



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8001301/2024

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**Preliminary Hearing Held by CVP (Edinburgh)
On 22 October 2024**

Employment Judge M Robison

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Mr C De Oliveira

**Claimant
In person**

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**The Royal Blind Asylum and School
Melanie Anne Evis
Craig Cowan
Glenn Campbell Watson**

**First Respondent
Second Respondent
Third Respondent
Fourth Respondent
Represented by
Ms K McGaff
Solicitor**

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JUDGMENT AND ORDERS OF THE EMPLOYMENT TRIBUNAL

1. The claims against the second and fourth respondents having been withdrawn, are dismissed.
2. The claimant not having two years' service, the claim for "ordinary" unfair dismissal is dismissed following withdrawal.
- 30 3. By 8 November 2024, the claimant will provide to the respondent:
 - (i) further information and supporting documentation which he will rely on to prove protected disclosures and detriment; and
 - (ii) provide a schedule of loss.
4. By 19 November 2024 the respondent will provide to the claimant:
 - 35 (i) copies of all documents to be relied on at the final hearing.
 - (ii) any response to the further information provided by the claimant, including amending the ET3 if so advised.

5. By 3 December, the claimant will forward to the respondent copies of any additional documents to be included in the final volume of documents.
6. By 20 December 2024, the respondent will provide the claimant with a final joint paginated volume of documents to be relied on at the final hearing.
- 5 7. A notice of hearing will be issued listing this case for a final hearing in person on 13 to 24 January 2025.

NOTE OF PRELIMINARY HEARING ON CASE MANAGEMENT ISSUES

- 10 1. The claimant lodged a claim in the Employment Tribunal on 25 August 2024 claiming unfair dismissal, detriment and unfair dismissal following public interest disclosure, and age, race and sex discrimination. The respondent resists the claims.
2. At this preliminary hearing I had the benefit of agendas prepared by both parties.

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Issues for determination by the Tribunal

- 20 3. We first considered the issues for determination by the Tribunal at any final hearing. Although Mr De Oliveira had lodged a very lengthy agenda setting out his claims in detail, we took time at this hearing to go through his answers and summarise what his claims are, to ensure that the respondent understood the claims being made and it is clear what issues the Tribunal will require to determine at the final hearing.

Whistleblowing

- 25 4. On the matter of the alleged protected disclosures, when they were made and to whom (question 2.3 of the agenda), the claimant explained his position and confirmed that he will provide copies of the documents relied on. He will forward these to Ms McGaff **by 8 November 2024**, explaining why he says they are protected disclosures.
- 30 5. The claimant confirmed that he is relying on the following disclosures:
 - (i) E-mail to the CEO Mr C Spalding believed to be 15 September 2023. The claimant will check his e-mails and confirm that, and he will explain why he believes this to be a protected disclosure;

- (ii) E-mails dated 30 May and 29 June 2024 to Ms Jamieson and Mrs Chalmers, which he believes to be protected disclosures;
- (iii) E-mail to Mr Spalding on 3 July 2024, again asserted by the claimant to be a protected disclosure;
- 5 (iv) E-mail dated 14 July 2024 to Mr Spalding. Ms McGaff was not aware of this e-mail but once she has seen it she will advise whether she can agree that it amounts to a relevant disclosure; and
- (v) The ET1 which was lodged on 25 August 2024 with the Tribunal and directed to Mr Spalding.

10 6. On the question of which failures these tended to show (question 2.4), he confirmed that he believes that these disclosures tend to show that a criminal offence has been committed, and/or that a person has failed to comply with a legal obligation, and/or that the health or safety of an individual is or is likely to
15 be endangered. This relates in particular to his allegation that service users had been subjected to physical harm, and that there was a failure to report or investigate the circumstances and an attempt to cover up the injuries.

7. The claimant's position is that the reporting and investigation of physical harm to service users is in the public interest.

20 8. The respondent does not accept that these are protected disclosures, so that is a matter which will require to be determined by the Tribunal.

9. With regard to the disadvantages the claimant says that he suffered as a result of making the disclosures (question 2.6), the claimant relies on the following allegations:

- 25 (i) Being forcibly removed from the workplace and suspended from work in the presence of other colleagues on 29 June 2024;
- (ii) Being dismissed on 23 August 2024;
- (iii) Refusal to deal with his verbal and written requests to Mrs Gill and Mrs Coleman for flexible working (the claimant will provide
30 the respondent with copies of the relevant e-mails); and
- (iv) Being bullied, harassed and pestered by other co-workers, sometimes in the presence of clients, as narrated in his ET1 and agenda.

10. As there is a dispute about this, the Tribunal will require to decide whether the claimant suffered the disadvantage he alleges, and if so, whether any of the treatment was because he had made any protected disclosures.

5 *Unfair dismissal*

11. After discussion, the claimant confirmed that he does not have two years' service with the respondent. He accepted that this means that he cannot claim "ordinary" unfair dismissal. His claim for automatically unfair dismissal for making a protected disclosure will however proceed.

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Discrimination

12. The claimant confirmed that he is making claims of race, sex and age discrimination against the first respondent (his former employer) and the third respondent, Mr Cowan, who was his line manager.

15 13. With regard to his claim for race discrimination against the third respondent Mr Cowan, and also the first respondent (who are liable for the actions of Mr Cowan), this relates to comments made by Mr Cowan, as set out in the e-mail dated 7 October 2024 responding to the rule 27 notice and order.

20 14. The claimant confirmed that he had made no mention of Ms Evis or Mr Watson in that e-mail response, but in any event, during the hearing he confirmed that he is not pursuing any claims against Ms Evis or Mr Watson. Accordingly those claims are withdrawn and dismissed.

25 15. The claimant is also pursuing a claim for age and sex discrimination. This relates to his allegation that he was less favourably treated than older female colleagues in regard to the rota. He alleges in particular that those older female colleagues were allowed to work less hours and on preferred days and shifts because of their age and/or sex. While he has forwarded to the respondent copies of the rotas which he relies on to support this claim, he confirmed that his comparators include a Mrs Niven, a Mrs Brecking and a Mrs Evis.

30 16. The claimant also alleges that his flexible working application was refused because of his age and sex, but also because of his race (as well as because he made a protected disclosure).

17. These are matters in dispute which the Tribunal require to hear evidence about and to determine whether the claimant has suffered direct discrimination because of any one of these protected characteristics.

5 **Listing for final hearing**

18. We then moved to discuss the fixing of a final hearing when these matters in dispute can be determined by the Tribunal.

19. We discussed the fact that both the claimant and the respondent had included in their agendas a long list of witnesses whom they proposed to call.

10 20. The claimant remains of the view that the 13 witnesses he has listed are all relevant witnesses. As I understand it, many if not most of the witnesses on that list are still employed by the respondent. Accordingly, the respondent is invited to consider whether they will call any of those witnesses, and if not, to ask those witnesses still employed by them whether they are prepared to be called by the claimant to give evidence on a voluntary basis.

15 21. Depending on the response, the claimant should reconsider his position and if he remains of the view that these witnesses are relevant, then he will be entitled to make any applications to the Tribunal for witness orders as appropriate. He should explain why the witnesses are necessary to prove his claims, and any applications will be considered by an employment judge who will decide whether or not the witness orders should be granted on the basis of the claimant's submissions.

20 22. The respondent has also listed 12 witnesses (with some overlap with the claimant's list). Ms McGaff will consider her position now that the claimant's claims have been clarified and assess whether all of those witnesses might be required.

23. Following discussion, and in the expectation that those lists will reduce for the final hearing, it was agreed that it was appropriate to list this case for 10 days.

24. Mutually convenient dates were identified as **13 to 24 January 2025**. The hearing will take place in person (face to face) before a full panel, that is a three member Tribunal.

25. For the avoidance of doubt, witness statements will not be used and the final hearing will cover both liability and remedy.

Documents

26. Ms McGaff agreed that the respondent will take responsibility for providing sufficient copies of the files of productions for the final hearing.
27. She will forward to the claimant copies of all of the documents which the respondent intends to lodge for the final hearing **by 19 November 2024**.
28. The claimant will then forward to Ms McGaff copies of any additional documents which he wishes to be included in the final volume of productions **by 3 December 2024**.
29. A final joint paginated volume of productions will be forwarded to the claimant **by 20 December 2024**, with the requisite copies forwarded to the Tribunal shortly before the first day of the hearing.

Schedule of loss

30. The claimant agreed to provide a schedule of loss **by 8 November 2024**. He was advised that a style or template is available from organisations such as the CAB and gov.uk, and these can be found by searching the internet.
31. The schedule of loss should also include what the claimant has done since he was dismissed with a view to limiting (or mitigating) his losses by seeking alternative employment. He should forward documents to support that to be included in the file of documents for the final hearing.

Judicial Mediation

32. Both parties are interested in judicial mediation. This claim will be referred to the Vice President who will decide whether judicial mediation should be offered. Both parties indicated that they wanted that to take place face to face (and not by video). Parties will be advised separately about the arrangements for judicial mediation if it is approved.

Employment Judge: M Robison

Dated: 22 October 2024

Date Sent to Parties: 24/10/2024