CASE NO: 2603116/2020

EMPLOYMENT TRIBUNALS

Claimant: **Ms J Williams**
Respondent: **The Governing Body of Snarestone Church of England Primary School**

Heard at: **Nottingham** **On:** **21 June 2021**

Before: **Employment Judge M Butler (sitting alone)**

RECORD OF A PRELIMINARY HEARING BY CVP

Representation
Claimant: **In person**
Respondent: **Ms N Owen, Counsel**

Covid-19 statement:
This was a remote hearing. The parties did not object to the case being heard remotely. The form of remote hearing was V – video. It was not practicable to hold a face-to-face hearing because of the Covid-19 pandemic.

JUDGMENT

The Judgment of the Employment Judge is that:

1. 9 of the claims of suffering a detriment as a result of making a protected disclosure have no reasonable prospect of success and are struck out;
2. the remaining 5 claims of suffering a detriment for making a protected disclosure have little reasonable prospect of success and the Claimant is to pay a deposit of £50.00 in respect of each of these claims before being allowed to proceed with them.

All of the claimed protected disclosures are set out below.

REASONS

1. The Claimant presented her claim to the Tribunal on 16 August 2020 following a period of early conciliation between 17 June 2020 and 17 July 2020. She was

employed as an Administrator by the Respondent from 5 September 2011 until 22 March 2020 when her employment was terminated by reason of redundancy.

2. During the course of her employment she claims to have made a number of protected disclosures as a result of which she suffered detriments. Two previous preliminary hearings by telephone were held by Employment Judge Victoria Butler on 10 November 2020 and 5 March 2021 when case management orders were made. Unfortunately, these were not properly complied with as a result of which the Claimant was given a further opportunity to set out the date and circumstances of each disclosure, the identity of the person to whom the disclosure was made, the detail of how the disclosure was made, details of the paragraph of Section 43B(1) of the Employment Rights Act 1996 (ERA) into which each disclosure fell, how she held a reasonable belief that the disclosure was made in the public interest, what detriments she suffered, when she suffered them and the identity of the perpetrator, the basis for her claim that she was subjected to the detriments because she made protected disclosures and the basis for her contention that the disclosure was the reason or principal reason for her dismissal. Accordingly, she claims her dismissal was automatically unfair.

3. I set out below brief details of the protected disclosures the Claimant claims to have made and, where details have been given, the detriments she suffered as a consequence of making them:

   (i) 31 October 2014, parents taking control of the school by being on school premises in large numbers and having access to areas of the school they should not have been in causing the staff to suffer from stress. This disclosure was made under Section 43B(1)(d) ERA that the health or safety of an individual has been, or has likely to be endangered and that safeguarding of children was being risked. Disclosure made to Chair and Vice-Chair of Governors.

   (ii) 31 October 2014, the Claimant and a Nursery Nurse being told to leave school to collect a child from home whose mother's car had broken down without checking business travel insurance which represented a failure to comply with a legal obligation under Section 43B(1)(b) ERA in that no check was made as to whether those collecting the child had business travel insurance; Section 43B(1)(d) ERA, endangering or likely to endanger the health or safety of an individual, both of which matters raised safeguarding issues. Made to Chair and Vice-Chair of Governors.

   (iii) 31 October 2014, recruiting volunteers without making DBS checks thereby contravening Section 43B(1)(b) and (d) ERA by failing to comply with a legal obligation and thereby endangering the health or safety of children. Made to Chair and Vice-Chair of Governors.

   (iv) 31 October 2014, the Claimant having to carry £7000 in cash and cheques with her 3 small children to deposit them in the bank. She claims this disclosure was made under Section 43B(1)(d) ERA in that it endangered her health and safety. Made to Chair and Vice-Chair of Governors.

(v) 31 October 2014: this seems to be a repeat of (iii) above and was made to the same people.

(vi) 31 October 2014, encouraging parents to call in during term time to say their children were sick so they could go on holiday resulting in a breach of Section 43B(1)(b) ERA by failing to comply with a legal obligation. Made to Chair and Vice-Chair of Governors.

(vii) 31 October 2014, a teacher forgetting to go to class resulting in children being alone in class and becoming unruly. This is claimed to be contrary to Section 43B(1)(b) and (d) by failing to comply with a legal obligation by endangering the health and safety of children. Made to Chair and Vice-Chair of Governors.

(viii) 31 October 2014, the school's back door being unlocked and a classroom fire door propped open thereby endangering the health and safety of people within the school contrary to Section 43B(1)(d) ERA. Made to Chair and Vice-Chair of Governors.

(ix) 4 March 2015, the Claimant telling a teacher they could not share log in details this being contrary to Data Protection Legislation and being contrary to Section 43B(1)(a) ERA in that a criminal offence had been committed and Section 43B(1)(b) ERA in failing to comply with a legal obligation. This resulted in the Claimant being the subject of a finance investigation. Made to Unison representative.

(x) 30 October 2015, a disclosure to the Vice-Chair of Governors that fund-raising money had not been accounted for and was in a teacher's filing cabinet, £1000 of which was removed by the teacher, which represented a breach of Section 43B(1)(b) ERA as it represented a failure to comply with a legal obligation.

(xi) On a date unknown but apparently sometime in 2016/2017, the Claimant disclosing that a Teaching Assistant was vaping in classrooms which was contrary to Section 43B(1)(a) ERA in that a criminal offence had been committed contrary Section 43B(1)(b) ERA as there had been a failure to comply with a legal obligation to safeguard children and Section 43B(1)(d) ERA endangering the health or safety of the children. Made to Vice-Chair of Governors.

(xii) 15 May 2019, maladministration of SATs when the Claimant reported to the Head Teacher that 2 Teachers had attempted to get her son to change an answer on his SATs paper which represented a failure to comply with a legal obligation under Section 43B(1)(b) ERA.

(xiii) 28 November 2019, disclosing to the Head Master that school sports funding was being misused there being no indication of which sub-section of 43B(1) ERA had been contravened.

(xiv) 30 April 2015, disclosure that a criminal offence had been committed when the Head and Vice-Chair of Governors were misusing public funds by requesting the Claimant raise a fake invoice on behalf of their friend contrary to Section 43B(1) (a) and (b). Made to the Unison representative.

The Evidence

4. There was an agreed bundle of 181 pages and the Claimant gave oral evidence. She provided a witness statement and was cross-examined.

The Claimant's Evidence

5. The Claimant said that all of the disclosures she made impacted on the proposal and decision to make her role redundant. She accepted that the last detriment she suffered was on 24 January 2020. She had not contacted ACAS before 17 June 2020. She spoke to the Citizens Advice Bureau on a date she could not remember but thought is was probably in January 2020, so she knew the next step was to contact ACAS at that time. She was also being supported by her Union Representative until she was made redundant. She had last spoken to that representative in January 2020 before she went on sickness absence. She says she did not talk to the Union Representative about the Employment Tribunal process.

6. The Claimant said she understood she had 3 months less a day from the date of her redundancy to submit her claim. She obtained this information from the internet at a time when she was trying to get legal representation through her home insurance. Ultimately, this was not possible because of the date she took out that insurance. She began her research on Employment Tribunal procedure towards the end of her consultation period in February or March 2020. Before that she had not heard of a detriment. She was trying to deal with matters herself and felt if she kept pushing it with the Head Teacher her job would be at risk. However, when she suffered detriments from 2015, she thought they were because she had made protected disclosures.

7. Her Union representative told her in April 2015 in relation to disclosure (ix) that her complaint amounted to whistleblowing but she was not sure what that was and did not ask the Union representative to explain. She then said she knew what whistleblowing was generally but was not sure whether the Union representative or she would be blowing the whistle. She did, however, realise that she was claiming whistleblowing when she prepared her timeline for her claim.

8. The Claimant said she did not appeal her dismissal as she was in no state to do so. She was incapable of doing this physically, mentally and emotionally. Although she said she stills suffers from the impact of what happened to her, she had produced no medical evidence but said she was still taking medication in August 2020 through March 2020 and up to the present.

9. When she went to the Citizens Advice Bureau in January 2020, she was given

website information and details of free legal advice organisations. She did not return to the Citizens Advice Bureau. She could not remember if, when she looked up public interest disclosures, she saw reference to time limits. She submitted her claim late because of stress and anxiety. When she reached a point of 3 months less a day she said she "just had to dig in and do it. If I had known the deadline was earlier, I would have dug in then and done it". She said she had not appreciated the time limits in relation to unfair dismissal and whistle blowing.

The Issues

10. The issues before me are:

    a) Whether any of the protected disclosures have no reasonable prospect of success and should be struck out or whether any of them have little reasonable prospect of success and should be subject to payment of a deposit as a condition of proceeding with them;

    b) Whether the Claimant's detriment claim under Section 48(3)(a) ERA is in time and, if not, whether it was reasonably practicable for her to have presented her claim in time pursuant to Section 48(3)(b) ERA;

    c) and, if not, was the claim submitted within such further period as the Tribunal considers reasonable pursuant to Section 48(3)(b) ERA.

    The Claimant confirmed at the hearing that she does not wish to make an application to amend her claim to include a claim of victimisation.

The Law

11. Section 43B ERA defines qualifying disclosure as:

"(1)…….. 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 following—

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

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

(c)….

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

(e)….

(f)…."

12. Section 43C ERA sets out to whom a disclosure must be made in order for it to qualify for protection:

> *"(1) A qualifying disclosure is made in accordance with this section if the worker makes the disclosure —*
>
> *(a) to his employer, or*
>
> *(b) where the worker reasonably believes that the relevant failure relates solely or mainly to—*
>
> *(i)the conduct of a person other than his employer, or*
>
> *(ii)any other matter for which a person other than his employer has legal responsibility, to that other person.*
>
> *(2) A worker who, in accordance with a procedure whose use by him is authorised by his employer, makes a qualifying disclosure to a person other than his employer, is to be treated for the purposes of this Part as making the qualifying disclosure to his employer."*

13. Rule 37(1)(A) of the Employment Tribunal Rules of Procedure 2013 provides that:

> *"(1) At any stage of the proceedings, either on its own initiative or on the application of a party, a*
>
> *Tribunal may strike out all or part of a claim or response on any of the following grounds—*
>
> *(a) that it is scandalous or vexatious or has no reasonable prospect of success.*

14. Under Rule 39(1):

> *"(1) Where at a preliminary hearing (under rule 53) the Tribunal considers that any specific allegation or argument in a claim…… has little reasonable prospect of success, it may make an order requiring a party ("the paying party") to pay a deposit not exceeding £1,000 as a condition of continuing to advance that allegation or argument."*

Rule 39(2) provides that:

> *"The Tribunal shall make reasonable enquiries into the paying party's ability to pay the deposit and have regard to any such information when deciding the amount of the deposit."*

Section 48 ERA provides:

"(3) An employment tribunal shall not consider a complaint under this section unless it is presented—

(a) before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them, or

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months."

15. I was referred to the following authorities and took them all into account in reaching my decision:

- ***Korashi v Abertawe Bro Morgannwg University Local Health Board [2012] IRLR4***
- ***Soh v Imperial College of Science, Technology and Medicine EAT0350/14***
- ***Chesterton Global Ltd v Nurmohamed [2017] EWCA Civ979***
- ***Eiger Securities LLP v Korshunova [2017] IRLR115***
- ***Blackbay Ventures Ltd v Gahir [2014] IRLR416***
- ***Kraus v Penna Plc [2004] IRLR206***
- ***Tayside Public Transport Co Ltd v Reilly [2012] IRLR755***
- ***North Glamorgan NHS Trust v Ezsias [2007] IRLR603***
- ***Hemdan v Ishmail and another [2017] IRLR228***
- ***Palmer and Saunders v Southend on Sea Borough Council [1984] IRLR119***
- ***Wall's Meat Co Ltd v Khan [1978] IRLR419***
- ***Locke v Tabfine Ltd UKEAT/0517/10***
- ***Westward Circuits Ltd v Reed [1973] ICR301***
- ***Marley (UK) Ltd v Anderson [1994] IRLR152***
- ***Northumberland County Council v Thompson UKEAT/209/07***

Submissions

16. It is the Respondent's case that some of the alleged disclosures made by the Claimant may be capable of satisfying the definition of qualifying disclosures. Having said this, it is also the Respondent's case that all of the alleged disclosures are out of time. Ms Owen made detailed oral submissions to be considered alongside her comprehensive opening note on behalf of the Respondent. She carefully analysed each disclosure making comments in relation

to them accepting that those numbered (iii), (vi), (vii), (viii) and (xi) had the potential to be qualifying disclosures.

17. Ms Owen also made reference to time limits. She said the Claimant should have submitted her claim on 23 April 2020 as the last detriment relied on was on 24 January 2020. She submitted that the Claimant's alleged ignorance of time limits was not credible as she knew from 2015 that she could blow the whistle and claims to have suffered detriments for the following 5 years. She had access to the internet, consulted the Citizens Advice Bureau and, although she said her Union representative was conflicted, she could easily have spoken to someone else in within UNISON. There were many avenues of support available to her which she did not pursue. In relation to her alleged illness, there was no evidence of a change in health between her dismissal and filing her claim and, further, she accepted that she should have started the process sooner. A 2 month delay was not reasonable.

18. The Claimant submitted that her redundancy was a sham based on a premeditated decision taken 4 years previously. She said her whistleblowing claims were in time and, if not, it was just and equitable to extend time. She then went through each disclosure setting out once more the basis of her claims.

Conclusions

19. The Claimant's employment with the Respondent ended on 22 March 2020. Her last claimed detriment happened on 24 January 2020 as set out in her schedule at page 107. Whilst I understand the Claimant is a litigant in person, her claims lack consistency in their explanation and detail and are at times rather vague.

20. The Claimant brings claims of detriment due to whistleblowing contrary to Section 47B ERA and automatic unfair dismissal due to whistleblowing under Section 103A ERA. She is not pursuing a claim of ordinary unfair dismissal under Section 98 ERA.

21. I now set out my conclusions in relation to each of the following alleged qualifying disclosures adopting the same numbering as above:

    (i) I find this alleged disclosure to be vague and lacking in detail. The Claimant does not set out precisely how the health and safety of children was likely to be endangered by parents being inside the school and there is no mention of the legislative provisions in relation to fire control. The Claimant has not reached the threshold set out in Kraus.

    (ii) The Claimant does not identify the legal obligation she says is being breached. It cannot be simply inferred that business insurance would be necessary and, following the decision in Blackbay Ventures, she has failed to identify the source of the legal obligation she says has been breached.

    (iv) In relation to the carrying of what the Claimant describes as large amounts of cash and cheques amounting to a failure to comply with a legal

obligation or endangering her health and safety, the Claimant does not state what legal obligation was breached and this alleged disclosure generally amounts to the Claimant's own personal interest as opposed to a public interest. It is not a qualifying disclosure.

(v) It is the Respondent's case that all volunteers have DBS checks and it is reasonable for the Claimant to be perfectly aware of this. She produces no evidence to support her assertion that volunteers had not been DBS checked and I conclude, therefore, she had no reasonable belief that the disclosure was in the public interest. Accordingly, it is not a qualifying disclosure.

(ix) It is clear that the Claimant maintains that this disclosure was made to Jackie Dean, her Unison representative. A Union representative is not an appropriate person to whom a qualifying disclosure can be made. Further, there is no explanation as to why the Headmistress asking for log in details is a breach of any legal obligation or, specifically, a breach of data protection legislation.

(x) Keeping charitable money in a filing cabinet and allowing an individual to take £1000 off the school premises shows no reasonable belief on the part of the Claimant that a criminal offence has been committed or a legal obligation breached. The Claimant alleges this was potential fraud but makes no comment as to who benefited from this alleged fraud. This alleged disclosure does not meet the threshold for a qualifying disclosure.

(xi) This alleged disclosure relating to something which occurred on 15 May 2019 seems to be something of an afterthought by the Claimant. I find that she had no reasonable belief there had been a breach of a legal obligation.

(xiii) Again, the Claimant relies on breach of a legal obligation but fails to specify the legal obligation she says has been breached. The words used by the Claimant do not convey that there has been any such breach or that there has been a criminal offence committed.

(xiv) This alleged disclosure was also made to Jackie Dean who is not a relevant person for the purposes of Section 43C(2). The Claimant does not suggest she knows what happened to the money which was allegedly misappropriated so provides no evidence of a criminal offence. Accordingly, she had no reasonable belief that the disclosure was in the public interest and this is not a qualifying disclosure.

22. Since the above alleged disclosures do not amount to qualifying disclosures, it follows that the Claimant cannot pursue a claim that she suffered a detriment as a result of making them. Added to this is the fact that they are all out of time. The Claimant's justification for claiming that it was not reasonably practicable to submit the claims within the time limit is not credible. She relies upon ill health, namely, suffering from anxiety and depression and not being able to give her full attention to the claims. She does not, however, produce

any medical evidence at all to support this contention. Moreover, she took advice from the Citizens Advice Bureau and had the opportunity to take further advice from her Union or other legal entities. She failed to do so. She also admits to having done research on the internet in relation to claims generally and also admits to having been aware for several years that she might be able to bring claims of whistleblowing.

23. Taking the above disclosures at their highest, I do not consider they amount to qualifying disclosures. Accordingly, even bearing in mind the Judgment in ***North Glamorgan NHS Trust***, given that the alleged disclosures do not meet the threshold of qualifying disclosures, I consider that they have no reasonable prospects of success and should be struck out.

24. The remaining disclosures numbered (iii), (vi), (vii), (viii) and (xi), as the Respondent concedes, have the potential to meet the threshold of qualifying disclosures. This is not to say that they will ultimately be accepted as such. If they are found to be protected disclosures, the Claimant may be found to have been automatically unfairly dismissed under s.103A ERA. I cannot, therefore, find that they have no reasonable prospect of success, but I do consider that they have little reasonable prospect of success. This is because all of the alleged disclosures made by the Claimant have the scent of revenge for being made redundant as opposed to having been made reasonably in the public interest. Accordingly, it is appropriate that the Claimant pay a deposit as a condition of being able to proceed with those claims.

25. In considering the Claimant's means, she gave evidence that she currently earns £25000 per annum, lives with her partner with whom she shares household expenses and has 3 children. The mortgage on the property she lives in is £1000 per month and she has no savings. In these circumstances, I consider that the Claimant should pay a deposit of £50 for each of the 5 disclosures which I have not struck out, making a total of £250 in all.

26. The final hearing is currently listed for 7 days in June 2022 and I have made orders in relation to this which accompany this Judgment.

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Employment Judge M Butler

Date: 9 September 2021

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