Case Number: 6004463/2024

EMPLOYMENT TRIBUNALS

Claimant: **Josh Woodcock**

Respondent: **Balfour Beatty Group Employment Limited**

Heard at: **East London Hearing Centre** (by Cloud Video Platform)

On: **16 July 2024**

Before: **Employment Judge Gardiner**

Representation

Claimant: In person

Respondent: Declan O'Dempsey, Counsel

JUDGMENT

The judgment of the Tribunal is that:-

The Claimant's application for interim relief is not well founded and is therefore dismissed.

REASONS

Introduction

1. From 30 August 2022 until his dismissal on 17 June 2024, the Claimant was employed by the Respondent as a Signalling Supervisor. He claims that this dismissal was automatically unfair, arguing that the reason or the principal reason was that he made protected disclosures. He lodged Employment Tribunal proceedings on 23 June 2024 applying for interim relief under Section 128 Employment Rights Act 1996.

2. The specific basis on which it is alleged that the disclosures were qualifying disclosures is that he reasonably believed that the disclosures tended to show that the health and safety of any individual has been, is being or is likely to be

endangered. This is how it is identified in the Claim Form. During the course of oral submissions, I checked that with the Claimant that his case was limited to a 'health and safety' protected disclosure, as was the pleaded position. He confirmed that it was. Therefore I am not concerned on this application with considering whether he had a genuine or reasonable belief that that the Respondent was in breach of a legal obligation.

The test for granting interim relief

3. Section 129 ERA 1996 sets out the test for granting interim relief. Interim relief shall be granted where it appears to the Employment Tribunal that it is likely that the reason for the dismissal is that the claimant has made a protected disclosure.

4. In *Dandpat v University of Bath* (UKEAT/408/09) (10 November 2009, unreported) and *Raja v Secretary of State for Justice* (UKEAT/0364/09/CEA) [2010] All ER (D) 134 (Mar) the EAT held that a claimant must show a "pretty good chance of success" to be granted interim relief, applying *Taplin v C Shippam Ltd* [1978] IRLR 450 (EAT) – a trade union dismissal case under TULR(C)A, s 163.

5. Following the reasoning of *Ministry of Justice v Sarfraz* [2011] EAT 562 and updating it to reflect the 2013 amendments to the ERA 1996, in making an order for interim relief under Section 128 and 129 ERA, the employment judge in a whistleblowing case must find that it was "likely" that the employment tribunal at the final hearing would find five things:

   (1) That the claimant had made a disclosure of information to his employer;
   (2) That he believed that that disclosure tended to show one or more of the things itemised at (a) – (f) under Section 43B(1) of the 1996 Act. Here the only basis relied upon is (d);
   (3) That the belief was reasonable;
   (4) That he reasonably believed that the disclosure was made in the public interest (which need not be the only motivation) and
   (5) That the disclosure was the principal reason for his dismissal.

6. For this purpose, the word "likely" does not mean "more likely than not" (that is at least 51% probability) but connotes a significantly higher degree of likelihood. It does not however amount to a "beyond reasonable doubt test".

7. To amount to a 'disclosure of information' the communication ought to have sufficient factual content and specificity to be capable of showing a relevant failure (*Kilraine v London Borough of Wandsworth* [2018] EWCA Civ 1436).

8. A belief can be a reasonable belief even if it is wrong. When assessing the reasonableness of the belief, those with professional or insider knowledge will be held to a higher standard than those without it, in assessing what is reasonable for them to believe. The facts that such persons should take to ascertain facts are

commensurately more demanding (*Simpson v Cantor Fitzgerald Europe* [2020] EWCA Civ 1601).

9. If the communication said to amount to a protected disclosure is made in bad faith, this does not deprive it of the status of protected disclosure. It is a potential basis for reducing the compensation awarded (Section 123(6A) ERA 1996).

10. Section 103A ERA 1996 provides:

> "An employee who is dismissed shall be regarded for the purpose of this Part as unfairly dismissed if the reason (or if more than one, the principal reason for the dismissal is that the employee made a protected disclosure"

11. It is well established that there is a potential distinction between acts related to the disclosure and the disclosure itself. However, a Tribunal should look with care at such arguments to see whether the features of the complaint were properly and genuinely separably from the making of the complaint (see *Bolton School v Evans* [2007] ICR 641 at paragraph 18).

The material before the Tribunal

12. The material before the Tribunal in order to decide this application was as follows:

    a. A bundle of documents prepared by the Claimant, running to 334 pages.
    b. A bundle of documents prepared by the Respondent, running to 182 pages.
    c. A witness statement from the Claimant.
    d. A witness statement and a supplementary statement from Nick Rayner (who took the decision to dismiss), a statement from Adam Collins and a statement from Peter Williams.

13. In addition, Mr O'Dempsey, counsel for the Respondent, had prepared an 11 page long Skeleton Argument which he referred to in the course of his oral submissions. The Claimant's detailed witness statement contained both evidence and argument, and effectively served as his Skeleton Argument.

14. Because the hearing was listed very shortly after the date on which the proceedings were issued, no Grounds of Resistance had been presented by the Respondent. As a result, the only response to the details of the claim is contained in the Respondent's witness statements.

The Tribunal's approach

15. There has been no oral evidence. This the default position on an application for interim relief as set out in Rule 95 of the Employment Tribunal Rules 2013. As a result, the contents of each of the witness statements has not been tested in cross examination. No oral evidence has been given about particular documents. On an

interim relief hearing, the Tribunal must carry out a summary assessment of the prospects of success. It is not necessary to make findings of fact.

16. As a result, these Reasons contain what appears on summary assessment to be the likely findings of fact on important matters if the same evidence was given at a Final Hearing, rather than specific factual findings.

Likely factual findings

17. In summary, the Tribunal is likely to have regard to the following matters at the Final Hearing in order to decide the automatic unfair dismissal claim:

    a. On 5 October 2023 the Claimant emailed his line manager Grant Saffery to ask if he could carry leave over to the following calendar year. He wrote that he had a two-week period (possibly 3 weeks) planned at the end of February/March "for some personal/family matters". He did not specify the dates. This was not a formal application to be granted annual leave.

    b. In response Mr Saffery told him the application would have to be submitted in January. He was told to pencil in the dates on the rota, and it would be dealt with after the Christmas break. The text message said: "I'll make sure it is approved".

    c. On 1 November 2023, Matt Snook took over as the Claimant's line manager.

    d. On 8 January 2024 the Claimant raised complaints against Matt Snook and Grant Saffery. The complaints were of bullying, harassment and victimisation. As worded by the Claimant, the complaints appeared to relate at least in part to various criticisms which Mr Snook and Mr Saffery had raised with him about his conduct. The Claimant's complaints were lodged through the Respondent's Speak Up procedure. These are not alleged to be protected disclosures. They were subsequently discussed with Martin Davidson, Deputy Head of Internal Audit.

    e. On 15 January 2024, Mr Snook was dissatisfied with the Claimant's performance as he set out in an email on the same date. He organised a meeting to discuss this with the Claimant for 17 January 2024.

    f. At some point in January 2024 the Claimant applied for three weeks' leave from 26 February 2024 onwards. He did so by entering the leave on the system in two blocks – 10 days from 26 February 2024 and 5 days from leave 11 to 15 March 2024.

    g. At the end of January, he emailed Matt Snook, his line manager, saying he had noticed that the annual leave for the first 10 days had been taken off the rota. Mr Snook replied on 29 January 2024, telling him that he would only grant three weeks leave in a single block in exceptional circumstances. In

further email exchanges Mr Snook made it clear that three weeks leave would not be authorised, although he had authorised the Claimant to take the last of those three weeks. The Claimant said that he had commitments during this period that could not be changed.

h. On 7 February 2024, the Claimant received a first written warning as the outcome of a disciplinary procedure. The sanction was given for using a company van for personal use, without permission. The warning was to remain on his personnel file for 12 months. Mat Snook was the investigating manager and Grant Saffery was interviewed as part of the investigation.

i. On 20 February 2024, the Claimant called in sick and did not attend work. He subsequently presented a Fit Note which signed him off work with stress.

j. From 27 February 2024 to 6 March 2024, the Claimant attended a Tribunal Final Hearing in his claim against his previous employers, at the London Central Employment Tribunal.

k. On 20 March 2024, the Claimant made further allegations of bullying and victimisation against Mr Snook and Mr Saffery to Speak Up. As part of the concerns raised, he alleged that the disciplinary allegations had been initiated by Mat Snook with malicious intent.

l. In early April 2024, track support work was being carried out on the rail network in Guildford. The work was undertaken by Mr George Tomkins and was signed off by Grant Saffery as his mentor on 13 and 14 April 2024. On 15 April 2024, although the Claimant was on long term sick leave, he chose to access the paperwork about this on the Respondent's Sharepoint site.

m. On 29 April 2024, the Claimant contacted the Institution of Railway Signalling Engineers (IRSE). This communication is alleged to be the relevant protected disclosure on which the Claimant relies. IRSE is the professional governing body for signalling engineers. He notified IRSE that SMTH [Signal Maintenance Testing Handbook] work carried out by Grant Saffery on 14 April did not comply with his obligations as an SMTH licence holder. This was because he did not maintain independence from the individual who carried out the work. In addition, he alleged that Grant Saffery had failed to maintain a work experience logbook showing his SMTH work experience since 2022. Finally, he claimed that Mat Snook had fraudulently completed logbook work experience entries. The wording is set out below.

n. On 8 May 2024, IRSE wrote to the Claimant telling him that his complaints against Grant Saffery and Mat Snook had been dismissed. The reason given was that the correct process had not been followed. Although not entirely clear and a matter that will need to be explored further in oral evidence and argument, a potential implication of the wording of this letter was that the Claimant ought to have raised it with Peter Williams, Regional Head of

Engineering and Professional Head of Signalling first. Letters were also sent to Grant Saffery and to Mat Snook informing them of this outcome. The letter stated that there was insufficient grounds for a complaint.

o. The following day, IRSE wrote to Peter Williams to notify him of the outcome of the Claimant's communication. Mr Williams was Mr Saffery and Mr Snook's line manager. IRSE stated "As you are aware, we recently received two complaints from Mr Josh Woodcock". The letter added: "The Committee suggests that you complete an internal investigation regarding this case as the complaints seemed to stem from a potential personal grudge."

p. Mr Williams carried out an internal investigation. He set out his conclusions in an email to IRSE. He concluded that there were no grounds for the allegations made by the Claimant. All works had been carried out in accordance with the expectations of the Respondent and of IRSE and complied with Network Rail standards. He wrote in an email on 17 May 2024 sent to IRSE that they appeared "entirely malicious". He went on: "I am also making a formal complaint against Josh Woodcock as he has displayed behaviours not in keeping with the integrity and obligations of an IRSE licence holder. I am not making any allegation of his standard of work, only his attitude to the authority and competence of others and acting unprofessionally in this regard". He added: "His disciplinary record at Balfour Beatty is extremely poor and we are meeting him today with the intention of ending his contract with us due to multiple misconducts.". The email finished:

> "The unfortunate consequence of this is that Grant Saffery is now off sick with stress as this event has been the final straw for his mental health. With your support, we can deal with Josh so that we don't encounter him again."

q. On 20 May 2024, Adam Collins started a disciplinary investigation into two matters – taking sick leave as a result of being refused annual leave and raising complaints with IRSE as a result of a personal grudge. He met with the Claimant. The notes of the investigatory meeting record the Claimant as answering, in response to the question "Do you believe that your attendance at the tribunal is in line with sickness policy" that "if you sick, you wouldn't be attending any other events". He was asked why he had just reported Mat Snook and Grant Saffery as the document had four signatures on. The record of his response – although the Claimant disputes its accuracy – is "not sure, can't recall all the signatories". He added that he would provide an answer to this question. He was asked why he did not raise the issue internally. His answer was that he considered this but chose to report it directly to IRSE because this was provided for in the procedure.

r. Mr Collins concluded that there was a case to answer, although reframed the sick leave issue as dishonesty regarding the true reasons for absence.

s. On 10 June 2024, the Claimant was invited to a disciplinary hearing to answer two disciplinary charges. The charges related to the Claimant's absence on sick leave during a period when annual leave had been refused. It was alleged that he had been dishonest about the true reasons for his absence, given he appeared to have been attending an employment tribunal hearing; and an allegation that the complaint made to IRSE had not been made in good faith.

t. The disciplinary hearing took place on 13 June 2024 and was conducted by Nick Rayner, Head of Renewals Services. Whilst there may be a factual dispute as to what was discussed during this hearing, and as to the accuracy of the meeting notes, Mr Rayner's evidence will be that the Claimant accepted he had attended the Employment Tribunal hearing throughout which had been held at the London Central Tribunal building. There was a discussion about whether this was consistent with the sickness policy. The written record notes he said that this was frowned upon he apologised. He said it was not an issue.

u. Four days later, on 17 June 2024, the hearing reconvened over Teams to inform the Claimant of the outcome of the disciplinary procedure. He was found guilty of gross misconduct and summarily dismissed. There is a factual dispute as to what was said by Mr Rayner and in particular whether he was told that the first of the two disciplinary charges had not been found to be proven.

v. The written letter confirming this outcome was sent to him on 21 June 2024. It is unclear whether Mr Rayner had seen the wording of the communication made by the Claimant to IRSE at any time before confirming the Claimant's dismissal. It is likely he was aware of the gist of the Claimant's complaints to IRSE.

w. The reason given in the dismissal letter why the Claimant was guilty of gross misconduct was explained in the following way:

> "I am satisfied that the facts of the case are as follows:
> • You attended a tribunal against your ex-employer without disclosing to your manager or the business that you required an extended period of leave for this purpose.
> Your reasons for sickness were not disputed at any point throughout the disciplinary process. The concern was centred around your dishonesty around the reason that you needed an extended period of leave.
> • You made a complaint to the IRSE about two Balfour Beatty colleagues that was considered by the IRSE to have been made based on a 'personal grudge' against fellow colleagues at Balfour Beatty.
> • That no IRSE policy had been breached by the two colleagues against whom you raised a complaint. I believe that your complaint against these two colleagues was not made in good faith.
> • That the complaint to the IRSE had a genuine reputational damage to Balfour Beatty given the correct internal processes were not followed and it involved an external body having to get involved in a complaint and liaise

> with Balfour Beatty regarding complaints which they found were made in bad faith."
>
> "I believe that you have been dishonest regarding your reasons for taking leave and also that you raised a false and malicious complaint against two colleagues, leading to a breakdown in the trust and confidence which we have in you as an employee."

x. On 28 June 2024, the Claimant lodged an appeal against his dismissal, raising by way of bullet points the grounds of his appeal. Although some of the points raised legal matters, such as victimisation for doing a protected act or disability discrimination, he did not expressly state that the dismissal was unfair because it was made on the ground he had made a protected disclosure.

Potential basis for disciplinary action

18. Pausing there, the Respondent had a potential legitimate basis for taking disciplinary action against the Claimant. By his own admission, he had attended the Final Hearing of his own case at an Employment Tribunal for a period of two weeks when he was on sick leave from his role with the Respondent with stress. He had not disclosed this to the Respondent. He was expected to do all he could during a period of sick leave to recuperate so he could return to work as soon as possible. Instead, he was attending a potentially stressful lengthy Tribunal hearing.

19. In his submissions, the Claimant has focused on alleged disparities between the eventual misconduct finding on this point and the way that this issue had been framed at earlier stages of the disciplinary process. The Claimant does not qualify to bring a claim of ordinary unfair dismissal because he does not have two years' service. Even if there were unfair elements in the disciplinary process followed, this does not provide a convincing basis for suggesting that the stated reasons in the dismissal letter were not the genuine reasons.

20. In addition, in response to serious complaints he raised about his line managers with IRSE, the regulator had not only dismissed the complaints but suggested that they may have been motivated by a personal grudge. In those circumstances, it would have been surprising if the Respondent had not started a disciplinary investigation. If proved, these matters provided a potential basis for dismissal, particularly as the Claimant was already on a first written warning.

21. Notwithstanding these potentially fair bases for disciplinary action and for the Claimant's dismissal, the Claimant must establish at this interim relief hearing not only that retaliation for making protected disclosures was more likely to be the principal reason for dismissal. He must go further than that and surmount the higher threshold of showing that this alleged reason for dismissal, namely the making of the alleged protected disclosure, has a pretty good chance of success. This has two elements: (1) a qualifying disclosure element, namely a pretty good chance of establishing that the communication with IRSE was, in law, a qualifying disclosure. If it was a qualifying disclosure, then it is accepted it was a protected

disclosure because it was made to a responsible person under Section 43C ERA 1996; and (2) a causation element, namely a pretty good chance of establishing that the communication with IRSE was the principal reason for the dismissal.

Protected disclosures

22. As to the potential strength of the Claimant's argument that his communication with IRSE was a qualifying (and therefore a protected) disclosure, the Claimant has identified three distinct qualifying disclosures. Although the complaints were set out in the same document, it is helpful to identify the relevant passages in relation to each alleged protected disclosure.

First alleged qualifying disclosure

23. So far as the first alleged qualifying disclosure was concerned, this was worded as follows in the Claimant's complaint to IRSE:

> "Grant Saffery was the SMTH on the shift that the above was installed, reconnected and then the individual who tested. The work was done by an individual called George Tomkins who is unlicensed and holds no competencies in the equipment concerned. Grant and George were the only two signalling members of staff on site. George has been working on signalling equipment for approx. 2 years but still does not hold a licence, he is under mentorship and his mentor is Grant Saffery (the SMTH tester).
>
> Grant should not have undertaken the testing of the equipment as he was involved with the reconnections, given that the installer was under mentorship by him [Grant] as the tester, Grant was not independent from the work being undertaken. Additionally, as his mentor he was fully aware George was not competent to undertake this work, further the mentorship reviews carried out by Grant do not show any experience of George specifically working on this type of equipment.
>
> Further, the work was tested under test plan number CA01 and AP02 which does not fully cover the works being undertaken. The TPWS's removed, within the detail of work in the test plan stated to remove the cable, yet there was no test plan lists for removing these cables. The work should have been done with a test plan to include remove and refit a plug coupled cable as well as for the TPWS grids (AP02).
>
> The pre-planned test plan was signed of and approved by Mat Snook, who was also the CRE for the work. Mat was responsible for checking the competencies of the staff involved with the work and therefore knew that George was not competent to undertake the work, yet signed it off regardless. This is a clear failure in Mat's responsibilities as not only an SMTH tester but also as a CRE to allow this work to take place.
>
> There is no doubt that Grant Saffery was involved with the work that he tested, and as the installer was not experienced and under mentorship by Grant it went further than Grant assisting and rather Grant was the one directing the work. There was no independence in the work being undertaken."

24. It should be noted that there is no reference in the text of the disclosure to the Claimant believing that this arrangement endangered the health and safety of any individual, or in general.

25. For the purposes of this interim relief application, I am prepared to accept that the Claimant has a pretty good chance of establishing that he was making a disclosure of information. The Claimant was disclosing factual information about the roles performed by those involved in the installation and testing in addition to making allegations.

26. However, I do not find that the Claimant has a pretty good chance of establishing that he had both a genuine and a reasonable belief that the matters he was disclosing had endangered health and safety, were currently endangering health and safety or that health and safety was likely to be endangered. The Claimant had not been present when the signal work was installed and tested. His disclosure was merely based on an observation based on a review of the SharePoint paperwork. He was not claiming to have detailed personal experience of the standard of George Tomkins' work. Without the detailed consideration and argument that would take place at a Final Hearing, the focus of his disclosure appears to be finding fault with both Mat Snook ("this is a clear failure in Mat's responsibilities") and Grant Saffery ("it went further than Grant assisting, rather Grant was directing the work"), rather than making a health and safety disclosure.

27. I accept that the requirement for 'independent testing' is a requirement which derives from the need to ensure that there are safe systems of work. I also accept what the Claimant says about the reason why it was introduced, namely in response to previous accidents involving railway safety. However, I do not accept that any allegation of a failure to fully comply with this requirement necessarily amounts to a genuine and reasonable belief that health and safety has been endangered in this particular instance.

28. In any event, the required distinction of role between the installer and the tester is rather more nuanced than has been the focus of the Claimant's submissions. As the Claimant himself quotes in his witness statement (at paragraph 57): "5.4 The Maintenance Tester shall not carry out or direct (but can assist) the work which is to be subsequently verified by themselves." In the disclosure, the Claimant asserts that Mr Saffery was directing the work rather than merely assisting – presumably in an attempt to establish that there has been a failure to comply with paragraph 5.4. In circumstances where the Claimant was not present, I do not find that he has a pretty good chance of establishing that this was the case, based only on a review of the paperwork.

29. I repeat that a belief can be a reasonable belief even if was wrong. However, whether a belief was a reasonable belief for this Claimant to have had will depend on the level of experience, training and skill possessed by the Claimant. The Claimant had a significant level of experience of signalling work. He was a signalling team leader. It is potentially relevant that the applicable regulator, whose

very role was to ensure that the necessary licencing regime was implemented, did not consider that there was any merit in the concerns he was raising. Rather, potentially due to the lack of merit in the concerns, IRSE considered that there may be some ulterior motive behind the communication.

30. As a result, I do not find that the Claimant has a pretty good chance of establishing that the first alleged qualifying disclosure was a qualifying disclosure. I do not consider that the Claimant has a pretty good chance of showing he had a reasonable belief that the information he was disclosing tended to show that health and safety was endangered.

Second alleged qualifying disclosure

31. So far as the second alleged protected disclosure is concerned, this was worded as follows:

> "Grant Saffery also has no record of undertaking any licenced SMTH work in his most recent log book work experience, the last entry for SMTH work being 25/09/2022, almost 18 months prior. Further, previous work experience entries show that Grant has not undertaken work on EBI200 track circuits since 2022, questioning if he is still competent. There is no record of any TPWS work.
>
> Grant Saffery has failed to maintain a work experience logbook showing any SMTH work experience since 2022, in breach of his requirements as a licence holder."

32. Again, there is no express reference to the endangerment of health and safety in the alleged disclosure. The only specific area where the Claimant questions Mr Saffery's competence relates to EBI200 track circuit work. The disclosure does not seem to relate to a particular instance where it is being suggested that Mr Saffery has done this specific type of work without the required competence. Mr Saffery had been the Claimant's line manager in October 2023 and presumably for some time before that. As a result, the Claimant ought to have had some knowledge of the work that Mr Saffery had been carrying out and about his competence. Nowhere in his witness statement does the Claimant provide any evidence to question Mr Saffery's general competence so as to support a reasonable belief that the information disclosed showed that health and safety was being endangered. Indeed there is no reference in this section of the Claimant's witness statement to any health and safety implications of the lack of entries. The focus of the disclosure seems to be on Grant Saffery's lack of required record keeping rather than on the implications for health and safety.

33. As a result, I do not find that the Claimant has a pretty good chance of establishing that he genuinely and reasonably believed that the disclosures he was making about Grant Saffery's record keeping disclosed information tending to show that health and safety has been, is being or is likely to be endangered.

34. In any event, to foreshadow a point to which I will return on the question of causation, there was no particular reference to this alleged protected disclosure

during the course of the disciplinary proceedings conducted by Mr Rayner. This is recognised by the Claimant himself at paragraph 68 of his witness statement. That is relevant to whether it was any part of the reasoning applied by Mr Rayner for the decision to dismiss the Claimant.

Third alleged qualifying disclosure

35. The third alleged protected disclosure was worded:

> "Mat Snook has fraudulently completed logbook work experience, the work experience completed by Mat is very vague and does not show competence. Further, the logbook held by Mat is a digital copy with the verifier signature inputted as an image that is copied and pasted for every entry, it also does not give the verifiers job title, licence number or date that it was signed. It is clear that Mat is copying and pasting the same signature over many years, it would not be normal for a true verifier to have the exact same signature at every review. Given the signature is inputted as an image it cannot be verified that it is a true signature. The signature used is an exact copy of that used in logbook reviews, further showing this is a copy and paste and not a true signature."

36. As explained in his witness statement, the Claimant had apparently been told by Mr Snook that he never attached a digital signature to the logbook entries he made but always used a wet signature (paragraph 69(e)). The Claimant has therefore drawn the inference from this comment that the digital entries in Mr Snook's logbook made by others must have been completed fraudulently – presumably on the basis that Mr Snook would not have allowed them to be completed other than with a wet signature. There does not appear to be any requirement that there must be a

37. I do not consider that the Claimant has a pretty good chance of showing that any belief that the entries were fraudulent was a reasonable one, given the matters he relies upon at paragraph 69 of his witness statement. However, this is not the basis on which the Claimant argues that the was a qualifying disclosure. He argues he had a reasonable belief that the disclosure of this information tended to show that health and safety was being endangered. He does not explain how this is the case in his witness statement or in the course of his oral submissions.

Protected disclosure summary

38. For these reasons, the Claimant has not shown on this application that he has a pretty good chance of success in establishing that he made a qualifying disclosure and therefore that he made a protected disclosure. He has not shown a pretty good chance of successfully showing that any belief that the disclosures tended to show dangers to health and safety were reasonable ones.

Causation

39. As to causation, it is true that the communication with IRSE was referenced during the course of the disciplinary process and was at least part of the reason stated for

the dismissal. However, the Claimant's difficulty is that the express basis for his dismissal was not the content of the communication but the motivation for making it – namely that he made it because of a personal grudge. The distinction between the content of the communication and the reason for making it was not a distinction made for the first time by the Respondent. Rather it was a distinction raised by the independent regulatory body who had expertise in how signalling work should be organised and executed. It was they, not the Respondent, who had first suggested that the complaint had potentially been motivated by a personal grudge. The obvious potential inference from IRSE's suggestion is that the evidence provided by the Claimant fell so far short of supporting his complaint that there must have been some other reason for making it.

40. At the time, the Claimant was already pursuing a complaint against Grant Saffery and Matt Snook internally, which had been raised through the Speak Up process, but had treated as being a grievance. This grievance was ongoing. Therefore, there was some internal evidence, not apparently known by IRSE, to potentially support a conclusion that the Claimant was dissatisfied with the two of them.

41. The Claimant could have lodged a further internal grievance about the matters he was raising with the IRSE. Indeed, the IRSE's licencing guide states the following as one of the obligations on licence holders:

> "immediately inform a superior, or in the case of a consultant or contractor, the client, if they become aware of an unsafe situation arising or are instructed to perform a task which is unsafe, and should take any appropriate action available to avoid the unsafe situation materialising. Should the warning be ignored, or if the licence holder is subject to pressure to continue with the unsafe action, the facts should be put in writing and sent to the employer or client informing them that a copy is also being sent to the Licensing Registrar. On receipt of such a communication the Registrar must draw it to the attention of the Licensing Committee;"

42. The Claimant sought to explain why he had chosen not to raise matters internally on the complaint form. Against the box "Remedial Actions", he had written this:

> "Mat is a senior manager to myself within the organisation, and there is no means of raising a complaint within the organisation, as such no action has yet been taken with regards these complaints."

43. Furthermore, when questioned during the disciplinary process as to why he had chosen to raise the complaint externally rather than by way of internal complaint, the Claimant had not provided a reason which the Respondent found to be a cogent one. He had said that he did not think it would be properly investigated but did not provide a detailed explanation for why that would be the case.

44. At a Final Hearing, the Claimant may struggle to persuade the Tribunal he genuinely believed that there was no adequate means of raising an internal complaint within the organisation. So far, he has not convincingly explained why, whilst he was on sick leave, he was accessing the Respondent's Sharepoint site,

looking at details of the involvement of Mat Snook and Grant Saffery in a project he was not personally carrying out, and choosing to report that directly to the regulator.

45. On the present evidence, it is not clear that the dismissing officer, Nick Rayner, had seen the specific wording of the Claimant's communication with IRSE said to be protected disclosures. The second of the three alleged protected disclosures is not referred to at all. The Claimant will ordinarily need to show that the information it disclosed was brought to Mr Rayner's attention, as opposed to general allegations which did not have the necessary factual specificity.

46. For all these reasons, I do not consider that the Claimant has a pretty good chance of establishing that the reason for his dismissal (or if more than one, the principal reason) was that he had made a protected disclosure.

47. Coupled with the Claimant's failure to show he has a pretty good chance of success in establishing that any protected disclosure was the principal reason for his dismissal, his interim relief application must fail.

Significance for underlying automatic unfair dismissal claim

48. Whilst I have concluded that the interim relief application must fail, it will still be open to the Claimant at the Final Hearing to argue that his dismissal was automatically unfair as a dismissal on the ground that he had previously made a protected disclosure. At a Final Hearing the evidential picture is likely to be fuller, not just in terms of the extent of the documents but also the oral evidence from relevant witnesses. At this stage, no findings of fact have been made.

Employment Judge Gardiner
Dated: 23 August 2024