EMPLOYMENT TRIBUNALS

Claimant: Mr K Meloy

Respondent: University of Leeds

Heard by CVP **On:** 1, 2, and 3 March 2022

Before: Employment Judge D N Jones
Ms H Brown
Mr I W Taylor

REPRESENTATION:

Claimant: Mr B Henry, counsel
Respondent: Mr S Nicholls, counsel

JUDGMENT

1. The respondent subjected the claimant to the detriment of removal from his substantive post in the Faculty of Engineering and Physical Science into a completely different role away from his colleagues on the ground that he carried out activities to prevent or reduce risks to health and safety at work having been designated by the respondent to carry out such activities.

2. The remaining claims for subjecting the claimant to detriments under section 44(1)(a) and (e) of the ERA are dismissed.

3. The claims that the claimant was subject to an investigation and disciplinary process and that his reputation was damaged because the outcome was not communicated to relevant parties on the ground that he had made protected disclosures are dismissed.

4. The claims for unfair dismissal are dismissed upon withdrawal.

REASONS

1. The findings of the Tribunal are unanimous.

Introduction

2. The claimant brought complaints of unfair dismissal under general principles and/or for making protected disclosures and/or for health and safety issues and being subject to detriments for making protected disclosures and/or health and safety reasons. The claims arise from problems related to reopening the premises in the Faculty of Engineering and Physical Science after the first lockdown of the pandemic. The claimant worked there as a Health and Safety Manager.

3. At the conclusion of the evidence Mr Henry informed the Tribunal that the claimant did not pursue the unfair dismissal claims and the second detriment claim in the agreed list of issues. With respect to the remainder of the detriment claims, the principal position was that they fell within section 44(1)(a) of the ERA. The other legal complaints were a fallback.

The Issues

4. The issues were agreed between the parties. Those which remain after the refinement of the case are as follows.

Time Limits

5. Have the claims been brought within the time limit set out at s 48(3) of the Employment Rights Act 1996 (ERA), subject to any material extension for Early Conciliation? In respect of any acts or omissions which occurred on or before 10 January 2021, were they part of a series of such acts or omissions and if so, was the last after 10 January 2021?

6. If any of the claims have been brought out of time, was it reasonably practicable for them to be presented in time and, if not, were they presented within such period as the tribunal considers reasonable?

Detriments

7. Did the respondent subject the Claimant to the following detriments:-

   7.1 A formal investigation;

   7.2 A formal disciplinary process;

   7.3 Removal from his substantive post and redeployment away from his colleagues within the engineering department;

   7.4 Removal from his substantive post out of engineering and into a completely different role;

   7.5 Damaged to his reputation by being disciplined and by the failure to communicate the outcome of the disciplinary to relevant parties to avoid further such damage?

Health & Safety grounds

8. Was the claimant designated by the respondent to carry out activities in connection with preventing or reducing risks to health and safety at work?

9. If so, did the respondent subject the claimant to any of the above detriments on the ground that he carried out or proposed to carry out any such activities?

10. Alternatively, were there circumstances of danger which the claimant reasonably believed to be serious and imminent? If so, were the steps taken, or proposed by the claimant, unilaterally to suspend work in the engineering buildings appropriate to protect himself or others from such danger?

Protected disclosures

11. Did the Claimant make disclosures to the respondent on 22 and 23 June 2020 of information as opposed to opinion?

12. If so, did the Claimant believe that it tended to show that the health and safety of an individual was, was being or would be endangered?

13. Did the claimant believe the disclosures were made in the public interest?

14. What that belief reasonable?

Reason for detriments

15. If the claimant was subjected to one or more of the above detriments was it on the ground of one of the protected acts for health and safety or making a protected disclosure?

The Evidence

16. The Tribunal heard evidence from the claimant. The respondent called Mr Paul Veevers, Director of Health and Safety Services and Mr David Wardle, Deputy Secretary.

17. The parties submitted a bundle of documents running to 560 pages. Some further documents were submitted during the hearing.

Background/facts

18. The respondent is a higher education institute which employs 9,000 staff across seven academic faculties.

19. The claimant was employed by the respondent on 4 January 2007 as a Health and Safety Manager at its Engineering School. In September 2019 the Faculty of Maths and Physical Sciences merged with the Faculty of Engineering to become the Faculty of Engineering and Physical Sciences (FEPS). The claimant became one of two Health and Safety Managers in the Faculty, the other being Mr John Preston.

20. In March 2020 the respondent closed the majority of its buildings as a consequence of the Government lockdown to address the Covid 19 pandemic. When lockdown was lifted the respondent arranged for re-entry to buildings on a gradual basis. A re-entry checklist was created for the purpose of ensuring that the risk was minimised. The respondent's Health and Safety Department worked in conjunction

with the Facilities Directorate (FD) to implement the return pursuant to plans made by a central executive of the respondent.

21. On Friday 19 June 2020, at lunchtime, the respondent's cleaning services of FD gave notice that they would not enter the buildings in the FEPS, as a consequence of a number of unanswered questions concerning water safety. They were uncomfortable about the safety of working there.

22. On Saturday, 20 June 2020 the claimant sent an email to his manager, Sarah Burdall, Professor de Leeuw, the Dean of the Faculty and his colleague John Preston. He copied in Mr Veevers. He stated that he could not give his approval for the continuation of any research activity within the engineering buildings. He stated that he had previously been informed that fire safety, water hygiene and air conditioning inspections were being carried out by FD and that those functions were compliant, fully operational and safe. The action of the cleaning services within FD, the department which had provided that information, undermined that. He asked for confirmation that the fire alarm systems in the engineering buildings were functional, tested and up-to-date, that the air-conditioning units in operation in the laboratories were serviced and up-to-date and that the water was safe for washing hands in the toilet and laboratories. He stated that without written confirmation he would recommend to the Dean and Heads of Schools that only essential maintenance operations should take place. Mr Preston sent a supportive email suggesting the same for the buildings in the areas for which he had responsibility. On Sunday 21 June 2020, Mr Veevers replied to say that he shared the concern but wished to avoid a blanket ban and that he was seeking clarity which he would provide the following day.

23. On 22 June 2020, at 10:37, the claimant sent another email to Mr Veevers and Prof de Leeuw, copying in Lynn Clarke, the Head of Health and Safety. He repeated his earlier concerns, emphasising the potential lethal consequences to those in air-conditioned laboratories if the systems were not monitored and maintained properly. He said that he had given assurances that fire sanitation and conditioning systems were being maintained and functioned safely but given that doubt had arisen he could no longer be confident they were suitable and sufficient and that he would be recommending operations were suspended until he received written assurances. He sent a further email that day, at 17:30 hours, stating that he had received no response. Ms Burdall sent an email at 17:32 hours expressing her concern that they might be in breach of welfare regulations although she thought there may have been some confusion. Mr Preston emailed later that day at, 21:47 hours, to say that he believed FD had lied to Mr Veevers and that he intended to write to cancel a site visit planned the next day for Food Science and Nutrition.

24. On 23 June 2020, at 6:22 hours, Mr Veevers sent an email to the claimant, Mr Preston and Ms Burdall stating that they should give him the morning/early afternoon to obtain the information they required and that if he was unable to obtain answers he would support the position they were suggesting. He said he approved of the postponement of the visit to the Food Science area. He stated he would take responsibility if anything negative happened in the meantime.

25. On 23 June 2020, at 10:26 hours, the claimant sent an email to cancel a visit to the engineering buildings because he had not received reassurances from FD that fire alarm and air conditioning systems were functioning to a safe standard. At 10:28

hours the same day, the claimant sent an email to Prof de Leeuw and others to state that he was suspending all operations in engineering buildings from noon of that day because he had not had these reassurances from FD. On 23 June 2020, at 12:37 hours, Mr Preston cancelled an on-site assessment in the School of Physics, Astronomy and Chemistry for the same reasons.

26. At 13:00 hours on 23 June 2020, Mr Veevers emailed Mr Preston, the claimant and Ms Burdall, copying in Ms Clarke, to say that he was having a meeting at 2pm to receive information on compliance matters. He said that there was a significant amount of email traffic being sent which was causing confusion and that no further action should be taken in respect of current activities in the FEPS.

27. All the decisions to suspend activity by Mr Preston and the claimant were reversed within a very short period of time by Prof de Leeuw. It was not sufficient to save inconvenience to a number of people who were to attend the meeting which the claimant had cancelled one of whom, Prof Rik Brydson, raised a formal complaint.

28. Prof de Leeuw sent an email to Ms Burdall on 23 June, at 11:45 hours, stating that the claimant had taken matters into his own hands again and created regulations on his own bat and even cancelled visits. She told her to ensure that the claimant referred all matters to her, Ms Burdall, and not contact the Heads of School or herself directly. She stated his behaviour was pretty intolerable and she would be grateful if Ms Burdall could sort out the claimant and the mess he had created. In an email to the claimant of the same date at 11:49 hours, Prof de Leeuw stated he was not in charge and had no authority to suspend any operations in schools, in respect of which there was a clear route for approval. She stated he should advise Ms Burdall on behalf of health and safety matters and it was Ms Burdall who reported to her.

29. The claimant replied to Prof de Leeuw and copied in Mr Veevers and human resources. He drew her attention to the respondent's policies and his job description as well as legislation. He stated that he had delegated functions in respect of health and safety.

30. Mr Preston sent an email to Mr Veevers and Ms Clarke on 23 June 2020 at 17:40 to express his frustration at Prof de Leeuw's reaction "*to sign our leaving card*", a reference to himself and the claimant. Ms Clarke forwarded this to Mr Veevers with her own view that a conversation with Prof de Leeuw was required. She had cut out the claimant and Mr Preston and only wanted to deal with Ms Burdall but, Ms Clarke commented, that was not how the structure worked.

31. Prof de Leeuw sent an email to Mr Veevers at 20:43 hours on 23 June 2020. She said the complexities that had arisen that day were not particularly to do with Covid or re-entry but more a matter of personalities. She said the health and safety team in the FEPS did not work particularly well. She referred again to a clash of personalities as well as errant behaviour. She stated that something needed to be done to avoid problems in the future.

32. On 25 June 2020 Mr Veevers had a meeting with the claimant. The claimant apologised for not having seen and acted on the email of Mr Veevers of 6:22 hours on 23 June 2020. Mr Veevers informed him he would have a review and consider all

the correspondence. He said the claimant should not enter campus or engage on re-entry work in the meantime.

33. Mr Veevers concluded that there were sufficient concerns to warrant an independent investigation into the actions of the claimant in respect of four matters: firstly, the inappropriate sending of emails to him of an undermining, passive aggressive nature on 22 June 2020; secondly, ignoring his email 23 June at 6:22 hours when he was asked to wait; thirdly, suspending on-site visits and all on-site operations without discussing his intentions with the claimant Ms Clarke or Prof de Leeuw; and fourthly, failing to follow a reasonable management instructions to stop sending emails on 23 June 2020.

34. Mr Wardle conducted an investigation and concluded there was a case to answer. The claimant attended a disciplinary hearing on 12 January 2021 to answer the four allegations before Prof Platten. He dismissed them all save for that of failing to follow a reasonable management instruction by sending the email to Prof de Leeuw after Mr Veevers had requested the team to refrain from such activity. This was an error of judgement which Prof Platten did not consider sufficiently serious to warrant any disciplinary sanction.

35. The claimant had been redeployed from June 2020 into the central services team. In November 2020 Mr Veevers undertook a review of the service at FEPS. He interviewed the Heads of School and the health and safety team. He concluded that the claimant had lost the trust of senior members in the team. He met the claimant and his union representative on 14 January 2021. He informed them he would remain in central services in a substantive post at the same grade and seniority but would not return to the FEPS.

36. The claimant raised a formal grievance in June 2020 about his redeployment which was not upheld.

The Law

38. Section 44 of the ERA 1996 provides:

(1) An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the grounds that –

(a) having been designated by the employer to carry out activities in connection with preventing or reducing risks to health and safety at work, the employee carried out (or proposed to carry out) any such activities;

(e) in circumstances of danger which the employee reasonably believed to be serious and imminent, he took (or proposed to take) appropriate steps to protect himself or other persons from the danger.

(2) For the purposes of subsection (1)(e) whether steps which an employee took (or proposed to take) were appropriate is to be judged by reference to all the circumstances including, in particular, his knowledge and the facilities and advice available to him at the time.

39. A qualifying disclosure is defined in section 43B of the Employment Rights Act 1996. It involves the disclosure of information which in the reasonable belief of the

worker making the disclosure is made in the public interest and tends to show a defined form of wrongdoing. This includes that a criminal offence has been, is being or is likely to be committed, that a person has failed, is failing or is likely to fail to comply with any legal obligation to which it is subject, the health and safety of an individual has been, is being or is likely to be endangered, or information tending to show any of these things has been, was being or was likely to be deliberately concealed.

40. Information may include an allegation but a statement which is general and devoid of specific factual content cannot be said to be a disclosure of information tending to show a relevant failure[1].

41. If a disclosure relates to a matter where the interest in question was personal to the employee it is still possible that it might satisfy the test that it was, in the reasonable belief of that employee, in the public interest as well his own personal interest. That depends on factors such as the numbers of those affected by the interest, the nature of the interest affected, the nature of the wrongdoing, the identity of the wrongdoer and the extent to which interests were affected by the wrongdoing disclosed[2].

42. By section 47B of the ERA a worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure.

43. In the case of **Fecitt v NHS Manchester [2012] ICR 372** the Court of Appeal held that section 47B will be infringed if the protected disclosure materially influences (in the sense of being more than a trivial influence upon) the employer's treatment of the whistle-blower, and the Tribunal must consider what (consciously or unconsciously) was the reason. That is a subjective test – the Tribunal must determine why the employer acted in the way he did in respect of the detriment which is alleged.

44. In **Shinwari v Vue Entertainment Ltd [2015] UKEAT 0394/14/BA**, the Employment Appeal Tribunal approved an earlier line of authorities, including **Martin v Devonshire Solicitors**, in respect of consideration of what the reason for the alleged detriment was, particularly when it is connected to a protected disclosure. Mrs Justice Simler, the then President of the Employment Appeal Tribunal, said:

> "*It is permissible in appropriate circumstances for a Tribunal to separate out factors or consequences following the making of a protected disclosure from the making of a protected disclosure itself, provided the Tribunal is astute to ensure that the factors relied on are genuinely separable from the fact of making the protected disclosure, and are in fact the reasons why the employer acted as it did*."

Analysis

45. We shall address the claims in three categories: investigation and disciplinary procedures, removal from substantive post away from colleagues together with the

[1] Kilraine v London Borough of Wandsworth 2018 ICR 1850,
[2] Chesterton Global Limited v Nurmohamed [2017] EWCA Civ 979

removal from substantive post out of engineering and finally damage to reputation by not communicating the outcome of the disciplinary hearing. Although our findings and conclusions are expressed in respect of each category, they have been made upon a holistic consideration of the evidence and the case as a whole.

The disciplinary investigation and formal disciplinary process

46. On the one hand an impartial investigation into the suspension of activity in the FEPS could vindicate the claimant if his actions were proper and beyond criticism. On the other this was the first stage of a disciplinary process which could ultimately lead to his dismissal or some other sanction. We are satisfied it is objectively a detriment to be made the subject of a disciplinary investigation with all the attendant worry and anxiety it will involve.

47. We are satisfied that the claimant was designated by the respondent to carry out activities in connection with preventing or reducing risks to health and safety at work. Mr Nicholls suggested that Eady J specifically excluded such categories of worker from the protection of section 44(1)(a) of the ERA in **Castano v London General Transport Services Ltd [2020] 417.** The EAT distinguished those workers who undertook general duties with some additional health and safety obligation to those whose work was designated as such by their employer. As a health and safety manager at the FEPS the claimant's principal function was to prevent or reduce health and safety risks at work and had been designated as such by the respondent.

48. We are not satisfied that the initiation of the investigation and the progress of it to a disciplinary hearing were acts which were on the ground that the claimant had carried out or proposed to carry out those activities.

49. We consider the particular allegations. In respect of the first, it concerned sending two emails which were undermining, passive aggressive and inappropriate. Mr Wardle specifically identifies a comment from the email of the 22 June 2020 at 08.53 hours, "*The email I sent you this morning seem to have bypassed you"* and in the email on the 22 June 2020 at 17:31 hours, *"I have seen no response from anyone in FD or yourself regarding this matter*". Others were copied into this email. Taken together with other remarks it is possible to construe these emails as disrespectful. For example, in the first the claimant states that, "*If the guidance you are going to provide in any way tries to ignore our legislative requirements on any issue I'm afraid I will not be able to except [sic] its terms of reference"*. There is a suggestion here that the Director of Health and Safety Services may intentionally provide guidance in contravention of health and safety law. The claimant was clearly frustrated but the tone of his email teeters into a personal criticism of Mr Veevers which was not warranted. The protection afforded by section 44(1)(a) is broad, but it was not intended to prevent any disciplinary control and sanction of all that a health and safety officer or manager does. Almost all of their activity will, to a greater or lesser extent, touch upon preventing or reducing risks to health and safety; but as with victimisation or whistleblowing the manner or the way in which the employee conducts himself will not fall within the protection even though connected to it, see **Shimwari**.

50. The same applies to the second and fourth allegations, ignoring the email from Mr Veevers on 23 June 2020, at 6:22 hours and failing to follow the management instruction to stop sending emails later the same day. As with the first

allegation these concerned the way in which the claimant conducted himself at work. The disciplinary investigation and hearing were concerned with whether the claimant had acted insubordinately or otherwise inappropriately with respect to instructions from the most senior person in his department.

51. The third allegation is one which concerned the suspension of on-site visits and would appear more obviously to fall within the protection of section 44(1)(a). Mr Nicholls says that it was not the suspension of visits but the claimant's actions without discussion of his intentions with Mr Veevers, Ms Clarke or Prof de Leeuw first. We note that Mr Wardle considered allegations two and three together and was concerned with whether the claimant knew and followed the appropriate process. Prof Platten considered whether the claimant's job description allowed the claimant to act without the permission of his line management. He concluded, in the circumstances, it did. His focus was, like Mr Wardle's, also on process and authority to act. There is a similarity or pattern in the allegations about whether the claimant had usurped the role of his managers and chosen to confront or ignore them. Although this allegation is more finely balanced, we are satisfied this was concerned with authority to act and not because the claimant had carried out the activity or proposed to carry it out. It would be unworkable if managers could not determine how their staff should undertake health and safety activity appropriately, which would be the consequence of too broad an interpretation of section 44(1)(a).

52. For these reasons the first two detriments were not on the ground of the claimant's health and safety actions.

Removal from post

53. The removal of the claimant from his post in June 2020 and the subsequent decision in January 2021 to confirm him in a new role in central services was a detriment. Although the salary was the same, he was removed from the Faculty in which he had worked throughout and against his wishes in circumstances in which he had been criticised for his actions. Objectively, an employee would consider that to be a disadvantage.

54. We were satisfied these actions were, qualitatively, a series of similar acts. They were about removing the claimant from his former post, initially temporarily but later permanently. These claims are in time because the last was on 14 January 2021, within the primary three month period for bringing a claim.

55. The decision to remove the claimant from his post at the end of June had a direct and obvious connection to his actions in postponing an arranged visit and suspending activity in the engineering buildings. There is no doubt that the claimant took this action because he considered there were risks to health and safety in the absence of confirmation that the appropriate checks had been undertaken. The very purpose of having these tests to fire alarms, air conditioners and water supplies is to protect users of the building from risks to their health and safety. The buildings had been standing empty for three months, something which was unprecedented. The cleaners refused to use them for fear of water related health risks. Mr Preston took the same professional view as the claimant. In the flurry of email activity the claimant had not seen Mr Veevers' email earlier in the day, but he had telephoned his manager, Ms Burdall and then sent to her an email to forewarn her of what he intended to do. It is noteworthy that in her short reply she did not object to or

overrule what he had proposed, nor draw the claimant's attention to Mr Veevers' email seeking a further delay.

56. The reaction of Prof Rik Brydson to describe the actions of the health and safety department as utterly incompetent was ill-informed and intemperate. The events of the weekend gave rise to a concern about health and safety which had not been known previously. His comment that he had been accessing the building up until then on a weekly basis paid no regard to that. These were unprecedented times when difficult decisions had to be made. This may have been a cautious exercise of judgment; but it was one which Mr Veevers himself indicated he would support the previous evening if reassurance were not forthcoming from the FD and he had indicated in his email of 6:22 hours that Mr Preston's decision to postpone a similar visit at the Food Sciences was appropriate.

57. Prof de Leeuw's response and negative views of the claimant, expressed in florid terms as summarised in paragraphs 28 and 31 above, were based upon a misunderstanding of the structure of the health and safety team and its responsibilities. The job description of the claimant was to act with the delegated authority of the Dean and Heads of Schools and to take prompt action with regard to unsafe situations, or unsafe equipment, including the prohibition of these when appropriate. The action he took was for that purpose. She made it abundantly clear, from her emails to Mr Veevers and to Ms Burdall, that she regarded the claimant's actions in cancelling visits and suspending activity as wholly unacceptable and action needed taking.

58. Mr Veevers action in removing the claimant from his post at the FEPS was principally because of the claimant's decisions to restrict access to the engineering buildings on 23 June 2020 and the reaction to it. At the investigation meeting on 11 August 2020, in an explanation for why the claimant had moved sideways, Mr Veevers told Mr Wardle that he had received '*a volley of abuse from a few academics impacted by the decision he took to cancel activities, the relationship between KM and Prof de Leeuw had broken down…the right thing to do to manage the situation was for KM to do some work in the central team*'. There may have been other concerns Prof de Leeuw had which predated the lockdown but these were secondary and, in any event, the protected conduct need not be the only nor principal cause[3]. It may be the claimant's judgment was unnecessarily cautious and premature because he was unaware of the email of Mr Veevers of 6:22 hours that day, but the law does not require us to address its reasonableness[4].

59. With respect to the decision to make the redeployment permanent, we reject the argument that this was for entirely different matters. Our attention was drawn to the interviews for the review, in which Ms Burdall expressed very negative views of the claimant which she said led to real difficulty in managing him and unfavourable views others had of his approach. Some had said they would even shy away from drawing attention to health and safety concerns because of the claimant's reaction. There were observations that the relationship between FEPS and its health and safety team had settled and was working more harmoniously than in the past. The views were not all one sided and the two health and safety officers who reported to the claimant spoke favourably of him. Nevertheless, the interviews drew attention to

[3] *Fecitt v NHS Manchester [2012] ICR 372*
[4] *Shillito v Van Leer (UK) Ltd [1979] IRLR 495*

a style and approach which needed to be addressed; one we would have expected to have emerged at annual reviews and tackled previously. The reliance on a brief reference to such a problem in the 2015 review, a document adduced at the hearing, did not suggest the claimant's manner had been as troublesome as was suggested or was of a level or extent which could not be redressed with responsible performance management.

60. We were satisfied that these were factors which fed into the decision to leave the claimant in a newly created post in January 2021 and not to return him to the FEPS. However, it was more than clear that the breakdown of the relationship with Prof de Leeuw remained a material factor in Mr Veevers' decision. Her view of the claimant had been forged by the events of 23 June 2020, it was a turning point and presented a major obstacle to a return. The claimant's actions to reduce the risks to health and safety on 23 June 2020 and the reaction it drew remained a material operating factor on Mr Veevers' mind when he made the claimant's role in central services permanent.

Damage to reputation

61. There was undoubtedly damage to the claimant's reputation given the very critical and adverse views which were expressed about him by Prof de Leeuw and Prof Rik Brydson. He was then, immediately, removed from his post of 13 years, an act with respect to which those and other academics and colleagues would draw, correctly, a causal connection.

62. That reputation could have been restored to some degree if the outcome of the disciplinary hearing and the opinions of Prof Platten had been explained to both those senior academics. That would have been an appropriate and necessary first step to return the claimant to his former position in January 2021.

63. We accept the submissions of Mr Nicholls with respect to this complaint. Firstly, the evidence does not establish who knew of the disciplinary action. The complaint is specifically phrased by reference to the reputational damage attributable to that. Secondly, Mr Veevers said that he did not communicate the outcome to anyone other than Ms Clarke and Ms Burdall, because he understood that such matters were kept strictly confidential and not made public. His decision not to tell Prof de Leeuw was not because the claimant had carried out health and safety activities. Mr Nicolls is correct in saying that causation for these purposes is not a but for test.

Summary in respect of detriments under section 44(1)(a) of the ERA

64. The claims succeed in respect of the removal from post, but not otherwise. With respect to the successful claims we do not address those detriments under section 47B, protected disclosures, because they were alternatives. We address below the unsuccessful claims with respect to the alternatives.

Detriments under section 44(1)(e) of the ERA

65. We do not accept that the risks to health and safety were serious and imminent and so the claimant could have no reasonable belief in that. Mr Veevers rightly said that it was not known when the checks for which the FD were responsible

were due. It was not known whether the services had or had not been maintained and, if so, when. In the absence of confirmation, it was cautious and prudent to assume a risk, but to describe that as serious and imminent on the available information is to overstate it.

Detriments under section 47B of the ERA

66. With respect to the protected disclosure complaints we are satisfied, for the same reasons set out in respect of the claim under section 44(1)(a), that the disciplinary investigation and action was about the claimant's manner, approach and authority to act and not the fact he made the disclosures[5]. The allegation in respect of reputational damage does not succeed for the same reasons as the health and safety detriment claims, summarised in paragraph 63 above. The other detrimental treatment with respect to removal from post is pleaded in the alternative, so requires no separate finding.

Employment Judge Jones
Date: 15 March 2022

Judgment and Reasons Sent to the Parties on
Date: 21 March 2022

[5] *Shinwari v Vue Entertainment Ltd [2015] UKEAT 0394/14/BA Bolton School v Jones [2007] ICR 641; Panayiotou v Chief Constable of Hampshire [2014] ICR 23*