure students were not disadvantaged. In August 2020, issues emerged with incorrect degree classifications for some students. The claimant asserted he faced excessive workload pressures during this period.
4. The university initiated an internal audit process in 2021 to review what occurred with the 2020 exam boards. The claimant provided input to this audit. He subsequently sought access to the internal audit report but was told this was only for the Board of Governors. The claimant obtained the report through a Freedom of Information request in January 2022.
5. On 20th January 2022, the claimant emailed concerns about the internal audit report to the University Vice Chancellor. He argued it presented an inaccurate view of what happened with the 2020 exam boards. The Vice Chancellor replied advising him to discuss the issues with certain individuals.

6. In November 2020, the claimant commenced a period of sick leave, returning in April 2021. The respondent was aware he was receiving medical treatment but limited details were provided about his health condition. From June to December 2021, the claimant raised a formal grievance regarding alleged unreasonable management by Professor Hilton. This went through stage 1 and stage 2 of the respondent's grievance procedure.
7. In February 2022, the claimant appealed against the stage 2 grievance outcome. The Secretary to the Board of Governors refused to progress this to a stage 3 appeal. On 28th April 2022 the claimant resigned his employment. In July 2022, he presented claims to the Employment Tribunal including unfair constructive dismissal. A full merits hearing took place in November 2022.

The complaints to the Tribunal

8. The claimant presented several complaints to the Employment Tribunal following his resignation on 28th April 2022.
9. He made a complaint of unfair constructive dismissal. The claimant argued the respondent's conduct amounted to a fundamental breach of the implied term of trust and confidence, entitling him to resign and claim constructive dismissal.
10. The claimant asserted the respondent had failed to properly delegate annual leave arrangements when Professor Hilton was absent. He alleged Professor Hilton unreasonably delegated excessive work to him during the 2020 exam period without adequate support.
11. The claimant contended Professor Hilton used him as a 'scapegoat' for extensive issues with the 2020 exam boards. He argued the university inappropriately removed him from chairing certain exam boards.
12. Further, the claimant complained about a lack of feedback when he applied unsuccessfully for the Associate Dean role. He also alleged the respondent failed to properly investigate his grievance at stage 1 and stage 2.
13. In addition, the claimant presented a claim of automatic unfair dismissal on the grounds of making protected disclosures. He argued the refusal to progress his grievance to stage 3 amounted to detrimental treatment for whistleblowing.
14. The claimant also advanced a complaint of wrongful dismissal, arguing the respondent failed to provide him with the appropriate contractual notice when his employment ended.
15. In the claimant's view, this conduct cumulatively destroyed trust and confidence, justifying his resignation. He contended the respondent therefore constructively and wrongfully dismissed him and subjected him to detriments for making protected disclosures.

Issues for determination by the Tribunal

16. The issues to be determined by the Tribunal were clearly set out in the Case Management Order made by Employment Judge Corrigan in September 2024 following a preliminary hearing. At the outset of the full merits hearing, the parties confirmed that these remained the issues to be decided by the Tribunal.
17. In summary, they are:
 - a) What is the time limit for bringing the whistleblowing detriment claim? The Tribunal must decide whether it was reasonably practicable for the claim to be brought within 3 months plus any ACAS early conciliation extension. If it was not reasonably practicable, the Tribunal must determine if the claim was brought within a reasonable period thereafter.

- b) Did the claimant make one or more qualifying disclosures that merit protection under whistleblowing law? The Tribunal needs to determine what exactly the claimant disclosed, to whom, when he did so, and whether he reasonably believed at the time that the disclosures were made in the public interest and tended to show a failure to comply with a legal obligation.
- c) If the claimant did make a protected disclosure, was he subjected to any detriment by the respondent for making that disclosure? Specifically, did the refusal to allow a stage 3 grievance appeal amount to detrimental treatment because of whistleblowing?
- d) What compensation should be awarded if the claimant suffered financial losses or injury to feelings as a result of detrimental treatment for whistleblowing?
- e) Was the claimant dismissed by the respondent or did he resign? This will determine whether he has a potential claim for unfair dismissal.
- f) Did the respondent's conduct amount to a fundamental breach of the implied term of trust and confidence such that the claimant was entitled to resign?
- g) If there was such a breach, did the claimant resign in response to it? Had he affirmed the contract after the breach but before resigning?
- h) If the Tribunal finds the claimant was dismissed, what was the reason or principal reason for the dismissal? Was it a potentially fair reason? Did the respondent act reasonably in treating it as sufficient reason for dismissal?
- i) Was the principal reason for any dismissal of the claimant that he had made a protected disclosure? If so, his dismissal will be automatically unfair.
- j) What compensation should be awarded if the claimant has suffered financial losses due to an unfair dismissal?
- k) Was the claimant constructively dismissed without notice pay in breach of his contract? If so, how much notice pay should he receive?

The hearing before the Tribunal

- 18. The claimant represented himself at the hearing. The respondent was represented by counsel, Mr P Sangha.
- 19. At the start of the hearing, the Tribunal confirmed with the parties that the issues set out in Employment Judge Corrigan's Case Management Order remained the issues to be determined. No changes were made to the issues at the hearing.
- 20. The claimant provided a witness statement which formed part of his evidence before the Tribunal. He was also cross-examined by counsel for the respondent.
- 21. The respondent relied on the witness statement of Professor Toni Hilton, who was Head of the Business School during the period relevant to the claims. Professor Hilton gave evidence and was cross-examined by, and for, the claimant.
- 22. In addition, the Tribunal considered the witness statement of Professor Aidan Berry, the previous Head of School, who also gave brief evidence at the hearing.
- 23. The respondent provided a bundle of documents which both parties referred to during examination of the witnesses. The bundle contained extensive email correspondence, meeting minutes, policies, the claimant's grievance documents, and other materials relevant to the issues in dispute.

24. At the conclusion of the evidence, both parties provided closing submissions summarising their positions on the legal issues and evidence presented at the hearing.
25. The Tribunal then retired to consider the parties' submissions along with the witness and documentary evidence to which we had been referred. The Tribunal aim to provide a reserved written judgment within 28 days setting out the background facts, legal issues, conclusions and reasons on each element of the claims.

The evidence

26. The Tribunal was provided with an extensive hearing bundle containing documents which were relied upon by the parties. This included:
 - a) Email correspondence between the claimant, Professor Hilton, and other university staff during the periods relevant to the issues in dispute. This related to matters such as the 2020 exam boards, the claimant's grievance, his communications regarding the internal audit, and his resignation.
 - b) Minutes and notes from key meetings attended by the claimant, Professor Hilton and others. These covered meetings about the 2020 exam boards, grievance investigation meetings, and senior management group meetings.
 - c) The claimant's detailed 'Review of Internal Audit Report' provided to the Vice Chancellor on 20th January 2022 along with extensive supporting documents.
 - d) The respondent's internal audit report dated July 2021 reviewing the 2020 exam board issues.
 - e) The claimant's grievance documents including his formal grievance letter, interview notes, investigation report, and his grounds of appeal.
 - f) The respondent's policies and procedures, including the grievance policy, whistleblowing policy, and relevant HR policies.
 - g) The claimant's medical records documenting his health issues and treatment during the periods of sick leave.
 - h) The claimant's schedule of loss and other documents relating to his resignation and alleged losses.
 - i) Sections of the respondent's 'GEAR' regulations regarding the conduct of exam boards and related quality assurance processes.
27. The claimant provided a witness statement and gave oral evidence at the hearing. In examination, he expanded upon his statement and was cross-examined by counsel for the respondent.
28. The Tribunal heard evidence from Professor Toni Hilton, who was Head of the Business School during the periods relevant to the claims. Professor Hilton's witness statement was considered, and she was cross-examined extensively by the claimant.
29. In addition, the Tribunal briefly heard oral evidence from Professor Aidan Berry. Professor Berry was the prior Head of School before Professor Hilton took over the role. His witness statement provided background context.
30. Through their oral testimony, the Tribunal was able to assess the credibility and clarity of recollection of the claimant, Professor Hilton and Professor Berry regarding events during the claimant's employment. Where their evidence conflicted, the Tribunal weighed the

competing accounts carefully in reaching conclusions.

The law

31. There were several areas of legislation and statutory provisions the Tribunal was required to consider in determining the issues in this case. Both parties referred to, or cited, legislative provisions or caselaw precedents. We considered all of those submissions, even where we have not expressly referred to them herein.

Whistleblowing

32. Regarding the whistleblowing complaints, the relevant law included section 47B of the Employment Rights Act 1996 which defines a qualifying disclosure as follows:

(1) In this Part a “qualifying disclosure” means any disclosure of information which, in the reasonable belief of the worker making the disclosure, tends to show one or more of the following—

(a) that a criminal offence has been committed, is being committed or is likely to be committed,

(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,

(c) that a miscarriage of justice has occurred, is occurring or is likely to occur,

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

(e) that the environment has been, is being or is likely to be damaged, or

(f) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.

33. Section 47B also sets out that a qualifying disclosure is a 'protected disclosure' if made in the public interest.

34. Under Section 48 of the Employment Rights Act 1996, workers have the right not to be subjected to any detriment by their employer for making a protected disclosure.

Constructive Unfair Dismissal

35. Regarding the constructive unfair dismissal claim, the key legal principles include that to claim constructive dismissal, there must be conduct by the employer which amounts to a fundamental breach of the implied term of trust and confidence in the contract of employment (as established in *Malik v BCCI* [1997] ICR 606).

36. The breach must be sufficiently serious to justify the employee resigning in response.

37. Under sections 95(1) and 98(4) of the Employment Rights Act 1996, an employee is entitled to treat themselves as constructively dismissed if the employer is in repudiatory breach of the contract.

38. Where the alleged fundamental breach relies on a series of acts by the employer, the 'last straw doctrine' may apply, whereby the final act must contribute something to the breach, even if minor (*Omilaju v Waltham Forest London Borough Council* [2005] ICR 481).

39. An employee cannot resurrect an earlier repudiatory breach that has been affirmed, but a further act following affirmation may entitle the employee to terminate if it forms part of a continuing breach (*Western Excavating v Sharp* [1978] ICR 221).

40. There is a high threshold for establishing a breach of trust and confidence sufficient to justify resignation, especially where the employee is on garden leave (RDF Media Group Plc & Anor v Clements [2007] EWHC 2892 (QB)).
41. In considering cumulative breaches, the focus should be on whether the conduct viewed as a whole amounted to a repudiatory breach, not the nature or reasonableness of individual acts (Kaur v Leeds Teaching Hospitals NHS Trust [2019] ICR 79).

Wrongful Dismissal

42. The provisions regarding wrongful dismissal and notice pay include sections 95(1) and 88 of the Employment Rights Act 1996 which enable employees to claim notice pay where the contract has been terminated without proper notice.

Findings in relation to the issues

Time limits

43. The first issue the Tribunal was required to determine was whether the claimant's whistleblowing detriment complaint was brought within the applicable time limit set out in section 48 of the Employment Rights Act 1996.
44. Under section 48(1) of the Employment Rights Act 1996, a complaint of detriment related to a protected disclosure must be brought within three months of the date of the act complained of.
45. Under section 48(2), if the act complained of was part of a series of similar acts, the complaint must be brought within three months of the last act in that series.
46. Under section 48(3), a complaint brought outside the three-month limit can nevertheless be considered by the Tribunal if the Tribunal is satisfied that it was not reasonably practicable for the complaint to be brought within that time limit, but was brought within such further period as the Tribunal considers reasonable.
47. The claimant's employment ended on 28 April 2022 when he resigned. The claimant presented his claim form to the Tribunal on 22 July 2022. The period of early conciliation took place between 18 May 2022 and 7 June 2022.
48. Therefore, any complaints about detriments that took place prior to 19 February 2022 would be out of time unless they could be linked to later acts as part of a series of similar acts, or it was not reasonably practicable for the claim to be brought within time.
49. The claimant's whistleblowing complaint related to alleged detriments he said he suffered after sending an email to the Vice-Chancellor on 20 January 2022 alleging deficiencies in an internal audit report.
50. In particular, the claimant stated he was then excluded from meetings, denied access to information and not consulted on key decisions. The key act of detriment he identified was the letter from Mr Wilson on 7 February 2022 refusing to progress his grievance to a stage 3 hearing.
51. As the alleged detriments arose from the claimant's 20 January 2022 email and occurred between then and his resignation on 28 April 2022, they clearly fell within the three month limit in section 48(1) as the claim was lodged on 22 July 2022.
52. The Tribunal therefore concludes that the whistleblowing detriment complaint was brought within the time limit set out in section 48 of the Employment Rights Act 1996.

Protected Disclosure

53. The Tribunal was required to determine whether the claimant made one or more qualifying

disclosures under section 43B of the Employment Rights Act 1996.

54. The claimant argued he made qualifying disclosures by raising concerns about the conduct of the 2020 summer exam boards. The respondent contended the claimant did not make any qualifying disclosures.
55. The relevant facts are that on 20 January 2022, the claimant sent an email to the University's Vice-Chancellor with an attached report summarizing his concerns about deficiencies in the University's internal audit report on the 2020 exam boards.
56. In oral evidence, the claimant acknowledged he did not have in mind any belief of a breach of legal obligation when he sent the email and report. The legal obligations were only identified retrospectively after the respondent requested particulars of the qualifying disclosure.
57. Sections 43B and 43C of the Employment Rights Act 1996 require the claimant to show he disclosed information he reasonably believed tended to show a breach of legal obligation.
58. The claimant's primary concern, as stated in his oral evidence, was that the internal audit report tended to assign blame to him personally. This was a matter in his personal rather than the public interest.
59. Based on the facts and applicable legal provisions, the Tribunal concludes the claimant has not established that he made any qualifying disclosures under whistleblowing legislation. The evidence indicates he did not hold a reasonable belief that the information disclosed in his 20 January 2022 email breached legal obligations at the time it was sent. The legal obligations were only identified after the fact.
60. Therefore, the Tribunal finds the claimant did not make any qualifying disclosures that could constitute protected disclosures under whistleblowing law.

Detriment for Making a Protected Disclosure

61. The next issue the Tribunal considered was whether, if the claimant did make a protected disclosure, he was subjected to any detriment by the respondent because of making that disclosure.
62. Under Section 48 of the Employment Rights Act 1996, workers have the right not to be subjected to any detriment by their employer for making a protected disclosure.
63. There must be a link between the protected disclosure and the detriment - the detriment must be 'on the grounds that' the disclosure was made.
64. The claimant argued the refusal on 7 February 2022 to allow his grievance to proceed to a stage 3 appeal amounted to detrimental treatment resulting from his earlier disclosure on 20 January 2022 regarding the internal audit report.
65. However, the Tribunal has found that the claimant did not make a protected disclosure when he emailed concerns about the internal audit report on 20 January 2022.
66. Therefore, the refusal to allow a stage 3 grievance appeal on 7 February 2022 could not have been detrimental treatment 'on the grounds of' making a protected disclosure, since no protected disclosure was made.
67. Even if the claimant had made a protected disclosure, the Tribunal found no evidence that the 7 February decision was influenced by the claimant's 20 January email. The reasons given for refusing a further appeal related to proper application of the grievance procedure, not any protected disclosure.

68. As the claimant did not make any protected disclosure, he could not have suffered any detriment on grounds of making such a disclosure. The refusal to allow a stage 3 grievance appeal was unrelated to any protected disclosure.

Remedy for Protected Disclosure Detriment

69. The Tribunal has found that the claimant did not make a protected disclosure under whistleblowing legislation. The respondent's refusal to allow the claimant's grievance to proceed to stage 3 was not detrimental treatment arising from any protected disclosure.
70. As no protected disclosure detriment has been established, the claimant is not entitled to any financial remedy in respect of this.
71. The issues of the financial losses caused, steps taken to mitigate loss, the period of compensatable loss, injury to feelings, and reduction for lack of good faith do not require determination. No compensation is payable for protected disclosure detriment where none has been proven.
72. In the absence of a finding that the claimant suffered detriment on the grounds of making a protected disclosure, there is no basis to award him any compensation under whistleblowing legislation. The claimant's claims for financial remedy fail in their entirety.

Unfair dismissal

73. The Tribunal finds that the claimant was not dismissed by the respondent. The evidence indicates the claimant resigned voluntarily by letter dated 28th April 2022. The respondent did not take any action to terminate the claimant's employment.
74. The evidence indicates there were some issues with delegation of responsibilities when Professor Hilton was on annual leave in July/August 2020. However, this was almost two years prior to the claimant's resignation. The Tribunal does not find the respondent's conduct in relation to delegation of duties at that time could amount to a fundamental breach of trust and confidence; it was at most an unfortunate but inconsequential omission by the Head of School. It was too remote from the date of resignation to be causally relevant.
75. The claimant's argument that he was inappropriately designated as the signatory for the mass apology email to students on 31st July 2020 is not accepted. The evidence indicates this role was allocated due to the claimant's involvement with the exam boards and results. It was also given in evidence, and agreed by the claimant, that he had been at the meetings where this was discussed, been asked to act as the signatory and agreed to so do. In any event, at the time he was the Deputy Head of School with responsibility for quality assurance (inter-alia) so it is not outside of his reasonable duties. It does not appear unreasonable or a breach of trust and confidence.
76. The Tribunal is not satisfied the respondent unreasonably delegated excessive work to the claimant or failed to provide adequate support. The claimant was employed in a senior academic role and appears to have taken on responsibilities of his own volition beyond what was delegated to him. There is no evidence the respondent was aware of any struggling with workload or need for greater support until after the event and, in any event, not until it was too late for them to take any steps to improve the situation.
77. The Tribunal finds no objective evidence to support the claimant's contention he was used as a 'scapegoat' for problems with the 2020 exam boards. Responsibility appears to have been collectively shared. The claimant was not singled out, publicly or privately blamed.
78. It is accepted the claimant was removed as chair of the exam board for the resits in around September 2020. However, the Tribunal does not consider this change of role, communicated in advance, could amount to a fundamental breach of trust and confidence. It appears a reasonable managerial decision.

79. The Tribunal finds the respondent reacted appropriately to the mental health concerns raised by the claimant prior to his resignation. The claimant did not clearly communicate the nature or extent of his health condition to those who may have been able to assist him sooner. Once aware, it appears to us that the respondent reasonably facilitated periods of absence and occupational health support.
80. The claimant was turned down for the Associate Dean role in late 2020 but there is no evidence of inadequate feedback. The respondent indicated his scores were lower than other candidates and offered further feedback, which the claimant did not pursue. This does not appear unreasonable or a breach of trust and confidence.
81. The Stage 1 and 2 grievance investigations appeared reasonable and thorough based on the nature of the grievance. The refusal to progress to Stage 3 was based on proper application of the grievance policy regarding escalating new complaints. There was no breach of the implied term.
82. The claimant was not entitled to access the internal audit report as a matter of course, policy or under any applicable rule. Neither was his direct manager – the Head of School. The refusal to voluntarily disclose the report to the claimant was in line with normal policy and does not appear a breach of trust and confidence.
83. The respondent reasonably refused to consider new information relating to the audit report at Stage 3 of the grievance as it was not something raised in his original grievance; directing the claimant to raise this in a fresh complaint as required under the policy. This does not appear unreasonable or a breach of trust and confidence.
84. In summary, having considered each of the allegations individually and cumulatively, the Tribunal concludes that the respondent did not act in a way that was calculated or likely to destroy or seriously damage trust and confidence. The matters complained of largely appear to be reasonable managerial decisions. There were no fundamental breaches of the implied term of trust and confidence entitling the claimant to resign.
85. Given the Tribunal's conclusion that there was no breach of the implied term of trust and confidence, the further issues as to the reason for dismissal, reasonableness and fairness do not require determination. The Tribunal finds the claimant was not constructively dismissed.
86. In conclusion, the claimant resigned of his own accord on 28th April 2022. He was not dismissed or constructively dismissed by any fundamental breaches of contract by the respondent. The claimant's complaint of unfair dismissal therefore fails in its entirety.

Whistleblowing Dismissal

87. The Tribunal must determine whether the reason or principal reason for the claimant's dismissal was that he had made a protected disclosure.
88. The relevant legal principles are that under section 103A of the Employment Rights Act 1996, an employee is regarded as unfairly dismissed if the reason or principal reason for dismissal is that they made a protected disclosure.
89. A protected disclosure is defined in section 43B of the Employment Rights Act 1996 as a disclosure of information that the employee reasonably believes tends to show one of the following matters is either happening now, took place in the past, or is likely to happen in the future:
 - a) a criminal offence;
 - b) the breach of a legal obligation;
 - c) a miscarriage of justice;

- d) a danger to the health and safety of any individual;
 - e) damage to the environment; or
 - f) deliberate concealment of information about any of the above.
90. Additionally, under section 43C the disclosure must be made in the public interest for it to qualify for protection.
91. The Tribunal has carefully considered the factual evidence regarding the reason for the termination of the claimant's employment.
92. The key facts are that the claimant resigned from his employment by letter dated 28th April 2022. The respondent did not actively dismiss the claimant or take steps to terminate his contract. This was the unilateral act of the claimant himself.
93. The Tribunal has found the claimant did not make any protected disclosures that could qualify for whistleblowing protection. His email of 20th January 2022 to the Vice Chancellor did not disclose any reasonable belief in legal breaches and was not shown to be in the public interest.
94. Given that no protected disclosure was made by the claimant, the reason for his resignation cannot have been making such a disclosure. The reason for the end of his employment was the claimant's voluntary choice to resign.
95. The Tribunal concludes that as there was no protected disclosure and the claimant resigned of his own accord, the reason or principal reason for the termination of his employment was categorically not making a protected disclosure.
96. Accordingly, the claimant was not dismissed for whistleblowing. His resignation was entirely unconnected with making any protected disclosure. This complaint therefore fails.

Remedy for Unfair Dismissal

97. The Tribunal must determine the appropriate remedy if the claimant was unfairly dismissed. This requires consideration of any compensatory award and basic award that should be made.
98. The relevant legal principles are that under sections 118-123 of the Employment Rights Act 1996, if the Tribunal finds unfair dismissal it can order the employer to pay a compensatory award based on the employee's financial losses caused by the dismissal.
99. Under section 123(1), the award is subject to a maximum cap based on the employee's weekly pay.
100. Additionally, under section 119 the Tribunal can order payment of a basic award calculated based on the employee's age, length of service and pay, subject to a maximum amount.
101. Having carefully considered all the evidence, the Tribunal concludes the claimant was not unfairly dismissed. The claimant resigned voluntarily by letter dated 28th April 2022. There was no repudiatory breach of his employment contract by the respondent.
102. As no unfair dismissal has been found, there is no basis to order the respondent to pay any compensation for unfair dismissal.
103. The Tribunal concludes the issues of the financial losses caused, the steps taken to mitigate loss, the appropriate compensatable period, the application of the statutory cap, and the level of any basic award, do not arise and do not require determination.
104. In the absence of a finding of unfair dismissal, the claimant is not entitled to any

compensation for unfair dismissal. All financial remedy claims for unfair dismissal therefore fail.

Wrongful Dismissal and Notice Pay

105. The Tribunal considered the claim of wrongful dismissal relating to notice pay under the claimant's contract of employment.
106. The relevant legal principles are that under sections 95(1) and 88 of the Employment Rights Act 1996, if an employee is dismissed in breach of their contract without the correct notice period, the employer will be liable to pay the salary in lieu of notice as damages for the breach of contract. This is subject to the employee's duty to mitigate their losses.
107. However, where an employee resigns voluntarily, giving notice of immediate termination of their contract, the employer will generally not be liable to pay notice pay unless the resignation itself amounted to a constructive dismissal in response to the employer's repudiatory breach of contract.
108. On the facts, the Tribunal finds that the claimant resigned voluntarily by letter dated 28th April 2022 stating he wished the termination to take immediate effect. The claimant accepted his contractual notice period was 3 months.
109. The respondent did not actively dismiss the claimant or terminate his contract. There was no repudiatory breach of contract by the respondent prior to the claimant's resignation. As such, his resignation could not amount to a constructive dismissal.
110. The claimant argues that the respondent failed to 'accept' his resignation until 4th May 2022 in an email from HR. However, his unilateral notice of immediate termination was effective regardless of the respondent's acceptance. The respondent was not required to accept the resignation for it to be valid notice of termination of the contract.
111. Therefore, the Tribunal concludes that as the claimant resigned voluntarily without working his full notice period, there was no wrongful dismissal by the respondent and no outstanding notice pay is owed to the claimant. The claim for wrongful dismissal and notice pay fails in its entirety.

Other relevant findings

112. The Tribunal heard extensive evidence regarding the claimant's involvement in implementing revised assessment arrangements for the 2020 summer exam boards due to the Covid-19 pandemic.
113. The Tribunal finds that while the claimant played an important coordination and quality assurance role, ultimate responsibility for the exam boards lay with the Head of School, Professor Hilton. There was evidence that key decisions were taken by senior management and committees, drawing on input from various staff including the claimant.
114. The Tribunal accepts that implementing 'no detriment' assessment arrangements was challenging for the Business School and the wider university. However, issues with incorrect degree classifications affected numerous higher education institutions adapting to Covid-19 restrictions. The Tribunal does not find systemic failings specific to the respondent.
115. The Tribunal concludes that broader lessons about information systems, data models and testing may be learned by the sector. However, the central issue for this Tribunal was whether the respondent's actions towards the claimant breached his employment contract, not to make findings on the exam board problems themselves. The Tribunal has restricted its conclusions to matters directly relevant to the legal claims argued before us.
116. The respondent initiated an internal audit process in 2021 regarding the 2020 exam boards.

The Tribunal heard conflicting evidence about the claimant's interactions with the internal auditor and his access to the eventual audit report.

117. Having weighed the evidence, the Tribunal accepts the audit report was intended for the University's Board of Governors. It finds the respondent acted reasonably and consistently with its policies in declining to disclose the full report to the claimant. However, the claimant was not prevented from obtaining the report through other channels if desired.
118. The Tribunal finds no basis to conclude there was any deliberate attempt to conceal relevant information from the claimant or scapegoat him for issues with the 2020 exam boards. Responsibility for what occurred appears to have been complex and shared between multiple staff and departments. The Tribunal does not consider shortcomings in an internal audit report to constitute a fundamental breach of contract.
119. Overall, the Tribunal concludes that broader improvements to assessment processes were required following the 2020 exam boards. However, this does not indicate unreasonable conduct specifically towards the claimant or any repudiatory contractual breaches entitling him to resign on a constructive basis – he was always entitled to simply resign. The problems encountered provide context but do not alter the Tribunal's conclusions on the claimant's individual employment law complaints.

Conclusions

120. The claimant's complaints of whistleblowing detriment and automatic unfair dismissal both fail as he did not make any qualifying disclosures that could constitute protected disclosures. His email to the Vice Chancellor on 20th January 2022 did not disclose information he reasonably believed at the time showed legal breaches. The refusal to allow a stage 3 grievance appeal was entirely unconnected to any protected disclosure.
121. Further, the claimant was not dismissed in any sense by the respondent. He resigned voluntarily on 28th April 2022 for reasons unconnected to whistleblowing. As there was no protected disclosure and no dismissal, the automatic unfair dismissal claim cannot succeed.
122. On the evidence, the respondent's conduct did not amount to a fundamental breach of the implied term of trust and confidence. The Tribunal carefully considered each allegation individually and cumulatively. The matters complained of appear to be reasonable managerial actions that any employer could have taken. There was no repudiatory contractual breach entitling the claimant to resign.
123. The claimant therefore was not constructively dismissed. He resigned of his own accord and was not entitled to treat himself as dismissed due to any breach of contract by the respondent. The constructive unfair dismissal claim accordingly fails.
124. As the claimant resigned by choice and was not constructively dismissed, he was not dismissed unfairly in breach of the Employment Rights Act 1996. There was no finding of substantive or procedural unfairness against the respondent. The primary reasons for the claimant leaving were voluntary resignation following difficulties adapting to management changes.
125. The claimant's unilateral resignation without notice also means he was not wrongfully dismissed in breach of contract. No notice pay is owed where an employee resigns immediately without working their notice. The respondent did not act wrongfully in this regard and this claim fails.
126. In summary, the Tribunal concluded that the claimant resigned voluntarily on 28 April 2022 without any repudiatory breach by the respondent. All claims of whistleblowing detriments, automatic unfair dismissal, constructive unfair dismissal and wrongful dismissal therefore fail in their entirety. No compensation is awarded to the claimant for any complaints

presented.

Employment Judge M Aspinall
Dated: 7 December 2024

Public access to Employment Tribunal decisions and judgments

Judgments and reasons for judgments (except those given under Rule 52) of the Employment Tribunal are published in full. These can be found online at **www.gov.uk/employment-tribunal-decisions** shortly after a copy has been sent to the parties in a case.

Recording and transcription

Where a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will **not** include any oral judgment or reasons given at the hearing. The transcript will **not** be checked, approved, or verified by a judge. More information is available online at:

<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions>
in the joint Presidential Practice Direction on the *Recording and Transcription of Hearings* and accompanying guidance.