EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Jahwel Bromfield	**v**	Glow Green Ltd

Heard at: Watford **On**: 12-14 September 2022
Before: Employment Judge Talbot-Ponsonby

Appearances
For the Claimant:
For the Respondent:

RESERVED JUDGMENT

1. The claimant's claim for unfair dismissal is not well founded and is dismissed

2. The claimant's claim for unauthorised deduction of wages is well founded to the extent that, for 2 of the 14 units the claimant completed, the claimant was paid £160 instead of the agreed rate of £180. Accordingly, the respondent has made an unauthorised deduction from the claimant's wages and is ordered to pay the claimant the gross sum of **£40.00** subject to PAYE

REASONS

Introduction

1. This is a claim brought by Mr Jahwel Bromfield, the claimant, against Green Glow Limited, the respondent. The claimant claims that he was dismissed as a result of having made a protected disclosure relating to health and safety issues, and that this is therefore automatically unfair. He further claims that the respondent has made unlawful deduction from his wages.

Claims and issues

2. The claimant states that, during a series of events from 1 to 18 March 2022, the respondent's employees failed to provide safety equipment and assistance and/or a safe working environment. He states that, on 12 April 2019, he telephoned the managing director of the company and told him of this.

3. The claimant was dismissed at a meeting on 16 April 2019 with immediate effect. He claims that the dismissal was as a result of his having raised these issues on 12 April 2019. The claimant is not asserting any detriment

in respect of the alleged protected disclosure other than that he was dismissed.

4. In addition, the claimant claims that he was a full time employee and was entitled to be paid £180 per day, and that he has not been fully paid for the months of March and April 2019.

5. At a preliminary hearing on 30 April 2020, the following were agreed to be the issues in the case:

Public Interest disclosure dismissal – s103A Employment Rights Act 1996 (ERA)

6. Did the claimant disclose information on 12 April 2019 when he raised a grievance with Mr Lloyd Greenfield, director, about his treatment by Mr Daniel Edwards, line manager, who did not provide the safety equipment and assistance needed to carry out work on 1, 6, 7, 10, 11, 13, 14, and 18 March 2019?

7. Was information disclosed which, in the claimant's reasonable belief, tended to show:

   7.1 The respondent had failed or was failing to comply with a legal obligation, namely, to have regard for the claimant's health and safety at work; and/or

   7.2 The health and safety of the claimant had been endangered?

8 If so, did the claimant reasonably believe that the disclosure was made in the public interest?

9 Was the reason, or if more than one, the principal reason for the claimant's dismissal on 26 April 2018, the fact that he had made a protected disclosure?

Unauthorised deduction form wages – s 13 ERA

10 The claimant asserts that he was a permanent employee, and not subject to a probationary period. He says he was entitled to be paid £180 per day, and not for the job.

11 He worked in total for 40 days and should have received £7,200 gross on 26 April 2019. When what he had been paid for jobs is deducted, he has not been paid the sum of £6,060. There has been an unauthorised deduction in that sum. (The list of issues in the case management order refers to an "authorised deduction", but this is clearly a typographical error and it should refer to an unauthorised deduction).

12 It is the respondent's case that the claimant had been paid all monies for work done and that there has been no unauthorised deduction.

The value of the claimant's tools

13 Whether the Tribunal has jurisdiction to hear and determine the sum in respect of the Claimant's tools left in the van on the day he was dismissed, valued by the Claimant at £1,250?

14 If I find in favour of the claimant, I will need to consider what remedy is appropriate.

Procedure, documents and evidence

15 The claim was heard in the Watford Employment Tribunal on 12-14 September 2022. Since, as set out above, the claim is for unfair dismissal, by virtue of section 4(3) of the Employment Tribunals Act 1996, it was heard by me sitting alone. The claimant appeared in person and Miss Brooks of Ellis Jones Solicitors LLP represented the respondent.

16 The claim was originally listed to be heard remotely by CVP. On 8 September 2022, the claimant asked the tribunal whether the claim could be heard in person, as he did not have adequate technology to take part remotely. The tribunal acceded to that request but, unfortunately, the respondent's solicitor did not receive the revised notice of hearing until 11 September 2022.

17 On the morning of 12 September, the Claimant attended the tribunal, as did the respondent's solicitor, Miss Brooks. Miss Brooks applied to me for the hearing to take part as a hybrid hearing, with the respondent's witnesses attending by CVP. Alternatively, they would come to the Tribunal to give evidence, but this would be likely to cause a delay while they did so.

18 I considered the overriding objective set out in rule 2 of the Employment Tribunal Rules of Procedure ("the Rules"), as follows:

> "2 Overriding objective
>
> The overriding objective of these Rules is to enable Employment Tribunals to deal with cases fairly and justly. Dealing with a case fairly and justly includes, so far as practicable—
>
> (a) ensuring that the parties are on an equal footing;
>
> (b) dealing with cases in ways which are proportionate to the complexity and importance of the issues;
>
> (c) avoiding unnecessary formality and seeking flexibility in the proceedings;
>
> (d) avoiding delay, so far as compatible with proper consideration of the issues; and
>
> (e) saving expense.
>
> A Tribunal shall seek to give effect to the overriding objective in interpreting, or exercising any power given to it by, these Rules. The parties and their representatives shall assist the Tribunal to further the overriding objective and in particular shall co-operate generally with each other and with the Tribunal."

19 Taking into account that I considered that I could hold a fair hearing with the respondent's witnesses appearing by CVP, and that this would avoid unnecessary delay and expense, I ruled that the hearing would proceed as a hybrid hearing, with the respondent's witnesses appearing by CVP, and the respondent's representative, and the claimant, in the hearing room with me.

20 On the morning of 13 September, the respondent's solicitor informed me that Mr Daniel Edwards, one of the respondent's witnesses, had been unexpectedly called abroad and could not attend to give evidence, but that the respondent did not seek to adjourn the hearing. Mr Bromfield would have preferred the hearing to be adjourned to allow him the opportunity to cross examine Mr Edwards, but I reminded him that the respondent was not obliged to call any particular witness, and informed the parties that I would accord such weight to Mr Williams' evidence as I considered appropriate, bearing in mind that it had not been tested.

21 I had a hearing bundle of some 562 pages prepared by the respondent, containing the pleadings and case management orders, relevant documents, correspondence between the parties, and various internet reviews relating to the respondent. I also had a bundle containing a witness statement from the claimant and statements from Mr Lloyd Greenfield, Mr Daniel Edwards and Ms Carrie-Anne Thornton on behalf of the respondent. I have read all the witness statements, and I have read all parts of the hearing bundle that I was referred to in submissions, as well as any other documents that I considered relevant.

22 Among the documents in the bundle were a statement emailed by Mr James Smith, the owner of the first property that the claimant attended, to the claimant, and an internal email from the complaints department at the respondent to Ms Thompson.

23 Mr Smith did not attend to give evidence and therefore was not subject to cross examination on his statement and, insofar Mr Smith refers to what Mr Edwards told the claimant, it is hearsay, based on what the claimant told Mr Smith. Nonetheless, Mr Smith is an independent party, and I will accord such weight to his evidence as I consider appropriate.

24 The list of complaints was in an email from a generic email address, "complaints@glowgreenltd.org". No individual has given a witness statemen to attest how this list was compiled other than that it is from the respondent's records. I have seen emails relating to some of these complaints, but not all.

25 I heard oral evidence from the claimant and from Ms Thornton and Mr Greenfield. As I have noted above, Mr Edwards was not able to give oral evidence.

26 I heard submissions from the claimant and from Miss Brooks; Miss Brooks also provided a written document which was essentially a transcript of what she said. I am grateful to both parties for their assistance in this matter.

Fact finding

27 The claimant applied to the respondent for a job in or about early 2019. His evidence was that the job advertisement he responded to offered a salary of £46,000 per year. The claimant was not able to provide the original advertisement, but has identified more recent advertisements from the respondent that do indeed refer to a salary of £40,000 to £55,000 per year.

28 The claimant had a telephone interview with Ms Thornton. The claimant states in his witness statement that he was told that Mr Daniels was listening to the call, and Mr Daniels then asked him 3 questions in relation to gas installations, that the claimant described as "basic".

29 Ms Thornton in her statement accepts that there was an initial telephone interview with herself, but states that the claimant was then invited for a face to face interview with Mr Edwards, but that she cannot find any notes of this interview and does not believe she attended it.

30 The recruitment process is not addressed in Mr Edwards' statement.

31 On balance, I accept the claimant's description of the recruitment process. If Mr Edwards had indeed interviewed the claimant, I would expect there to be a record of this, as well as a letter or email inviting him to the interview, and none of these has been produced to me; in addition, Mr Edwards does not mention in his statement any interview that he held with the claimant prior to the job offer being made, and I would expect this to have been mentioned.

32 The claimant accepted an offer of a job with the respondent and, on 15 February 2019, the respondent sent an email to the claimant with a formal offer letter, setting out terms and conditions, and a reference and criminal convictions form to be completed.

33 The address on the letter itself is not correct, as the respondent used the wrong postcode. The claimant stated in his witness statement, and reiterated in cross examination, that he never received the hard copy of the letter. He accepted that he received the email but stated in cross examination that he was unable to read the attachments because his phone would not let him do that, as its memory was full. I do not accept that the claimant had no way of reading the attachments, although it appears that he did not trouble to read them. In any event, I consider that the attachments were properly sent to the claimant by the respondent.

34 The offer letter confirmed the following:

34.1 Under the heading, "Your package and benefits", it was stated:

- "Permanent PAYE contract;
- £180 per unit
- [….]"

34.2 Under the heading "Terms with Glow Green Limited", the letter stated

> "3. **Unit price for boiler installations - £180 per unit** – your unit when (sic) only be paid when it's classed as complete which is when all paperwork

has been submitted accordingly. Site cannot be left until schedule of work complete (unless advised otherwise);

4. **Any schedule of work outside of your unit** will be paid at £18 per hour (starting rate. If this is remedial work for your own installation, then it will be unpaid);"

35 The claimant attended the respondent's premises in Bournemouth for an induction day on 1 March 2019. He did not take with him any information relating to the reference and criminal convictions form; he never subsequently provided this information. In his witness statement he states he was never subsequently asked for these.

36 At the induction day, the claimant attended various presentations, including a health and safety presentation. The claimant states in his witness statement, and reiterated in cross examination, that he did not consider that the respondent paid much attention to health and safety on his induction day.

37 The claimant was emailed a copy of the company's staff handbook and the health and safety policy following the induction day, and signed a form to confirm that he had received these and accepted that it was his responsibility to read them.

38 Also on the induction day, the claimant signed his formal contract of employment. The terms of this that are relevant to this claim are as follows:

"1. General

[…]

1.2 This Statement annuls any previous agreement whether verbal or written given to you at any time.

[…]

3 Probationary Period

The first six months of your employment will be a probationary period and your employment may be terminated during this period at any time on one week's notice. During this period your performance, suitability for continued employment and conduct will be monitored. […]

4. Place of work

4.1 Your role is of a roving nature and your normal place of work will be a combination of client sites as directed by the Company on a day to day basis. Client sites could be anywhere within the UK. Wherever possible you will be given reasonable advance notice of your work locations, however you may be required to attend a client site at short notice.

4.2 If there is no client work for you the company may require you to report to its premises at Avalon, 5th Floor, 26 - 32 Oxford Road, Bournemouth, BH8 8EZ, or at any other premises the Company may relocate to in the future. You may be asked to undertake other reasonable duties.

[…]

6. Job title

[…]

6.3 Daily duties and responsibilities:

a) Installation of boilers to the highest of standards

[…]

e) Remove rubbish and waste disposal from customers property

[…]

h) Complete all paperwork within specified timeframes;

[…]

7. Pay

7.1 Your unit pay is £180 per completed job which shall accrue from day to day and be payable monthly in arrears […]

7.2 Overtime is not paid unless the period of overtime, and the hourly rate of overtime pay, has been agreed and authorised by email or phone by your line manager before you work the overtime. The Company reserves the right to request you to take any overtime worked as time off in lieu (Toil) during troughs in workload. Toil will equal the amount of overtime worked and be paid at your normal rate of pay.

8. Debts/Overpayments & Deductions

8.1 The Company reserves the right to make the following deductions from your salary or other payments due to you any money which you may owe the Company at any time. This includes but is not limited to:

[…]

- Any other overpayments or amounts owing to you by the Company eg parking and driving fines, […]

[…]

- Damage costs such as vehicle damage and rubbish clearance;
- Costs incurred to Glow Green Ltd for bad workmanship;
- Complaint costs due to bad workmanship;
- Jobs or remedials not completed within allocated time due to the fault of the Engineer, i.e. punctuality or productivity;
- Incomplete installations, or missing paperwork meaning a job cannot be classed as complete;

[…]

9. Hours of work

> 9.1 Your normal working hours are varied between 7:00 am to 7:00 pm Monday to Friday with rotational Saturdays and an on-call rota. The hours are flexible to be suited to our clients' availability.
>
> 9.2 You are required to work 45 hours a week, which do not include paid holidays or public holidays. This is an average of 180 hours a month and these hours will be worked at such time as may be required by the Company.
>
> […]
>
> **30. Contract of Employment**
>
> 30.1 By signing below, you confirm that you accept the above contractual obligations (plus any additional terms in a Job Offer letter) as your Contract of Employment. You also acknowledge that you have been given a copy of the Staff Handbook."

39 One element of the dispute is whether, as the claimant claims, he was employed full time at a salary, or whether, as the respondent claims, the claimant was employed on a zero-hours contract and paid for jobs completed. I will consider this issue later.

40 The claimant carried out work for the respondent over the period from 6 March 2019 until 16 April 2019. He attended 10 different client properties, as listed below.

1	6 March 2019	Aylesbury 1 HP19 7GH
2	7-8 March 2019	Aylesbury 2 HP19 9QL
3	11-22 March 2019	Ealing W13 8JZ
4	25 March 2019	Flitwick MK14 6AF
5	26-7 March 2019	Hatfield AL10 9JT
6	28-9 March 2019	Field Mead NW7 2LB
7	2-3 April 2019	Kent DA9 9TR
8	5 April 2019	Luton LU2 9LL
9	8-10 April 2019	Toddington LU5 6AN
10	11-16 April 2019	Bexleyheath DA6 7PZ

41 I will not set in detail the work done at the various properties, but describe in summary the complaints made by the claimant and the respondent in respect of each job.

<u>First job: 6 March 2019, Aylesbury 1 HP19 7GH</u>

42 The claimant complains that he had difficulties signing into his tablet, which caused a delay. In addition, the boiler that needed replacement was on the third floor and was too heavy for one person to carry up the stairs. He states

that he asked for an apprentice, but was told that this was not possible; the customer then helped him to carry the box up the stairs and also to remove the old boiler from the wall.

43 Because the flat was on the third floor, a scaffolding tower was required for the claimant to install the flue on the outside. This had been built in the wrong place and so the claimant could not do this. He states that he telephoned Mr Edwards, who told him to use his 3 part ladder. He tried to do this, but it was too long; Mr Edwards then agreed to arrange for the scaffolding to be moved.

44 Mr Edwards suggests that he did not suggest that the claimant use the triple ladder, but simply arranged for the scaffolding to be moved. This is contradicted by the statement from Mr Smith, the client, which is in the bundle, in which he states that he helped the claimant to try to erect the ladder.

45 As I have noted, I am mindful that neither Mr Edwards nor Mr Smith was subject to cross examination on their statements, and that insofar as Mr Smith's statement refers to what Mr Edwards told the claimant, it is hearsay, based on what the claimant told Mr Smith.

46 Nonetheless, I consider that there was no need for the claimant to have misreported his conversation to Mr Smith at the time, or for Mr Smith, as an independent third party, to report anything other than what he believes to be correct, and I find that Mr Edwards did ask the claimant to see whether the ladder would suffice but, if this was not possible, the scaffolding would be moved.

47 The claimant was able to complete the job on 11 March 2019; he states that he started in the morning, but was called away to inspect another job during the day, and was unable to compete it until it was dark.

Second job: 7-8 March 2019, Aylesbury 2 HP19 9QL

48 On 7 March 2019, the claimant again had difficulties with his tablet. He states in his witness statement that the work was in an attic full of mouse or rat droppings, and he needed gloves and overalls, but Mr Edwards refused him permission to buy these.

49 The internal email with the list of complaints identifies a complaint received in respect of this job, stating that the claimant was rude and that he did not fit the thermostat, despite having promised to go back and do this.

50 On the balance of probabilities, I find that there were mouse or rat droppings in the loft, but that the claimant could have purchased gloves had they been needed, and I find that this job was not completed. I also note from the spreadsheet of the claimant's timesheets that he did not provide the completed paperwork for this job.

Third job: 11-22 March 2019, Ealing W13 8JZ

51 The claimant states that he required internal lifting equipment and additional help. Mr Edwards arranged for him to have the assistance of an apprentice

for the duration of the job, but the claimant stated that he needed more. In particular, the claimant stated that he had to lift a heavy boiler and cylinder into the loft, and this was not feasible with only 2 people.

52 Mr Edwards, in contrast, states that this should have been possible and there were other builders on site who would be able to assist the claimant if needed.

53 In addition, external scaffolding was required but had not been arranged; however, as the client was arranging for scaffolding in the following week in any event, it was agreed that the external flue could wait for this.

54 Finally, the claimant complains about other health and safety hazards at the job arising from the other builders not working properly, and that he complained to Mr Edwards about this. Mr Edwards acknowledges that the claimant complained about this, and his evidence was that he immediately contacted the customer to ensure that health and safety requirements were adhered to. I find that this was the case.

55 There was a significant complaint raised about the work on this job, including leaks, water damage, damage to floorboards, and a gas leak. In cross examination, the claimant accepted that floorboards were damaged, albeit, he stated, by the apprentice; and he accepted that some water may have escaped from the old tank when it was removed; he also blamed the apprentice for leaks, although he accepted that he was responsible for the apprentice's work. Finally, I have seen a contemporaneous email from the customer to the respondent complaining that there was a gas leak from the pipework installed by the claimant. At the end, the customer would not agree to sign off the job as it was not complete. The claimant accepted that another engineer, John, had to complete this work; Mr Edwards states in his witness statement that it took John a further 2 days to complete the job and rectify the outstanding issues.

56 I find that the claimant's work on this job was significantly below standard, and I note that he appeared to show little concern for this in cross examination.

Fourth job: 25 March 2019, Flitwick MK14 6AF

57 There are no disputes in respect of the claimant's fourth job, on 25 March 2019.

Fifth job: 26-7 March 2019, Hatfield AL10 9JT

58 On 26-27 March, the claimant carried out his fifth job, in Hatfield. Parts were missing on arrival that Mr Edwards ordered to arrive the next day. The claimant complained that some were still missing even when the later parts arrived.

59 On 9 April, this customer raised a complaint with the respondent, to say that the installation was not complete because the controls were not installed and other pipes were not supported, and also that a wet stain had appeared on the ceiling immediately below the boiler.

60 An internal email from the complaints department dated 15 April 2019 records that the claimant did not appear concerned about this.

61 I find that there were no concerns raised by the claimant in relation to health and safety at this job, but that he nonetheless did not complete the work to a suitable standard and, again, another engineer was required to remedy this.

Sixth job: 28-9 March 2019, Field Mead NW7 2LB

62 The claimant did not refer to this in his witness statement and had some difficulty recalling the details in cross examination. Mr Edwards states that the claimant overran, and the customer had no heating or hot water within 24 hours inf the installation, and that another engineer was required to complete this. This is referred to in the internal email of complaints. I accept Mr Edwards' account of this.

Seventh job: 2-3 April 201, Kent DA9 9TR

63 Again, the claimant did not refer to this in his witness statement and had some difficulty recalling the details in cross examination. Mr Edwards states that the claimant overran and left the property in a mess, and had to return to resolve this. Again, this is referred to in the internal email of complaints. I accept Mr Edwards' account of this.

Eighth job: 5 April 2019, Luton LU2 9LL

64 Again, the claimant did not refer to this in his witness statement. He recalled that he had not fitted the thermostat but stated that he was not suitably qualified to do so, as it required an electrician. Mr Edwards confirms in his witness statement that no thermostat was fitted, and another engineer Had to attend the property to resolve this. to resolve this. Again, this is referred to in the internal email of complaints. I accept Mr Edwards' account of this.

Ninth job: 8-10 April 2019, Toddington LU5 6AN

65 The claimant describes this in his witness statement under the heading "Flitwick".

66 There were delays as the claimant's roof ladder was damaged; in his witness statement, he suggests that Mr Edwards accused him of having damaged it, but it is clear that Mr Edwards immediately arranged for a replacement ladder to be sent.

67 Complaints were received from the customer in relation to the work at this property, stating that the claimant had caused damage and left a mess in the property, damaged floorboards, and that there was a water leak.

68 In addition, the customer subsequently discovered that the claimant had made what she described as a table from wood in her loft. In cross examination, the claimant admitted that there was a lot of wood in the loft and he had used some. He was somewhat evasive about whether the loft was in a mess.

69 Again, I find that this work was not carried out to a proper standard.

Tenth job: 11-16 April 2019, Bexleyheath DA6 7PZ

70 In his witness statement, the claimant confirms that he rang Mr Greenfield to raise a grievance because of this job.

71 The claimant complained that this job overran because no radiators had been ordered by the respondent. He says that when he arrived, there were no radiators and his job instructions were to go to a particular merchant, 0,2 miles away, to collect them. The merchant said that they had no radiators and showed the claimant this. The claimant spoke to Mr Edwards, twice, who asserted that the radiators had been ordered.

72 The claimant was then told to go to an alternative merchant, where the radiators had been ordered, and then a third. In each case, the merchant had no radiators and no record of any order from the respondent. Ultimately the claimant was not able to continue with the job that day due to the time taken driving round looking for the radiators.

73 The claimant states that he decided that on the following morning, 17 April, he would remain at home until he received confirmation of where the radiators were. Mr Edwards called him to chase him at 9.00 and told him that the radiators were at the original merchant; the claimant telephoned that merchant, who again confirmed that there were no radiators ordered by the respondent. Mr Edwards then suggested that the claimant went to a merchant in Watford, which he was unwilling to do due to the additional time this would take. During the course of this conversation, the claimant accused Mr Edwards of lying to him.

74 Feeling frustrated with what he perceived to be lack of support from the office, the claimant found Mr Greenfield's telephone number and rang him. Mr Greenfield says that he has no recollection of this telephone call and so the only evidence as to the conversation comes from the claimant. However, in the meeting on 26 April, which I shall refer to in due course, there was reference to the claimant having spoken to Mr Greenfield, and I accept that this conversation took place.

75 The claimant says that Mr Greenfield did not seem to be interested, and called Mr Edwards and Ms Thornton into his office. In his witness statement, he states that, during this conversation, he not only complained about the debacle with the radiators, but he also told Mr Greenfield of several health and safety issues.

76 My note of his cross examination is as follows:

> "Q: You were upset / frustrated – you don't know what to do – you are accusing Dan of lying – so you say you telephoned Lloyd Greenfield?
>
> C: Yes
>
> […]
>
> Q: Did he answer the phone?
>
> C: Yes

Q: Did he try to get you off the phone?

C: Yes

Q: You told him about the radiators and told him that Dan had been lying?

C: Yes

Q: He then called the into the office?

C: 1000% (sic) sure - I heard him calling Dan, Carrie into the room

Q: Then you say – he didn't seem interested and wanted to know why you weren't at work?

C: I tried to tell him about the health and safety issues – he didn't want to hear. He said we'd speak on Wednesday

Q: So you didn't have time to tell him the facts?

C: I didn't say that

Q: How long was the phone call?

C: I don't know. Long enough. Long enough for me to tell him – I'm having problems with Dan – these are kind of problem (sic).

Q: He told you to go to work?

C: He said to go to work and we'd catch up about the health and safety on Wednesday

Q: You've said, "Wednesday never came"; do you mean, you didn't get the chance to call him?

C: He never called me. I thought, I've told you what I need to tell you. I was expecting him to contact me and he never did.

Q: Did you get the chance to give specific details of times, places, alleged facts when you were on the phone?

C: No, I've already said, he told me to get back to work

Q: Was the first time that you put any complaint in writing on 15 May after your dismissal?

C: Yes

Q: Did you ever put in writing, specific dates, times etc?

C: No, because I thought I already gave enough information. I also gave enough in the probation meeting".

77 In response to a question from me about exactly was said in relation to the health and safety issues, the claimant states that, having talked about the radiators, "*I said, I've health and safety issues. Then he called Dan into the room*".

78 Considering both the witness statement and the evidence given in cross examination, I find the claimant's description in cross examination is accurate, and he told Mr Greenfield generically that he had concerns about health and safety that he wished to raise, but no specific details.

79 It is also clear, both from the claimant's own evidence and from the note of the meeting on 26 April 2019, that in this conversation, the claimant accused Mr Edwards of lying.

80 The radiators were subsequently ordered and collected and the claimant completed this work on 16 April 2019.

81 Thereafter the claimant performed no further work for the respondent. In his witness statement, he details a job in Rickmansworth which he attended but was unable to carry out any work because on the first day the boiler had not been delivered and, on the second day, when he inspected the boiler, it had been damaged so he was unable to fit it, although he then states that he installed it in any event. Mr Edwards gives no further information about this job and it was not explored in cross examination.

82 The claimant states that, thereafter, except as referred to below, he was not offered any further work and, on 24 April, he was sent an email inviting him to a probationary review meeting on 26 April 2019.

83 The claimant states that he was asked to finish a job in Ealing on 25 April and "*I knew what was going to happen*", from which I infer that he expected that he would be dismissed.

84 The meeting was held on 26 April 2019, although the typed transcript of the meeting reads "26.4.21". Mr Edwards, Ms Thornton and the claimant were present. Ms Thornton took notes and Mr Edwards conducted the meeting.

85 The claimant was at pains to suggest both that Ms Thornton failed to take an accurate record of the meeting, and that the typed note was not an accurate transcript of the handwritten note. Having read both, I am satisfied that the typed notes are an accurate transcript of the handwritten note, and that Ms Thornton did her best to make a note of the meeting, bearing in mind that the claimant was prone to speak very quickly when he felt strongly on matters. I had to ask him to slow down in court on a number of occasions and, in the absence of a recording of the meeting, I am satisfied that the handwritten note was the best record that Ms Thornton could take in the circumstances.

86 The notes record that several customer complaints were discussed and, at the end of the notes, Mr Edwards informed the claimant that the decision had been taken that the claimant had failed his probation, the effect of which was that he was dismissed.

87 The notes then state, "*No other minutes taken as [the claimant's] tone and behaviour became aggressive and [Ms Thornton] was trying to calm down the situation, which took a number of hours due to having to request him leave the building and another member of staff escorting him out, and to the van, and in attempt for him to handover the keys to the vehicle*" (sic).

88 According to this note, the claimant's concerns of health and safety were not raised other than a passing reference to a large cyclinder and the claimant needing help, and informing Mr Edwards that he needed scaffolding. The words "health and safety" do not appear at all.

89 The claimant stated in cross examination that he raised the health and safety concerns with Ms Thornton after Mr Edwards had left, because he felt he could not speak freely in front of Mr Edwards, but that Ms Thornton failed to take any record of this.

90 I accept that the claimant was feeling aggrieved and did inform Ms Thornton of his frustrations about feeling as lack of support from Mr Edwards, but that she was unable to take a detailed note of this because he had by then become volatile and she was concerned lest he become aggressive.

91 Ms Thornton wrote to the claimant on 29 April to inform him that he had failed his probation as a result of the customer complaints.

92 In its amended grounds of response, the respondent avers that the claimant was dismissed because of gross misconduct, misconduct and poor performance, and alleges fly tipping, customer complaints and poor workmanship.

93 In cross examination, Ms Thornton also suggested that the claimant was dismissed for gross misconduct.

94 More telling was the evidence of Mr Greenfield. In his witness statement, he states at paragraphs 20-21:

> "20 […] due to the complaints we received about poor workmanship, I believed the Claimant was dangerous and I made the decision to terminate his employment.
>
> 21 I requested that a probationary meeting was held with the Claimant and for his employment to be terminated with immediate effect as a result of his conduct, workmanship and complaints from customers and the public."

95 The claimant's case was that the decision to dismiss him had been made before the meeting. I find that this is the case, as it was confirmed by Mr Greenfield in his witness statement and in cross examination, and indeed the meeting notes are comparatively brief and do not offer the claimant any opportunity to undergo remedial training, or appear to consider any sanction other than dismissal.

96 I note the complaint of fly tipping. I have not seen the original telephone note of the complaint, but find it inherently unlikely that the respondent would have made this up, and I find that the respondent did receive such a complaint. I find that it was received after the dismissal because, if it had been received before the meeting on 26 April, I would expect this to have been raised with the claimant, and it was not.

97 During the first 2 weeks, of May 2019, the claimant asked the respondent to clarify his wages, and to arrange for the delivery of some tools that he had left in the van because he could not take them on the train home. There is

correspondence in which the parties were seeking to track the tools and ensure their delivery.

98 On 10 May, Mr Edwards informed the claimant that money had been deducted due to damage to a customer's property and that £200 had been received due to the complaint of fly tipping. This is the first time that the fly tipping is mentioned in the papers.

99 On 15 May 2019, the claimant wrote to Mr Greenfield, to lodge a grievance in which he raised a number of issues, which I summarise as follows:

99.1 He complained of deductions from his wages, as follows:

99.1.1 He said that he had been employed for 40 days but had only been paid for 12 days

99.1.2 He worked on bank holiday Friday, and should be paid £250 for this day as well as being given a day's annual leave

99.1.3 He was paid at £160 per unit, when he should have been paid at £18 per unit.

99.2 The claimant stated that the respondent was in breach of contract and had failed to address health and safety issues. He denies fly tipping.

99.3 The respondent had failed to return to the claimant tools that the claimant had left in the van as he could not take them on the train home.

100 Ms Thornton responded to this on behalf of the respondent on 6 June 2019. I summarise the response as follows:

100.1 As to wages:

100.1.1 The claimant is only entitled to be paid for units completed and has been paid appropriately

100.1.2 The claimant was due £250 for holiday pay and this would be paid

100.1.3 The claimant had accumulated 5 days' holiday and had been paid for 1 day at £120 per day, and the respondent would therefore pay a further 4 days, making a total of £480.

100.1.4 The claimant was indeed due to be paid at £180 per unit not £160, and was therefore due an additional £240, which would be included on his final payslip.

100.2 The letter then states that the claimant was dismissed for gross misconduct, including fly tipping, and negligence in his work. Ms Thornton refers to the poor quality of the work, and states that she has a photographic record. She notes that 8 formal complaints have

been received, and that the respondent is paying well over £1,000 in compensation as a result.

100.3 Ms Thornton then states that the respondent takes allegations about health and safety very seriously, and asked for details about these, including evidence of:

100.3.1 The specific health and safety concerns

100.3.2 On what date and to whom concerns were reported

100.3.3 Exactly how, by whom and when the claimant was told to get on with the job; and

100.3.4 Why he did not formally raise these before his dismissal

101 The claimant did not respond to this letter.

102 I have been provided with the claimant's payslips and the spreadsheet confirming the work that the claimant carried out for the respondent. The spreadsheet confirms as follows:

102.1 For March, the claimant was paid for 1 unit. 2 others are noted, one for 2 days but marked "no paperwork no pay", and one for 5 days plus a further 5 days' overrun, also marked "no paperwork no pay".

102.2 For April, the respondent is marked as having completed one remedial job, and 12 other jobs, with 3 days noted as overrun which were not paid.

103 The timesheets show as follows:

103.1 The March timesheet shows that the claimant was paid £160 for one completed job. No deductions were made for tax or NI, or for any other reason.

103.2 The April timesheet shows that the claimant was paid for 13 units at £160 each, subject to tax and NI, and subject to a further deduction of £50, which a handwritten annotation on the payslip indicates is a parking fine.

104 On 3 June 2019, the claimant was sent £120 for one day's holiday pay. On 10 June, a further £970 was paid to the claimant, being the sums referred to in the letter dated 6 June.

105 Accordingly, notwithstanding the comments made by Mr Edwards in his email, I find that, subject to the arguments about (1) whether the claimant is entitled to be paid for every day he was employed and (2) whether he was entitled to be paid for those jobs where the paperwork was not complete, both of which I shall address in due course, the respondent has paid the claimant all the sums due except for £40 that he should have been paid, because the respondent paid him at the rate of £160 per unit for 14 units and has only made this up to £180 for 12 units. This leaves a shortfall of £40.

106 After he left the respondent's employment, the claimant obtained work with Warner Brothers. He started on 7 May 2019, and worked there until 25 August 2019. The claimant explained that this was a fixed term contract.

107 The information provided by the claimant about seeking further work is then silent until February 2020, when he submitted an application for further work through "Indeed". He has then provided applications running from February 2020 until February 2021. The applications were submitted sporadically; some were submitted on 20 February 2020, then none more until 12 May 2020; a significant number were submitted from May 2020 until February 2021. At that time the claimant decided instead to refurbish his stepfather's house and let it for income.

108 The claimant asserted that he was looking for work from August 2019 until February 2020, but could not explain why he had provided no information about this.

Law

Public interest disclosure dismissal

109 Section 103A of the Employment Rights Act 1996 provides as follows:

> "103A Protected disclosure
>
> An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure."

110 "Protected disclosure" is defined in sections 43A and subsequent sections of the Act. Sections 43A to 43 C provide as follows:

> "43A Meaning of "protected disclosure"
>
> In this Act a "protected disclosure" means a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H.
>
> 43B Disclosures qualifying for protection
>
> (1) In this Part 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 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) that a miscarriage of justice has occurred, is occurring or is likely to occur,
>
> (d) that the health or safety of any individual has been, is being or is likely to be endangered,

(e) that the environment has been, is being or is likely to be damaged, or

(f) that information tending to show any matter falling within any one of the preceding paragraphs has been, or is likely to be deliberately concealed.

(2) For the purposes of subsection (1), it is immaterial whether the relevant failure occurred, occurs or would occur in the United Kingdom or elsewhere, and whether the law applying to it is that of the United Kingdom or of any other country or territory.

(3) A disclosure of information is not a qualifying disclosure if the person making the disclosure commits an offence by making it.

(4) A disclosure of information in respect of which a claim to legal professional privilege (or, in Scotland, to confidentiality as between client and professional legal adviser) could be maintained in legal proceedings is not a qualifying disclosure if it is made by a person to whom the information had been disclosed in the course of obtaining legal advice.

(5) In this Part "the relevant failure", in relation to a qualifying disclosure, means the matter falling within paragraphs (a) to (f) of subsection (1).

43C Disclosure to employer or other responsible person

(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."

111 In the case of Cavendish Munro Professional Risks Management Ltd v Geduld [2010] ICR 325, the Employment Appeals Tribunal undertook a detailed consideration of that amounts to disclosure of information. The tribunal found that "information" requires facts, rather than allegations of dissatisfaction, noting that section 43F distinguishes between information and an allegation. The tribunal noted, at paragraph 24:

"24. Further, the ordinary meaning of giving "information" is conveying facts. In the course of the hearing before us, a hypothetical was advanced regarding communicating information about the state of a hospital. Communicating "information" would be "The wards have not been cleaned for the past two weeks. Yesterday, sharps were left lying around". Contrasted with that would be a statement that "you are not complying with

> Health and Safety requirements". In our view this would be an allegation not information."

112 In his judgment in the case of Kilraine v London Borough of Wandsworth [2018] ICR 1850, Sales LJ elaborated on this, saying there is no rigid dichotomy between allegations and information; some statements made by employees may be both allegations and disclosures, or a mixture of the two. The example given in *Cavendish Munro* was of an allegation which contained no specific information, but other allegations may. It is an issue for the tribunal to decide on each occasion.

113 Sales LJ went on to explain that the wood "information" in section 43B(1) has to be read with the qualifying phrase "tends to show"; the worker must reasonably believe that the information 'tends to show' that one of the relevant failures has occurred, is occurring or is likely to occur. Accordingly, for a statement or disclosure to be a qualifying disclosure, it must have sufficient factual content to be capable of tending to show one of the matters listed in S.43B(1)(a)–(f). Whether an identified statement or disclosure in any particular case meets that standard will be a matter for evaluative judgment by a tribunal in the light of all the facts of the case. It is a question that is likely to be closely aligned with the issue of whether the worker making the disclosure had the reasonable belief that the information he or she disclosed tends to show one of the six relevant failures. Furthermore, as explained by Lord Justice Underhill in Chesterton Global Ltd (t/a Chestertons) and anor v Nurmohamed (Public Concern at Work intervening) [2018] ICR 731, CA, this has both a subjective and an objective element. If the worker subjectively believes that the information he or she discloses does tend to show one of the listed matters, and the statement or disclosure he or she makes has a sufficient factual content and specificity such that it is capable of tending to show that listed matter, it is likely that his or her belief will be a reasonable belief.

114 In the case of Gunning v County Durham and Darlington NHS Foundation Trust and anor ET Case No.2500404/15, the claimant alleged that he had been dismissed because of protected disclosures made over several years. The tribunal accepted his assertion that he had raised issues with management on numerous occasions, and in relation to a number of different matters, but at the hearing he failed to give any evidence of what information he had actually provided to his employer. In the absence of this information, the court was unable to make any finding of a protected disclosure.

115 The tribunal will take into account the context of any communication and the entirety of any series of communications, even if communicated to different people, as was the case in Norbrook Laboratories (GB) Ltd v Shaw [2014] ICR 540, EAT. S had contacted NL's health and safety department and then, subsequently, the HR department, asking about health and safety policies in relation to driving on snowy roads, and raising the concern that he considered the roads to be dangerous. The tribunal found that the communication whole constituted a qualifying disclosure.

116 Finally, in Kilraine (above) the Court of Appeal confirmed that the context of the statement matters. As Sales LJ said, at paragraph 41 of his judgment:

> "It is true that whether a particular disclosure satisfies the test in s 43B(1) should be assessed in the light of the particular context in which it is made. If, to adapt the example given in para [24] in the Cavendish Munro case, the worker brings his manager down to a particular ward in a hospital, gestures to sharps left lying around and says 'You are not complying with Health and Safety requirements', the statement would derive force from the context in which it was made and taken in combination with that context would constitute a qualifying disclosure. The oral statement then would plainly be made with reference to the factual matters being indicated by the worker at the time that it was made. If such a disclosure was to be relied upon for the purposes of a whistleblowing claim under the protected disclosures regime in Part IVA of the ERA, the meaning of the statement to be derived from its context should be explained in the claim form and in the evidence of the claimant so that it is clear on what basis the worker alleges that he has a claim under that regime. The employer would then have a fair opportunity to dispute the context relied upon, or whether the oral statement could really be said to incorporate by reference any part of the factual background in this manner."

117 The other element of the test of a protected disclosure is that the claimant must show that he reasonably believed that the disclosure was in the public interest. The tribunals and the Court of Appeal have construed public interest widely. In particular, in Dobbie v Felton t/a Feltons Solicitors [2021] IRLR 679, the EAT commented that the key question is whether the disclosure serves the private or personal interest of the worker making the disclosure, and those that serve a wider interest.

118 The question of the reason of the claimant's dismissal is a question of fact for tribunal. In the case of Smith v Hayle Town Council [1978] ICR 996, the Court of Appeal confirmed that in cases where the employee does not have 2 years' service, he has the burden of proof to show, on the balance of probabilities, that the dismissal was for an automatically unfair reason.

119 Section 100 of the Employment Rights Act 1996 also provides some protection in respect of dismissal in connection with health and safety issues. So far as relevant to this case, the section provides:

> "100 Health and safety cases
>
> (1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that—
>
> […]
>
> (c) being an employee at a place where—
>
> (i) there was no such representative or safety committee, or
>
> (ii) there was such a representative or safety committee but it was not reasonably practicable for the employee to raise the matter by those means,
>
> he brought to his employer's attention, by reasonable means, circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health or safety

[…]"

120 As with section 103A, the burden of proof is on the claimant to demonstrate that the reason for his dismissal was the bringing to his employer's attention the circumstances that were harmful or potentially harmful to health and safety.

Deductions from wages

121 Other than to the extent regulated by legislation such as the National Minimum Wage Act 1998 and regulations made thereunder, the level of a salary payable to an employee, and how and when it is payable, is a matter to be agreed by the employer and employee (or occasionally by collective bargaining) and is governed by the terms of the relevant employment contract.

122 Once this agreement has been reached, however, the employer is obliged to pay the salary in the times and manner agreed. This is governed by Part II of the Employment Rights Act 1996 ("the ERA"), and section 13 provides as follows:

> "13 Right not to suffer unauthorised deductions
>
> (1) An employer shall not make a deduction from wages of a worker employed by him unless—
>
> (a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or
>
> (b) the worker has previously signified in writing his agreement or consent to the making of the deduction.
>
> (2) In this section "relevant provision", in relation to a worker's contract, means a provision of the contract comprised—
>
> (a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or
>
> (b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.
>
> (3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion.
>
> (4) Subsection (3) does not apply in so far as the deficiency is attributable to an error of any description on the part of the employer affecting the computation by him of the gross amount of the wages properly payable by him to the worker on that occasion.

> (5) For the purposes of this section a relevant provision of a worker's contract having effect by virtue of a variation of the contract does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the variation took effect.
>
> (6) For the purposes of this section an agreement or consent signified by a worker does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the agreement or consent was signified.
>
> (7) This section does not affect any other statutory provision by virtue of which a sum payable to a worker by his employer but not constituting "wages" within the meaning of this Part is not to be subject to a deduction at the instance of the employer."

123 Section 14 of the ERA excludes from section 13 any deductions made to recoup overpaid wages or expenses, and certain other deductions, none of which is relevant to this case.

124 A failure to pay the wages properly due is accordingly a deduction for the purposes of section 13 ERA.

125 A "worker" is defined in section 230 of the ERA, and includes (but is not restricted to) an employee.

126 "Wages" are defined by section 27 of the ERA and include "any fee, bonus, commission, holiday pay or other emolument referable to his employment, whether payable under his contract or otherwise" (section 27(1)(a)).

127 Pursuant to section 23 of the ERA, any claim to the Tribunal must be made within 3 months of the deduction or, in the case of a series of deductions, 3 months of the last of the series (subject to any extension of time arising out of a reference to ACAS).

Construing a contract

128 The principles to be applied when construing a contract were summarised by Popplewell J in Lukoil Asia Pacific Pte Ltd v Ocean Tankers (Pte) Ltd (The "Ocean Neptune") [2018] EWHC 163 (Comm) as follows:

> "The court's task is to ascertain the objective meaning of the language which the parties have chosen in which to express their agreement. The court must consider the language used and ascertain what a reasonable person, that is a person who has all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract, would have understood the parties to have meant. The court must consider the contract as a whole and, depending on the nature, formality and quality of drafting of the contract, give more or less weight to elements of the wider context in reaching its view as to the objective meaning of the language used. If there are two possible constructions, the court is entitled to prefer the construction which is consistent with business common sense and to reject the other. Interpretation is a unitary exercise; in striking a balance between the indications given by the language and the implications of the competing constructions, the court must consider the quality of drafting of the clause and it must also be alive to the possibility that one side may have agreed to something which with hindsight did not serve his

> interest; similarly, the court must not lose sight of the possibility that a provision may be a negotiated compromise or that the negotiators were not able to agree more precise terms. This unitary exercise involves an iterative process by which each suggested interpretation is checked against the provisions of the contract and its commercial consequences are investigated. It does not matter whether the more detailed analysis commences with the factual background and the implications of rival constructions or a close examination of the relevant language in the contract, so long as the court balances the indications given by each."

129 Chitty on contracts notes, in paragraph 15-053 of the 34th edition, that "This summary can be broken into a number of components, namely (i) the objective nature of the assessment; (ii) the "factual matrix" or "available background"; (iii) the meaning of the language used by the parties; (iv) the need to have regard to the contract as a whole; (v) the significance of the nature, formality and quality of the drafting of the contract; (vi) what is to be done when there are two possible meanings of the disputed clause; (vii) the unitary and iterative nature of the process, and (viii) striking the balance between the various, potentially conflicting, principles."

130 One important factor is that having established the background knowledge of the parties, it is then an objective exercise. The subjective intentions of the parties are not relevant.

131 The factual matrix incudes the facts that were known or reasonably available to both parties by the time they entered into the contract. However, in the case of Chartbook Ltd v Persimmon Homes Ltd [2009] UKHL 38, the House of Lords confirmed that the courts cannot look at that the parties said or did while the matter was in negotiation for the purposes of drawing inferences about what the contract means. The same applies to the admissibility of drafts and preliminary documents.

Tools

132 As previously noted, "Wages" are defined by section 27 of the ERA and include "any fee, bonus, commission, holiday pay or other emolument referable to his employment, whether payable under his contract or otherwise" (section 27(1)(a)).

133 This cannot include tools which were, on the claimant's case, his own already.

134 Pursuant to section 3(2) of the Employment Tribunals Act 1996 and Article 3 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994, the Tribunal has jurisdiction to hear a claim by an employee alleging a breach of contract by their employer, seeking in the following:

134.1 damages for breach of a contract of employment or any other contract connected with employment;

134.2 the recovery of a sum due under such a contract; or

134.3 the recovery of a sum in pursuance of any enactment relating to the terms or performance of such a contract.

Conclusions

135 Considering the issues identified above, I find as follows;

Public Interest disclosure dismissal – s103A Employment Rights Act 1996 (ERA)

Did the claimant disclose information on 12 April 2019 when he raised a grievance with Mr Lloyd Greenfield, director, about his treatment by Mr Daniel Edwards, line manager, who did not provide the safety equipment and assistance needed to carry out work on 1, 6, 7, 10, 11, 13, 14, and 18 March 2019?

136 I have set out above the evidence given by the claimant and by Mr Greenfield about the telephone conversation on 12 April. I have found that all the claimant said to Mr Greenfield on that telephone call was that, in his own words, "I've health and safety issues". This statement alone does not convey any information and appears therefore not to be a disclosure.

137 I also consider the telephone call in the context of the various conversations that the claimant had had with Mr Edwards. In many of his complaints, he suggests that Mr Edwards expected him to work in an unsafe manner. With one exception, he does not suggest that he told Mr Edwards that he had concerns about health and safety and, indeed, on several occasions Mr Edwards did accede to the claimant's requests to move or provide scaffolding where appropriate.

138 The only occasion on which the claimant explicitly states that he told Mr Edwards that he was concerned about health and safety was for his third job, on 11-22 March 2019, at Ealing (W13 8JZ), in relation to the related to the working practices of other builders at the same property, and on that occasion Mr Edwards' evidence is that he immediately contacted the customer and insisted that health and safety practices be adhered to, and that he would remove the claimant and his apprentice if this was not done.

139 For these reasons, I do not consider that, even taking into account the claimant's telephone conversations with Mr Edwards, the telephone conversation on 12 April 2019 amounted to a disclosure of information.

140 Whatever the claimant may have said at the meeting on 26 April 2019 is not relevant, because, as I have set out above, the respondent had decided to dismiss him before the meeting and therefore the reason for the dismissal cannot be anything that was said at the meeting.

141 Although the claimant was at pains in his cross examination to seek to prove that the respondent expected him to work in an unsafe environment, this is not the issue before the tribunal in this claim. The question is not, whether or not the respondent expected the claimant to work in an unsafe manner, but whether the claimant made a protected disclosure about this issue (whether or not correct) and whether this was the reason for his dismissal.

Was information disclosed which, in the claimant's reasonable belief, tended to show:

(a) The respondent had failed or was failing to comply with a legal obligation, namely, to have regard for the claimant's health and safety at work; and/or

(b) The health and safety of the claimant had been endangered?

142 For the reasons set out above, and taking into account the very brief mention of health and safety issues, I do not consider that the claimant disclosed any information in the telephone call which he could reasonably believe tended to shown that the respondent had had failed or was failing to comply with a legal obligation namely, to have regard for the claimant's health and safety at work, or that his the health and safety had been endangered. On the claimant's own evidence, that would have been the purpose of the subsequent telephone conversation that the claimant hoped to have the following week, but which never happened.

If so, did the claimant reasonably believe that the disclosure was made in the public interest?

143 The claimant gave no evidence in relation to this. As I have set out above, it is not a high threshold and, had the claimant turned his mind to this, I am satisfied that he would have considered that any disclosure about whether the respondent complied with health and safety legislation and ensured a safe working environment would be in the public interest.

Was the reason, or if more than one, the principal reason for the claimant's dismissal on 26 April 2018, the fact that he had made a protected disclosure?

144 I have set out above the facts surrounding the dismissal.

145 I find that the reasons given by Mr Greenfield in his witness statement are correct; that, following the conversation with the claimant on 12 April 2019, and in the light of the claimants received about the claimant's poor workmanship, coupled with his conduct in accusing Mr Edwards of lying, Mr Greenfield decided that the claimant should be dismissed for this reason. I do not find that any alleged complaints about health and safety had any bearing on the decision to dismiss the claimant.

Section 100 Employment Rights Act

146 I have referred above to the various telephone conversations with Mr Edwards. I do not consider that, in these, the claimant was binging to his employer's attention maters concerned with health and safety; he was asking for appropriate support, which was generally provided. On one occasion he did specifically refer to health and safety, and Mr Edwards took prompt action.

147 Even if I am wrong about this, I have found that the reason for the claimant's dismissal was the claimant's conduct, his poor workmanship, and the complaints received. Section 100 is therefore not engaged.

Unauthorised deduction form wages – s 13 ERA

The claimant asserts that he was a permanent employee, and not subject to a probationary period. He says he was entitled to be paid £180 per day, and not for the job.

148 I have set out above the approach to be taken in construing a contract.

149 In particular, although Ms Thornton was at pains to tell me what she intended the contract to mean, and the claimant was at pains to tell me what he believed it meant at the time, as I have set out, their subjective views are not relevant to my interpretation of the contract. I must identify what a reasonable person would have understood the parties to have meant, having regard to the background knowledge which would reasonably have been available to the parties.

150 Accordingly, I take into account the advertisement, not to show the claimant's objective belief, but as part of the background to the contract.

151 By virtue of paragraph 30.1 of the contract, the offer letter dated 15 February 2019 is incorporated into the contract, even though the claimant had not read it.

152 In favour of the claimant's interpretation of the contract (that he was employed on a salary accruing from day to day) are the following factors:

152.1 Clause 7.1, which contradicts itself but which states that his unit pay rate "shall accrue from day to day"

152.2 Clause 7.2, relating to overtime and time off in lieu

152.3 Clause 9.2, requiring the claimant to work 45 hours a week

152.4 The advertisement, which appeared to be inviting engineers to apply for a full time job at £40-55,000 / year

153 In favour of the respondent's interpretation of the contract (that he was paid per unit completed) are the following factors:

153.1 The offer letter dated 15 February 2019 (which I have found forms part of the contract), which reads:

> "3. **Unit price for boiler installations - £180 per unit** – your unit when (sic) only be paid when it's classed as complete which is when all paperwork has been submitted accordingly […]
>
> 4. **Any schedule of work outside of your unit** will be paid at £18 per hour (starting rate. If this is remedial work for your own installation, then it will be unpaid);"

153.2 The beginning of clause 7.1 of the contract, which reads, "Your unit pay is £180 per completed job […]".

154 On balance, taking into account the internal contradictions and the background, I find that the most important part of the contract is the agreed pay rate of £180 per completed unit, which is in both the offer letter and the contract itself. The other terms fall to be construed in the light of this.

155 On that basis, it appears to me that the advertisement, which (as I have noted) appeared to be inviting engineers to apply for a full time job at £40-55,000 / year may well be misleading; but that is not a matter that I need to decide.

156 Accordingly, I do not find that the claimant was entitled to be paid £180 per day, but rather £180 for each of his "completed units" and that, in accordance with the offer letter, the units were only completed when all the paperwork was complete.

He worked in total for 40 days and should have received £7,200 gross on 26 April 2019. When what he had been paid for jobs is deducted, he has not been paid the sum of £6,060. There has been an unauthorised deduction in that sum. (The list of issues in the case management order refers to an "authorised deduction", but this is clearly a typographical error and it should refer to an unauthorised deduction).

157 On the basis of the construction of the contract I have found above, I do not find that the claimant is entitled to be paid for additional days. There were some units for which he was not paid, but these were not completed as no paperwork was provided, and he did not challenge this.

158 As I have set out in my findings of fact, the claimant was initially underpaid, by being paid £160 per unit rather than £180, and the shortfall of £20 per unit has been made up for 12 out of 14 units. Accordingly I find that the claimant is entitled to an additional £40.

It is the respondent's case that the claimant had been paid all monies for work done and that there has been no unauthorised deduction.

159 As I have set out above, I have found that there was an unauthorised deduction of £40. The only other deduction that appears on the payslips is £50 for a parking fine, which the respondent has agreed in his employment contract may be deducted and was not challenged in the hearing before me.

The value of the claimant's tools

Whether the Tribunal has jurisdiction to hear and determine the sum in respect of the Claimant's tools left in the van on the day he was dismissed, valued by the Claimant at £1,250?

160 I have set out above the definition of "wages", and the value of the tools, which were agreed to belong to the claimant, do not fall within this definition and therefore are not wages for the purposes of the Employment Rights Act 1996.

161 No claim has been advanced by the claimant that there was a contractual obligation on the respondent to return any tools and it appears to me that any claim would more properly lie in the tort of conversion or under the Torts (Interference with Goods) Act 1977. The tribunal has no jurisdiction to determine such a claim.

_____

Employment Judge Talbot-Ponsonby

Date: 8 January 2023

Case Number: 3321650/2019

Sent to the parties on: 12 January 2023

For the Tribunal Office