

Neutral Citation Number [2024] EWHC 1400 (KB)

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Claim No. KB-2023-003029

Royal Courts of Justice,
Strand, London, WC2A 2LL

Date of hearing: 18th March 2024
Date Judgment given: 14th June 2024

Before: MASTER YOXALL (Sitting in Retirement)

B E T W E E N

A

Claimant

And

B

Defendant

Representation:

Mr. Daniel Hubbard, of counsel, instructed by Lee & Thompson LLP, for the Claimant
The Defendant appeared in person

JUDGMENT

This judgment was handed down by the Judge remotely by circulation to the parties by email and release to the National Archives. The date and time for hand-down is deemed to be 10.30am on 14th June 2024

1. The Claimant is a clearing bank. It alleges that the Defendant, who was employed by it as a finance manager, breached the contractual and common law duty of confidence he owed to it.
2. I have before me two applications. The first is an application by the Claimant dated the 24th October 2023 for summary judgment against the Defendant under CPR Part 24. The second application is an application by the Defendant dated 11th March 2024 for an order “that the Defendant be granted an Order of Strike Out and Discontinuance for Abuse of Process and an Order of No Jurisdiction so that this matter can be heard in consideration of the full facts including the employment matters.”
3. This judgment concerns the Claimant’s application. However, I shall make brief reference to the Defendant’s application. I have taken the evidence in support of the Defendant’s application into account in considering the Claimant’s application.
4. Mr. Daniel Hubbard, of counsel, appeared on behalf of the Claimant. The Defendant appeared in person and was assisted by a McKenzie Friend, his wife. From time to time during the hearing before me, I permitted the Defendant’s wife to make submissions.
5. I shall refer to the Claimant, the Defendant and his wife as such and not by name given the anonymity order which has been made in this case. I shall refer to various witnesses by initials for the same reason.
6. I must deal with the Defendant’s capacity to conduct the litigation. On about the 7th August 2023, the Defendant’s wife filed a certificate of suitability in respect of her acting as the Defendant’s litigation friend. There is no doubt in my mind that the Defendant is not a protected party within the meaning of CPR Part 21 and that he has the capacity to conduct the proceedings. There is no medical evidence to show that he lacks such capacity. I also bear in mind that the Defendant has been an accountant for over 30 years and has experience in the finance industry.
7. The Defendant is said to suffer from a genetic disorder, namely, hereditary multiple exostoses. It was said on behalf of the Defendant that the effect of this disorder on him is such that he requires more time to process information and to express himself accurately. I found the Defendant perfectly able to make submissions although he did look to his wife for support. It’s right to say that his wife did at times try to take over the submissions but they were both anxious to get their points across.
8. The hearing was listed to take place on 18th March 2024 with a whole day set aside. I understand that the date was agreed with the Defendant. As it turned out, the Defendant and his wife attended stating that they could not stay beyond lunchtime as they had childcare commitments. Mr. Hubbard made the point that there had been no prior indication of difficulty with the hearing date. The Defendant and his wife explained that they had agreed to the date on the assumption that he could leave and that his wife could remain as his advocate. On the 15th March 2024 there were email exchanges between the Defendant’s wife and court staff. The correspondence was referred to me. In short, the Defendant’s wife stated that the Defendant was unable

to attend and that she would appear for him. She requested a right of audience given the Defendant's needs.

9. On the 15th March 2024, I wrote to the Defendant's wife by email stating that I did not consider that she had any right of audience but that she could assist the Defendant as a McKenzie friend. I stated that in the court's discretion she *might* be granted a right of audience but that there was no question of my granting a right of audience to her with the Defendant not being in attendance. Following this, the Defendant did attend with his wife as already indicated.
10. I heard submissions from Mr. Hubbard in support of the Claimant's application and submissions on behalf of the Defendant in response. There was insufficient time to hear oral submissions on behalf of the Claimant in reply. The hearing concluded at about 1.20pm. I gave permission for Mr. Hubbard to provide his submissions in reply in writing. On the 22nd March 2024, those written submissions were filed and served. On the same day the Defendant sent a long email to the court (written by his wife, I believe) responding to the Claimant's submissions in reply. This was forwarded to me by court staff on 26th March 2024 but I did not see that email until the 4th April 2024 as I had been away. On that date I asked court staff to reply to the Defendant (copying-in the Claimant's solicitors) stating that I would read the Defendant's email but that I did not wish to receive any further evidence or submissions.
11. As far as the Defendant's application is concerned, that was adjourned to be heard when this judgment is formally handed down. It is to be noted that the Defendant's application is dated 11th March 2024 just one week before the hearing on the 18th March 2024.
12. I should state that I am completely satisfied that the parties have had ample opportunity to present their respective cases in relation to the Claimant's application. Having been refused a general right of audience, the Defendant and his wife served written submissions, running to 46 pages, which were received by me shortly before the hearing started.
13. I was provided with three volumes of documents for the hearing (Bundles A, B and C). There are witness statements, exhibits and written submissions. I shall refer to documents as follows: Bundle/Page No.
14. It is unfortunate that much of the written material provided on behalf of the Defendant is long winded and irrelevant to the issues in the case.
15. As far as the Claimant's application for summary judgment is concerned, I remind myself that it is not for the Defendant to prove that he will win his case at trial. It is for the Claimant to show that the Defendant has no *real* prospect of successfully defending the claim. As is well known, a fanciful prospect of successfully defending the claim will not do.

The Background

16. In December 2022, the Defendant was engaged by the Claimant as an independent contractor. The Claimant was evidently satisfied with the Defendant's work as by a letter dated 22nd March 2023 he was offered the position, as an employee, of financial manager starting on 11th April 2023. The Defendant signed the letter, which had terms and conditions attached, on the 22nd March. The offer letter provided that the first six months of employment would be a probationary period.
17. There can be no doubt that the Defendant was bound by those terms and conditions. The salient terms and conditions were as follows:

"3. DUTIES

[...]

3.2 During your employment, you shall:

[...]

- (d) familiarise yourself with and comply with our Code of Conduct and the other policies described in the [A].People Handbook.

[...]

14. CONFIDENTIAL INFORMATION

14.1 You shall neither during your employment (except in the proper performance of your contractual duties) *nor at any time after its termination* directly or indirectly: (My emphasis).

- (a) use for your own purposes or those of any other person, company, business entity or other organisation whatsoever; or
- (b) disclose to any person, company, business entity or other organisation whatsoever, any trade secrets or confidential information (whether or not recorded) relating or belonging to [A] or any of its Associated Companies including but not limited to any such information relating to [...] customers, customer lists or requirements, price lists or pricing structures, marketing and sales information, business plans or dealings, joint ventures, regulatory matters, commercial terms with business partners or customers, [...] any document marked "Confidential" (or with a similar expression), or any information which you have been told is confidential or which you might reasonably expect [A] would regard as confidential, or any information which has been given to [A] or any Associated Company in confidence by customers, suppliers and other persons" ("Confidential Information").

14.2 You shall not at any time during the continuance of your employment with [A] make any copy or note of any information relating to any matter within the scope of the business, dealings or affairs of [A] or any Associated Companies except in the proper performance of your duties.

[...]

14.5 You shall use your best endeavours to prevent the misuse or unauthorised communication of any Confidential Information by any person, company or organisation and inform [A] immediately upon becoming aware or suspecting, that any such person, company or organisation knows, has, or has used any Confidential Information.

[...]

15. WORKPLACE PRIVACY

[...]

15.4 You shall take all necessary steps to safeguard the personal data of others which you handle in the course of your employment and will comply with rules set out in the [A].People Handbook.

[...]

19. TERMINATION OF EMPLOYMENT

[...]

19.7 On termination of your employment or at any time at [A]'s request, you must immediately:

[...]

- (b) delete any information relating to [A] from any device or medium which is in your possession, custody or control which does not belong to [A]"

18. On 3rd July 2023 the Defendant signed an "Attestation Form for the [A].People Handbook" (the "Handbook"), attesting that he had read and understood the policies within the Handbook and the policies and procedures relevant to his role and department.

19. In the section headed "Acceptable Use Policy for Systems and Communications" the Handbook provided, inter alia, as follows:

"Data Security:

[...]

As part of the Data Lifecycle Policy and outlined in the [A]People Handbook, employees are *not permitted to move [A]Bank data outside of the corporate environment.* (My emphasis).

[...]

Email Security

[...] As part of the Data Lifecycle Policy and outlined in the [A]People Handbook, employees are *not permitted to move [A]Bank data outside of the corporate environment*. Sending emails containing Confidential [A]Bank information may result in a Security Incident, which is escalated to management. (My emphasis).

Rules for [A] email accounts

[...] Any [A]Bank information should not be sent to any personal email addresses."

20. In the circumstances, the Claimant submits that the Defendant as an employee owed the Claimant duties of confidentiality both in contract and at common law. I accept this submission.
21. As far as the common law duty is concerned, the leading case is *Coco v A.N. Clark (Engineers) Limited [1968] F.S.R. 415*, in which Megarry J set out the three elements normally required for a breach of confidence claim to succeed independently of contract. The information must (i) have the necessary quality of confidence; (ii) have been imparted in circumstances importing an obligation of confidence; and (iii) there must be an unauthorised use of the information to the detriment of the person entitled to the benefit of it. As to the third requirement, a real risk of misuse of the information is sufficient.
22. On 10th July 2023, AC, a Scheme Payments Subject Matter Expert at the Claimant, sent the Defendant (and two other finance managers) an email ["the AC Email"] with the Subject "Bacs billing files for June 2023"; see B/193. The said email attached 3 documents: 2 Excel spreadsheets and a Pdf as follows:

[1] Excel Spreadsheet MCA1156 June 2023.csv.

This document is a monthly report for June 2023 in the form of an Excel spreadsheet which lists the names of 80 of the Claimant's BACS (*i.e.* Bankers Automated Clearing Services) customers and the type of service(s) which they use. The document also records the name of the designated individual at each of the Claimant's BACS customers, together with that individual's business email address, ContactID used to log-on to the payment service website and the security method by which the individual gains access to the payment service website and when he/she last accessed it.

[2] PDF MCA5002-June 2023.pdf

This document is an invoice from VL which hosts the payment service website to the Claimant raising charges to the Claimant. It lists each of the Claimant's customers together with their account numbers and sort codes and contains the type, date and amount of each BACS transaction of each such customer against that customer's account number and sort code.

[3] SUNS – Sort Codes – Bureau Numbers.xlsx

This document is an Excel spreadsheet which contains a list of the Claimant's customer Service User Numbers, a Service User Number being a unique number assigned by the Claimant to each of its BACS customers, the numbers having been provided to the Claimant by the BACS system. The document is a consolidated directory of users of the Claimant's BACS services including their sort codes.

23. There can be no doubt that the information ["Information"] set out in paragraph 22 above was confidential within the meaning of the contractual terms and at common law. The Defendant himself accepted in argument that, given the nature of the Claimant's business, the Information was confidential.
24. On the 14th July 2023 at 11.00am there was a meeting by MS Teams between the Defendant on the one hand and SB and LB on the other. (SB was from the Claimant's human resources department and LB was the Defendant's line manager). The Defendant was told that his probationary period was unsuccessful and that his employment would be terminated by close of business on the same day. It is right to say that the Defendant, and his wife who attended part of the interview, are deeply unhappy with SB and LB's conduct of the interview – but there is and can be no dispute as to its outcome. The meeting was recorded at the Defendant's request and it ended at about 11.17am.
25. Shortly after the interview concluded, at 11.28 am on 14th July 2023, the Defendant forwarded the AC Email to his personal email account. The email subject line was "FW: Bacs billing fees for June 2023". There is no dispute, and there can be no dispute, that he forwarded the email; see paragraph 42 of the Defence. The Defendant's email to his personal email account lists the attachments as: "MCA1156 Jun2023.csv; MCA5002-June2023.pdf; SUNs - Sort Codes – Bureau Numbers,xlsx"; see A/78 (p.58 in NA1).
26. What is in dispute is whether or not the Defendant forwarded the AC Email with the attachments. This is the crux of the case and of the Claimant's application. One would have thought that the Defendant's position on this crucial factual issue could have been simply and shortly stated. Unfortunately, that is not what has happened.
27. Seconds after, if not almost instantaneously after, the Defendant had forwarded the AC Email to his own personal email account, the Claimant received an alert via an automated security systems alert sent by email to data loss prevention at 11.28am

stating that a match to the Claimant's policy rules had been detected. See p.A/79. The email alert was forwarded by data loss prevention to SB at 14.09 on 14th July 2023.

28. I have a witness statement by BJW, the Claimant's chief information security officer dated 9th August 2023 which deals with the Claimant's technical systems. The said alert went to the Claimant's security team for review. BJW explains that there are two levels of policy rule. The first level policy rule is whether email attachments of over a certain size are sent to a specified email domain (including in particular personal email accounts such as gmail or hotmail). An alert is triggered if one or more attachments of over 50kb are attached to an email to a specified domain (including gmail).¹ This rule, BJW explains, relates to the size of the attachments not to the size of the email itself. BJW explains that whilst the subject heading of the email alert refers to attachments of "1Mb Plus" in fact at the relevant time (July 2023) the alert was sent if attachments of over 50kb are attached to an email sent to a specified domain. He states that the title of the alert and the information in it (to reference 50kb rather than 1Mb) was not updated when the rule was changed.
29. The second level policy rule is whether the content of the email itself includes any confidential information (as determined by the Claimant's security systems, for example an account number or sort code) that is being sent to the specified domains. There are further rules that follow thereafter.
30. BJW states that in this case the policy rule that triggered the alert was the first level rule regarding attachments. Put another way, the email alert did not, in itself, refer to confidential information being sent. BJW states that the alert was only triggered because the documents were attached to the email sent by the Defendant to his personal gmail account and because (at least) one of those attachments breached the policy rule. The alert would not have been triggered if the Documents were not attached to the email.
31. The email alert² stated, inter alia:
 - (a) the email alert subject line: "Rule detected - Attachments to gmail or hotmail etc 1Mb Plus";
 - (b) the notification of "Rule matched: "Attachment to gmail or Hotmail etc 1mb Plus""; and
 - (c) "Policy Name: "Attachments to Gmail or Hotmail"".
32. BJW then refers to the Claimant's system log relating to the Defendant's email to his personal account.³ This shows that the email was delivered to the Defendant's personal email address ("Delivery/Action: Delivered") and that the email had three

¹ NA, head of Human Resources with the Claimant, gives the same evidence on this point in her first witness statement.

² See: A/79

³ See: B/194

attachments ("Attachment Count: 3"). The subject line is "FW: Bacs billing files for June 2023".

33. BJW states that he sent himself a test email. He states that on 8th August 2023 he forwarded the email that the Defendant sent to himself to his own personal email account. He exhibits screenshots of the relevant steps in the process.⁴ As shown in the screenshots, the documents were attached to the email that he sent from his [A] email account and were attached to the email that he received in his personal gmail account. The attachments can be seen at the bottom of the email.⁵
34. BJW states that the test email which he sent to himself (with the attachments or documents) generated an automated alert for the same reason that the Defendant's email to his personal gmail account generated the alert. BJW states that he then re-sent the email to his own personal email address but this time with the attachments removed.⁶ This email did not trigger an automatic alert. He states that this is because the 'Attachments' policy rule was not triggered and the body of the email did not contain any confidential information. He states that if the Defendant had sent the email without the Documents attached the automated alert would not have been triggered.
35. BJW states that the size of the three attachments is just over 1.5Mb.⁷
36. By an email from SB to the Defendant dated 14th July 2023 4.07pm, SB attached a letter from LB to the Defendant. The letter confirmed that the Defendant's employment would terminate on the 14th July 2023 and that the Claimant would make a payment in lieu of the Defendant's notice period of 2 weeks. The letter stated that all terms and benefits associated with his employment would cease as of the end of 14 July 2023.⁸ SB concluded the email by stating that it had come to light that the Defendant had sent some highly confidential customer data to his personal email address. SB stated that she would email the Defendant separately about this.
37. By an email dated 14th July 2023, 16.09 to the Defendant,⁹ SB stated:

"Dear [B],

[A] is aware that, following the termination of your employment today, you emailed to your gmail address several documents, all of which were confidential and some of which included personal data.

Your actions constitute a material breach of your Employment Contract as well as a breach of [A]'s Data Privacy Policy, the UK GDPR and your obligations to keep confidential the records of [A] to which you have access as an employee.

⁴ See: Screenshots B/195-199

⁵ BJW states that the confidential information is redacted in this screenshot.

⁶ See: Screenshots B/200,201

⁷ Which seems to be confirmed by the screenshot at B/195

⁸ See A/82

⁹ See A/86

[A] takes this matter extremely seriously.

Please confirm by return that you have permanently deleted the email, and that you have not made any copies of it or retain any copies. Please refer to clause 19.7 of your Employment Contract.

Please contact me on [SB@[A]] by return attesting to your permanent destruction of the Confidential Information wherever it may have been stored.

Unless you comply with these reasonable requests, [A] will treat your conduct as gross misconduct sufficient to justify immediate termination. This will mean that you will not receive any pay in lieu of notice and only the entitlements accrued up to and including today.

We look forward to hearing from you.

[SB]"

38. The Defendant replied by email dated 14th July 2023 timed at 6.05pm¹⁰.

"..... I note with some bemusement you have accused me of breaching my employment contract after you terminated my contract some hours ago meaning the contract was null and void at the time it was terminated.

For purposes of clarification and for the avoidance of doubt, at the point my contract was terminated I was no longer an employee of [A] therefore no breach of contract occurred. Surely an HR partner would be aware of the very basics of HR?

Even if I did any of what you allege, *emails would not open without the system password* (which I have been locked out of) meaning that it would be utterly useless. ... In addition for legal matters such as these the court procedure rules dictates for full disclosure therefore I have to reasonably wonder what it is that [A] have to hide and or are attempting to conceal?.....

I am shocked and appalled at the fact that you have threatened me with immediate termination retrospectively when my contract of employment was terminated hours ago. I also feel harassed, intimidated and fearful that you have threatened me with withholding the pay and holiday pay that I am legally entitled to, once again providing me with evidence of a criminal offence, gross misconduct and a serious hate crime given the harassment and victimisation I have clearly been subjected to. All for raising a grievance, going on (authorised) annual leave and then being terminated upon my return.

I strongly and kindly suggest you update your knowledge accordingly as clearly you lack the knowledge base sufficient to carry out your duties correctly....." (My emphasis).

39. Given the Defendant's response and his failure to confirm the deletion of the email and destruction of the confidential information wherever it may have been stored, the Claimant issued proceedings and applied for and obtained an ex parte interim

¹⁰ See A/87.

injunction from Murray J. on 27th July 2023.¹¹ I should add that the claim form and Particulars of Claim only seek injunctive relief.

40. On the return date, 10th August 2023, the Claimant's application came before Lane J. who had evidence from and heard submissions by the parties. The Defendant appeared in person with his wife assisting as a McKenzie friend. Lane J granted an interim injunction restraining the Defendant, until further order of the court, from using, publishing or communicating or disclosing the said three attachments to the AC Email. The Defendant was ordered to pay the Claimant's costs of the application. I should add that at that hearing the Defendant stated that he had deleted the AC Email.
41. A disturbing feature of the hearing before Lane J was that the Defendant purported to adduce evidence of serious financial and other misconduct by the Claimant. This included the Defendant referring to two cases – with apparently genuine neutral citations – to show that the Claimant had been involved in litigation and misconduct. The Claimant denies any misconduct or wrongdoing or being the subject of investigation or litigation. It turns out that there is assertion by the Defendant but no evidence whatsoever of misconduct by the Claimant. In any event, the alleged misconduct was wholly irrelevant to the breach of confidence claim. As to the two cases relied on by the Defendant, they are, as Mr. Hubbard stated, bogus.¹² I assume that the Defendant was misled by internet researches.
42. Another disturbing feature of the case is that notwithstanding repeated requests from those acting for the Claimant, the Defence and witness statements served by the Defendant and his wife are not verified by a statement of truth as required by CPR r.21.1.¹³

The Defendant's Case

43. It is unfortunate that the Defendant has not focused on the Claimant's breach of confidence claim and his response to that claim. The Defendant contends that the meeting held on the 14th July 2023 (and a meeting held on 7th July 2023 with LB) were unfairly conducted. He contends that his dismissal was wrongful or unfair. Although these matters have caused the Defendant and his wife considerable upset, they are irrelevant to the claim and to what I have to decide.
44. The Defendant raised a number of issues.

¹¹ Short informal notice was given to the Defendant.

¹² Obviously, I am not permitted to carry out independent research into facts but I can seek legal cases.

¹³ P.115/C Claimant's solicitors' letter 9 August 2023 pointing out that the witness statement of the Defendant and his wife and the Defence are unsigned and requesting signed copies; p.207/C letter dated 19 September 2023 referring to CPR r.21.1 and repeating the request; p.312/C email dated 12 March 2024 pointing out that statements and pleadings still not verified by a statement of truth. In contrast, the Defendant's application notice was verified by a statement of truth.

Repudiatory breach / Contract null and void

- [1.1] That the circumstances of his dismissal were such that his employment contract was null and void at the time it was terminated and that at the point his contract was terminated he was no longer an employee of [A] therefore no breach of contract occurred; see the Defendant's letter of 14th July 2023 above. This could be taken as stating that the Defendant was no longer bound by the contractual terms relating to the duty of confidence.
- [1.2] I reject this submission. I consider that this submission has no real prospect of success. At the time the Defendant sent the AC Email to his personal account, he was still in the employ of the Claimant. In any event, I consider that the contractual terms relating to the duty of confidentiality survive the termination of the contract; see Clause 14.1. I accept Mr. Hubbard's submission that there is no principle of law that a breach of contract brings an end to post contractual obligations of confidence. Furthermore, the duty of confidentiality at common law survives the termination of employment.

Email Password Protected

- [2] That emails from the Claimant were password protected and would not open without the system password; see Defendant's letter of 14th July 2023 above. The evidence of BJW is that the AC Email and attachments were not password protected. The Defendant seemed to abandon this position in his Defence. At paragraph 62 of his Defence, the Defendant pleaded:

62) [Ms B]¹⁴ further fabricated that [B] alleged the files were sent password protected, despite this *not* being the case. [B] has been very clear in his written response that when he clicked on the *email link* it brought up the [A] portal which requires a password. That is entirely different to password protected files, a fact a solicitor would be aware of. [Ms B] admits that [B] said the email would be utterly useless to what is being alleged against him by [A] in this matter which is true. *[B] has been consistent that it is only evidence for the employment matter.* It is therefore of concern that both [Ms B] and [Ms A] provided wilfully false statements to the court, especially since solicitors are officers of the court who take an oath to uphold the law. (My emphasis).

Access via a link. Password needed

- [3] That to access the documents he would have to click on a link in the email which would have brought up A's portal which could only be accessed with a password. The evidence of BJW is that the portal is irrelevant because the documents were not shared via a link in an email: they were sent as attachments to the email. BJW states that when he sent the test AC Email to his own personal email account, he was able to click on and open each of the attachments without any password.

¹⁴ Of the Claimant's solicitors.

Email or attachments evidence for future litigation

- [4.1] That sending himself the email or attachments is excusable as it is evidence for the employment matter and would have to be disclosed anyway; see the Defendant's letter of 14th July 2023 (above). I note that in paragraph 59 of his statement dated 11th March 2024 (in support of the Defendant's application) the Defendant stated:

"59. Throughout the short pre-action process, the Claimant had threatened and intimidated the Defendant into not keeping evidence of the original email. The Claimant demanded time and time again that the email and its files be deleted immediately and confirmation of this be provided. This raises concern that the Claimant was bullying the Defendant into deleting all of his evidence so they could frame him for something he has not done in order to reduce any award he may receive in the Employment Tribunal...."¹⁵

- [4.2] I reject the Defendant's proposition that forwarding the AC Email and attachments was justified given litigation in the future. Such an argument has no real prospect of success. The prospect of litigation against an employer does not justify a breach of confidence: see: *Brandeaux Advisers (UK) Ltd and others v Chadwick [2010] EWHC 3241 (QB)*. An employee must rely on litigation disclosure processes to obtain relevant documents.

Claimant's IT system automatically blocks attachments sent outside

- [5] That the Claimant's IT system automatically blocked attachments to emails sent out to personal emails. This issue was raised for the first time in paragraph 44 of the Defence dated 7th August 2023 and in the Defendant's witness statement dated 7th August 2023.¹⁶ However, the evidence of BJW is that the Claimant's information security systems do not prevent attachments from being sent to personal email accounts.¹⁷ Instead, as stated above, the system creates an alert when this happens. As already stated, BJW forwarded the AC Email to his own gmail account and exhibited a full screenshot of the email as it appeared therein, which shows the presence of the attachments containing the confidential information. The Defendant seemed to abandon this aspect of his defence; see [6] below.

Defendant removes attachments prior to forwarding the AC Email

- [6.1] That the Defendant removed the attachments prior to forwarding the email. In paragraph 68 of the "Defendant's Application to Strike Out and Discontinue" dated 11th March 2024, the Defendant pleaded, inter alia:

¹⁵ Mr. Bray, of the Claimant's solicitors, has served a witness statement dated 14th March 2023 denying this and other allegations of misconduct. In argument, Mr. Hubbard made the point that the Defendant could have no claim in the Employment Tribunal given his length of service.

¹⁶ P.B/93, para 1) (sic)

¹⁷ B19/189

68. The Defendant has been consistent that he diligently removed the attachments prior to forwarding the email they were attached to thus the Defendant has done no substantial wrongdoing whatsoever no matter how much the Claimant makes up otherwise....

[6.2] Contrary to what is stated above, the Defendant has not been consistent in stating that he removed the attachments prior to forwarding the AC Email. This had never been stated previously.

[6.3] On the 14th March 2024, the Defendant's wife wrote a long email to the court (to one of the Masters' clerks) she stated, inter alia:

".... I also refer the Claimant back to the screenshot of the recording on the 14/07/2023 in which the Claimant admits I was there. The Claimant is therefore aware I was there when [B] sent the email to himself *and saw him remove the files*. We have a very small house and I keep all the files with Chronologies up to date. If he had taken any files wouldn't I have seen files? Wouldn't any files appear on the email and the cloud? Where are the files?..." (My emphasis).

[6.4] In any event, against what the Defendant and his wife state, we have the screenshot of the AC Email as sent by the Defendant (see A/78); the security alert; and the system log – each of which shows that there were attachments to the AC Email when the Defendant forwarded it to his personal account. As BJW states, there would be no alert if there were no attachments.

Defendant's screenshot

[7] The Defendant relies on a screenshot showing how the AC Email appears in his gmail account on his phone¹⁸. Mr. Hubbard submits that the document is plainly not a screenshot of the full email, which can be seen by comparing the document exhibited by the Defendant with (a) the AC Email as sent to the Defendant ([A/78]) and (b) the AC Email as it appears in BJW's gmail account ([B/197]). The latter documents each clearly show, beneath AC's signature, his job title and the Claimant's logo and disclaimer, all of which are absent from the screenshot exhibited by the Defendant, showing that he has not exhibited a screenshot of a full copy of the email. I accept Mr. Hubbard's submission.

Conclusion

45. I am conscious of the fact that this is an application for summary judgment and that one should not embark on a mini-trial. That said, this does not mean that the court

¹⁸ Exhibited to the Defendant's witness statement dated 9 August 2023; C/20.

must take at face value and without analysis everything that a respondent says to such an application.

46. In the circumstances which I have set out above, I am driven to the conclusion that the Defendant has no real prospect of successfully defending the claim and that there is no other compelling reason why the case should be disposed of at a trial. The Claimant's evidence that the Defendant sent the AC Email and attachments to his personal email account in breach of confidence is compelling and I see no real prospect of a court finding otherwise.
47. Accordingly, I shall give summary judgment for the Claimant.
48. A draft of this judgment was sent to the parties on 22nd April 2024.

Dated the 14th June 2024