



# THE EMPLOYMENT TRIBUNAL

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**SITTING AT:** LONDON SOUTH

**BEFORE:** EMPLOYMENT JUDGE BALOGUN

**MEMBERS:** Ms B Von Maydell-Koch  
Mr C Rogers

**BETWEEN:**

Mr A Luwoye

**Claimant**

And

Baring Lodge Residential Care Home Ltd (1)  
Ms Odaliah Marapara (2)

**Respondents**

**ON:** 11 & 12 February 2021  
20 & 21 May 2021

**Appearances:**

For the Claimant: Mr Hammer, Solicitor  
For the Respondents: Mr Hendley, Consultant

**RESERVED JUDGMENT**

All claims fail and are dismissed

## REASONS

1. By a claim form presented on 6 August 2019, the claimant claims automatic unfair dismissal; whistleblowing detriments; failure to provide particulars of employment and failure to follow the ACAS code. All claims are resisted by the respondent.
2. We heard evidence from the claimant. On behalf of the respondents, we heard from Odaliah Marapara, Managing Director and owner (R2); Maud Munjodzi (MM); and Christian Militaru (CM). The parties presented a joint bundle of documents. In addition, the claimant provided some supplementary documents. References in square brackets are to the pages in the joint bundle unless otherwise stated.

### The Issues

3. The issues that the Tribunal has to decide are as follows:
  - a. Did the claimant disclose “information” to R2 in respect of the matters set out at paragraph 10 and of the particulars of claim and in a letter dated 8.5.19, referred to at paragraph 14 of the particulars of claim. If so;
  - b. did the claimant believe the disclosure of information was made in the public interest. If so;
  - c. was that belief reasonable;
  - d. Did the claimant believe that the information tended to show that:
    - i. *the respondents were failing or were likely to fail to comply with their obligation to care properly and appropriately for residents in its care home*
    - ii. *the health and safety of the residents had been and were likely to be endangered in the future*
    - iii. *that a criminal offence had been committed and or was likely to be committed in the future; namely theft of cigarettes and fraudulent hours*
  - e. Were those beliefs reasonable;
  - f. Was the claimant subjected to a detriment by R2 by being dismissed;
  - g. Was the reason, or if more than one, the principal reason for the claimant’s dismissal the disclosures;
  - h. Did the respondents fail to provide the claimant with a statement of employment particulars pursuant to section 1 of the Employment Rights Act 1996 (ERA)
  - i. Did the respondents fail to follow the ACAS code on disciplinary and grievance procedures

### The Law

4. Section 103A of the Employment Rights Act 1996 ( the “ERA”) provides that an employee shall be regarded 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.
5. Section 43A ERA, define a “protected disclosure” as: “[...] a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H.”
6. Section 43B provides that a qualifying disclosure means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the matters listed in sub-sections (a)-(f).
7. Section 47B ERA provides that a worker has a right not to be subjected to any detriment by his employer on the ground that the worker has made a protected disclosure.
8. As the claimant did not have sufficient service to claim ordinary unfair dismissal, the burden is on him to prove that the reason or principal reason for his dismissal was that he made protected disclosures.

### Findings of Fact

9. The respondent operates a care home caring for people with autism, dementia and learning disabilities. At the relevant time, there were 5 residents.
10. The claimant was employed on 1 May 2019 as a Team Leader. Prior to his appointment, the claimant had had a decade worth of experience as a care worker. R2 is and was the owner and registered manager of the Home. She was also the claimant’s line manager. One of the employees at the home, CM, worked as a carer and also undertook other duties, such as cooking for the residents. CM was also the partner (relationship, not business ) of R2.
11. On 6 May 2019, the claimant arrived at work on his day off and asked to speak to R2 urgently and in confidence away from the home about certain matters. R2 agreed and drove them to a local pub. R2’s sister, MM who was not an employee but happened to be at the home at the time, went with them. There then followed a discussion in the pub.
12. There is a dispute between the parties about those discussions. The claimant said that he raised with R2 all of the matters that are now set out at paragraph 10 of the particulars of claim (POC) [16-17] R2 claims that the claimant did not refer to the matters set out at 10(a) to (g) and (i) POC but only those at (h) – *that vulnerable residents were being deliberately neglected and that CM had invited friends to smoke and drink in the care home and enter the room of a resident*. Although MM has also given an account, the Tribunal considers it unreliable as it was clear during cross examination that she had a poor recollection of key events and contradicted her own evidence. We have therefore placed no weight on her evidence.
13. The claimant said that he had with him at the meeting a pre-prepared note of the matters he raised and that a copy of the said note is the document at 63-66 of the bundle. R2 denies that the claimant had such a note at the meeting. On this, we prefer the

claimant's evidence. The claimant had attended work on his day off in order to have the discussion with R2. If he was prepared to do that, then it is likely that he would have taken the time to write those matters down. Further, the annotated note that we have seen appears authentic.

14. Having reviewed the claimant's note, it refers to the matters set out at paragraph 10 of the particulars of claim and we therefore accept his evidence that those matters were raised with R2 at the meeting. The claimant relies on these matters as protected disclosures.
15. R2 told us that she made several attempts to explain to the claimant that the so called stranger on site was in fact a handy man who was there to fix a plumbing leak in one of the resident's rooms but the claimant became argumentative, shouting and threatening and said that it was illegal for her to work with CM . R2 contends that the claimant said that if he is dismissed, he will report the respondents to the CQC (care quality commission) and the police and will take them to the Tribunal where he would receive a minimum of £20,000. All of this is denied by the claimant. He contends that R2 was nodding along to each of his points and appeared to be agreeing with what he was raising. He also claims that R2 told him that CM had been intimidating and violent towards her and that she would have to fire him.
16. It seems to us highly implausible that R2 would simply nod in agreement to the serious matters being raised by the claimant without challenge. This is particularly so given the professional and personal implications for R2. Further, we consider it unlikely that R2 would reveal highly personal information about the state of her relationship with CM to an employee she barely knew. It is more likely that she would have defended CM against the allegations levelled against him, as her evidence suggests. There is also a reference in the claimant's note to reporting matters to the police and the CQC, which is consistent with R2's account. Hence, having considered this dispute of evidence, we prefer R2's account.
17. The claimant claims that on Tuesday, 7 May 2019, he attended work and spoke to a number of staff who told him about CM's conduct as set out at paragraph 12 of the particulars of claim, which is a repeat of some of the earlier allegations. [17]. The claimant also contends that on the same day, he found an empty bottle of vodka in the manager's office and showed it to R2, which she denies. The timesheet for that period shows that the claimant was not on duty on 7 May and we find that it is accurate. When this was put to the claimant in cross examination, he said that he had in fact shown R2 the empty vodka bottle when he spoke to her on the Monday, not on Tuesday. That was new evidence. The claimant was only in attendance very briefly on Monday as shortly after his arrival he left with R2 for the pub. The vodka bottle is not referred to as part of that chain of events. The claimant does not say that he spoke to the staff on the Monday and we don't believe he could have done as there would not have been enough time before going to the pub. There is also no suggestion that he returned to the Home that day. We find, on balance, that the claimant did not find an empty vodka bottle or have discussions with staff on the Tuesday or indeed, the Monday.
18. In the bundle are 2 letters – one from R2 to the claimant dated 7 May 2019 and one from the claimant to CM, copied to R2, dated 8 May 2019. Both the claimant and R2 deny receiving a copy of the other's letter. We deal with these in turn.

19. The respondent's letter to the claimant dated 7 May is headed "WARNING LETTER FOR MISCONDUCT". The letter refers to his conduct at the pub on 6 May, specifically, his reaction to R2's explanation about the handyman and his shouting and threatening of R2. It warns that further misconduct may result in further disciplinary action and possibly dismissal [69] R2 says that she handed the letter to the claimant at the end of his nightshift on the morning of 9 May. As already mentioned, the claimant denied that he ever received such a letter. However, we accept R2's evidence that the letter was given to the claimant. We also accept R2's evidence that on receipt of the letter the claimant was abusive and repeated the threats made on 6 May.
20. Turning to the claimant's letter to CM, this was dated 8 May and informs CM that a complaint had been made against him relating to events on 5 May. The letter goes on to set out allegations against CM as per paragraphs 10(g) to (i) and 13 of POC and calls for an explanation from CM within 7 days, failure of which could result in his automatic dismissal [71] The claimant says that he wrote the letter during his shift on 8 May and handed a copy to R2 on the morning of the 9<sup>th</sup>. Although the POC says that he also handed a copy to CM, the claimant says that this was an error by his representative and in his statement says that he was dismissed before he had a chance to give it to CM. The claimant relies on the letter as a protected disclosure. As mentioned above, R2 denies ever receiving it.
21. At this point in time, the claimant had only been employed for a week. He was also aware that R2 was in a personal relationship with CM. It therefore seems inconceivable that the claimant would write such a letter without first determining with R2 that he had authority to do so. The claimant says that R2 read the letter in his presence. If that was the case, we would have expected him to have referred in his statement to her reaction or response on doing so; yet the claimant makes no reference to this. Taking matters in the round, we find on balance of probabilities that this letter was not given to R2.
22. On the afternoon of the 9 May, the claimant returned to the Home after his shift to attend a pre-arranged staff meeting. On arrival he was given a letter by R2, dismissing him with immediate effect. [72] The letter does not give a reason but R2's evidence was that he was dismissed because of his intimidating and aggressive behaviour on 6 May, which was repeated on 9 May.

#### Submissions

23. Both parties made oral submissions, which we have taken into account.

#### Conclusions

24. Having considered our findings of fact, the parties' submissions and the relevant law, we have reached the following conclusions on the issues before us

#### Has information been disclosed in relation to the allegations at para 10 POC [16]

##### a) Maltreatment of the residents: shouting and yelling at them

25. Information in the context of section 43B ERA must convey facts. The above statement is general and devoid of specific factual content. It does not identify a specific resident

or incident or expand on shouting and yelling. It is a general allegation. It is not information.

*b)Physical abuse of the residents: Mr Militaru had been “beating up” the residents and locking them outside to show them “who was boss”*

26. Same issues as statement a) above. Residents referred to generally. The use of the phrase “*beating up*” does not provide specificity to the central allegation of physical abuse. It is not information.

*c)A family member of one of the residents DO had been spoken to in a “ruddy, unprofessional and intimidating manner”*

27. Again, this is a general allegation not conveying specific factual content. The family member is not identified and the conduct complained of is in general terms. It is not information.

*d)Theft and stealing of cigarettes from a Jonathan Edge by both CM and R2*

28. This contains sufficient factual content to amount to information. It states what was stolen, by whom, from whom.

*e)Mr Militaru selling cigarettes at inflated prices to the residents to make money*

29. This is an allegation not conveying sufficient factual content. It doesn't state which residents the cigarettes were sold to or the inflated price.

*f)CM intimidating previous members of staff, dismissing any staff who raised previous complaints*

30. This is a general allegation containing no specific facts. It is not information.

*g) Fraud relating to the hours worked by Mr Militaru which the manager sanctioned*

31. This is a general allegation which does not convey specific facts. It is not information.

*h)Deliberate neglect of vulnerable residents including Mr Militaru inviting his friends to smoke and drink in the care home and entering into residents rooms*

32. This is an allegation conveying sufficient specific factual content to amount to information.

*i. deprivation of residents rights: not providing th appropriate care for them*

33. This is a general allegation devoid of specific facts. It is not information.

Letter dated 8 May 2019 [ 71]

34. As we have found that this letter was not given to the respondent, it follows that there was no disclosure of it. It cannot therefore be a protected disclosure.

35. We find that, of the matters relied upon, only d, and h disclose information.

Reasonable Belief

36. There are 4 stages to reasonable belief –

i) the claimant's subjective belief – did the claimant believe that the disclosure tended to show a relevant failure.

ii) The objective belief – was that belief reasonable. In considering the objective test, those with professional or insider knowledge will be held to a different standard than lay persons in respect of what it is reasonable for them to believe Korashi v Abertawe Bro Morgannwg University Local Health Board 2012 IRLR 4 EAT

iii) did the claimant believe that the disclosure was in the public interest

iv) If so, was such a belief reasonable.

37. Our observation is that the “disclosures” appear contrived. After only day 3 of his employment with the respondent, when he should have been finding his feet and getting to know his colleagues, the claimant came up with a long list of allegations, some serious, with no supporting evidence. He adopted a confrontational approach, showing no interest in any explanations from R2 and made threats to report matters to outside authorities as well as threats to take the respondent to Tribunal, should he be dismissed. It was as if the claimant was goading the respondent into getting rid of him. For these reasons, we are not satisfied that the claimant had the necessary subjective belief.

38. However, if we are wrong about the claimant's subjective belief, we consider below whether his belief about what the information tended to show was objectively reasonable

d) - Theft and stealing of cigarettes from a Jonathan Edge by both CM and R2

39. This is based on what the claimant says at paragraph 23 of his witness statement, about noticing on his first day in the job that CM and R2 were helping themselves to the resident's cigarettes. When asked why he thought they were stealing, he said, “*I have worked a long time in health and social care to know what is going on in care homes*”. The claimant jumped to a conclusion based on pre-conceptions. There may have been a number of possible explanations for what he saw. CM told us that there was only one resident who smoked and that he took cigarettes out of the safe for that resident and lit them for him because residents are not allowed lighters. It is quite clear to us from the evidence that the claimant felt personal antipathy towards CM. The claimant found out early on about CM's relationship with R2 and disapproved of it. The claimant suggests at paragraph 16 of his statement that CM sought to use the relationship to assert his authority over him. Whether that is true or not, the claimant may well have felt threatened by CM's position. That antipathy towards CM appears to have affected the

claimant's objectivity, hence his readiness to believe the worst of him. There was no objective basis for him to believe that his disclosure tending to show that a criminal offence had been or was being committed.

h) - Deliberate neglect of vulnerable residents including Mr Militaru inviting his friends to smoke and drink in the care home and entering into residents rooms

40. This is based on paragraph 25 of the claimant's statement where he claims that on 5.5.19, Ms Abujobi, a member of staff on shift, told him on the phone that CM had been in a resident's room with a stranger, she didn't know why the stranger was there and they had been smoking and drinking together in the garden. On the basis of that limited and uncorroborated conversation, the claimant concluded that the health and safety of residents in the home had been or was likely to be endangered through neglect. Further, he was not prepared to be persuaded away from that belief, even after R2 had explained that the individual was a handyman there to fix a leak in the resident's room. His explanation for not accepting this was that "*Ms Abujobi would have known the reason why the stranger was there, if he had been there for a proper reason such as fixing a leak*". That is an assumption he has made based on nothing. The claimant had not been employed long enough to know what or whom Ms Abujobi would have known. We find that the claimant did not have a reasonable belief that his disclosure tended to show that the health and safety of residents were endangered.
41. For completeness, if our conclusion that the matters at a) b) c) e) f) g) and i) above are not "information" is wrong, we find in any event that the claimant did not have the necessary reasonable belief. The allegations were based on hearsay statements which the claimant took at face value without investigating further in order to establish whether or not they were true.
42. In light of the above, we conclude that the claimant has not shown on balance of probabilities that he made any protected disclosures. It therefore follows that his automatic unfair dismissal and detriment claims fail.

#### Section 1 Statement

43. Section 2(4) ERA requires an employer to provide a section 1 statement of particulars of employment within 2 months of the employment commencing. By the time of his dismissal, the claimant had only been employed for 9 days and therefore the duty had not crystallised. This claim fails.

### **Judgment**

All claims fail and are dismissed.



Case No: 2303103/2019

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Employment Judge Balogun  
Date: 15 September 2021