



EMPLOYMENT TRIBUNALS

Claimant: Miss M Bagri

Respondent: BW Legal Services Limited

Heard at: Leeds **On:** 22 to 24 May 2017
4 July 2017 (deliberations in chambers)

Before: Employment Judge Cox

Members: Mrs E M Burgess
Mr D W Fields

Representation:

Claimant: Ms H Trotter, counsel

Respondent: Mr J Boyd, counsel

RESERVED JUDGMENT

This claim fails and is dismissed.

REASONS

1. Miss Abdi presented a claim to the Tribunal alleging that she had been unfairly dismissed from her job as a compliance manager for the Respondent (“the Company”). She also alleged a breach of the statutory right to be accompanied and claimed damages for breach of contract, but she withdrew these aspects of the claim at the Hearing and they were dismissed with her consent.

The issue

2. Miss Abdi worked for the Company for just over three months, from 13 March 2016 to 17 June 2016. The right to complain of unfair dismissal usually depends upon the employee having been employed for two years or more (Section 108(4) of the Employment Rights Act 1996 – the ERA). There is no qualifying length of service, however, if the reason or, if more than one, the principal reason, for the employee’s dismissal was that she had made a protected disclosure (Sections 103A and 108(3)(ff) ERA).
3. A protected disclosure is a “qualifying disclosure” that the employee has

made in one of various specified ways, which include to her employer (Section 43C(1)(a) ERA). A qualifying disclosure is the disclosure of information which, in the reasonable belief of the individual making the disclosure, is made in the public interest and tends to show one of certain specified matters. Those matters include that a person has failed, is failing or is likely to fail to comply with a legal obligation (Section 43B(1)(b) ERA); and that the health or safety of any individual has been, is being or is likely to be endangered (Section 43B(1)(d) ERA). Miss Bagri alleged that the sole or principal reason for her dismissal was protected disclosures falling within these provisions that she had made to Ms Rachael Withers, the Company's Chief Operating Officer, during a meeting between the two women on 14 June 2016.

4. Because Miss Bagri was relying on an exception to the normal requirement for two years' qualifying service, the issue for the Tribunal was whether she had established that the reason or principal reason for her dismissal was that she had made a protected disclosure (Smith v Chairman and other Councillors of Hayle Town Council [1978] IRLR 413).

The evidence

5. The Tribunal heard oral evidence from Miss Bagri herself. On the part of the Company, the Tribunal heard oral evidence from Miss Withers; Mr Sean Barton, who is a solicitor and the Company's Chief Executive Officer; Ms Saiqa Ahmed, an employee of the Company who worked as Miss Bagri's assistant when she was with the Company; and Mr Bilal Mahmood, who works for the Company as Head of Collections.
6. The Tribunal gave the Company leave to rely on the witness statement from Mr Mahmood and a supplementary witness statement from Miss Withers that had been served shortly before the Hearing, but in edited form only: these statements were amended to include only evidence addressing issues raised in Miss Bagri's witness statement that could not have been anticipated by the Company and/or could not be dealt with by another Company witness. The Tribunal also gave the Company leave to rely on certain additional documents submitted after the compliance date for disclosure, on the basis that they appeared to be relevant to the issues in the claim and there was no discernible prejudice to Miss Bagri in them being admitted in evidence.
7. On the basis of the witnesses' evidence and the documents to which the witnesses referred it, the Tribunal made the following findings.

Background

8. The Company was established in January 2012 by Miss Withers and Mr Barton, who is a solicitor. It is a law firm, dealing in the recovery of low value but high volume consumer debt. Most of its clients are companies who have purchased debts from other organisations such as banks and telecommunications companies. Its workforce has grown from eight in 2012 to 215 by the time of these proceedings. Its aim is to be the market leader in the provision of consumer debt recovery through legal services. Since 2013 it believes it has been the largest consumer debt litigation law firm in England in terms of the number of claims issued. It is currently

running over 1,000,000 cases.

9. The Company is regulated by the Solicitors Regulation Authority (the SRA). The SRA requires law firms to have designated persons working to ensure compliance with its regulatory regime in the areas of legal practice and financial administration. Within the Company, those persons are Miss Withers and Mr Barton.
10. As a result of the Financial Services and Markets Act 2000 (Miscellaneous Provisions) Order 2015, the Company could have opted to be regulated solely by the SRA but decided to assume the obligation of being regulated by the Financial Conduct Authority (FCA) also. The FCA regulatory regime was introduced in 2014 but the Company decided when it was first set up in 2012 to ensure that it complied from the outset with the likely requirements of the FCA regime. It then applied for FCA authorisation and the FCA conducted an audit of the Company's business, including its management of risk and its policy on vulnerable customers. The Company was granted FCA authorisation in January 2015. The FCA requires the Company to have two Approved Persons working to ensure compliance with its regulatory regime. These individuals are Miss Withers and Mr Barton.
11. In 2013, the Company successfully applied for a consumer credit licence from the Office of Fair Trading. The Company is not required to hold such a licence but decided to apply on a voluntary basis.
12. In order to ensure its compliance with the regulatory regimes to which it is subject, the Company has established: a team to deal with customers who are vulnerable, including those in financial difficulties; a risk and compliance committee to monitor performance against criteria including compliance risk; and a call quality team. It has purchased software costing over £100,000 that allows it to listen to calls in the business to monitor quality and compliance. The Company is also subject to unplanned, blind audits by its customer Lowell on a monthly or quarterly basis. The Company has never had a regulatory complaint upheld.
13. Miss Withers has 25 years' experience of working within the credit industry, in a wide range of roles from credit control and managing finance to underwriting and managing a contract centre employing 200 staff. She is familiar with the requirements of regulatory compliance.
14. Miss Bagri was recruited in March 2016 to help manage the Company's obligations under the FCA regulatory regime. The previous compliance manager had struggled to marry her knowledge of compliance with an understanding of operations. Miss Withers was concerned to recruit someone with more in-depth knowledge of operations on the basis that, to understand whether there is a real compliance risk, a compliance manager needs to understand whether a theoretical risk actually exists in practice. Miss Bagri was recruited because she was thought to have both compliance and operational experience.
15. Miss Bagri reported to Miss Withers. Miss Withers's "right hand man" was Mr Matt Baxter, Operations Manager. Miss Withers's intention was that Miss Bagri would report to Mr Baxter in her absence, but the Tribunal

accepted Miss Bagri's evidence that this was not made clear to her. When Miss Bagri was first recruited, Miss Withers told her that her first priority should be to set up a team to audit the Company's internal business units, and then should move on to professionalising quality control within the Company. The so-called "business as usual" (BAU) tasks of handling complaints were currently being done by Miss Bagri's assistant, Ms Ahmed. Miss Withers asked Miss Bagri to relieve Ms Ahmed of some of those responsibilities.

16. At this time, the Company held meetings each month at which managers would assess and score a random selection of calls in the business for their compliance with the Company's regulatory requirements and requirements on call quality, known as "call calibration". In late May, Miss Withers found out from Ms Ahmed that Miss Bagri had decided to stop attending these sessions. Miss Withers viewed these call calibration sessions as a fundamental part of the business's mechanism for ensuring compliance and was furious that Miss Bagri had withdrawn from them without her authorisation.
17. By 7 June 2016 Miss Withers had agreed to do sign off Miss Bagri's probationary period. She also agreed to Miss Bagri's request that the Company provide her with training to become a solicitor, on condition that she drew up a development plan for Ms Ahmed to enable her to take over the duties of compliance manager.

The 14 June meeting

18. Because of the size of her own workload, including work on setting up an associated company in Scotland, Miss Withers did not have time to keep a close eye on Miss Bagri. She asked Mr Baxter to prepare a Compliance Objective Plan to provide structure for Miss Bagri's work and discuss this with her. He did so. On 9 June 2016 Mr Baxter emailed Miss Bagri with the plan that he had drawn up. This gave objectives for Miss Bagri, a target date for completion of the objectives and the person to whom she should report on the objective, which was in most cases "MB/RW", that is, Mr Baxter/Miss Withers. Mr Baxter suggested they meet the following week to discuss the plan.
19. Rather than responding to Mr Baxter, Miss Bagri emailed Miss Withers as follows:

"I am really sorry to have to burden you further, however, I have some concerns about the direction in which Matt wants to oversight the compliance function.

I really did not wish to voice my concerns over email, which is why, I wanted to speak to you over the last few days.

Since my arrival into the business I have been amazed how you have driven the business through unprecedented growth and success. I really see a career for myself and I was hoping to work alongside you to improve the compliance, regulatory and oversight function, so that you are not exposed to risks whilst the business grows and expands further.

In order for me to mitigate risks, I really need to be open and honest about the areas of improvements, I need to be able to voice concerns, I need to be able to tell you when things aren't working as they should and when areas aren't performing as they should.

Whilst exposing risk and non conformance won't be pleasant, it is the only way we can address some of the areas of concern that we have.

During this process there will be differences of opinion, there will be processes that operations have adopted for years that will need to be challenged and me reporting these into Matt will simply not work.

By way of example, the number of dpa breaches identified for Liam Jefferson (7) was excessive and warranted further performance management as he posed a business risk, however, Matt decided not to take action as 'he was a risk that the business was willing to take'.

From a compliance front, this was not the correct action, as it left the business open to criticism from the Ico and going forward could result with excessive fines under the new regulations. The new rules state that a firm will be charged 4% of their gross annual turnover if it does not safeguard the data of EU citizens.

Ideally the compliance function needs to be entirely independent and impartial from operational and support areas to allow us to advise on the best outcomes for the business.

If you are after a head of Compliance that will conform to operations way of working then I am not really the right person for the business.

If we could chat on Monday as to how you see my role, as my vision may not be in line with your expectations.

I really did not wish to send this email, however, I think it is important that you know how I feel. If I am not the right person for the role, there will definitely not be any hard feelings and I have genuinely enjoyed working with you over the last 9 weeks."

20. Miss Bagri's reference to her job being "head of Compliance" was inaccurate. As she stated in her claim form, her job title was compliance manager.
21. Miss Withers was annoyed and frustrated to receive this email, which she considered indicated a lack of respect for her management of Miss Bagri and an attempt to undermine the authority of Mr Baxter. Immediately after receiving the email, Miss Withers was away on Company business in Glasgow, where she was seeing a major client and taking steps to set up a Scottish law firm, BW Legal Scotland. She returned to the office on 14 June. Miss Bagri had asked for a meeting to discuss her email and Miss Withers agreed to meet her.

22. At the meeting, Miss Bagri gave Miss Withers a copy of a bullet-point presentation with the title "Compliance Business Plan". The first two pages of this document contained this text:

Overview of our key risks

- Inconsistent approach
- Professionalism
- Experience of staff
- Lack of Supervision
- No preparation for meetings
- Lack of Ownership
- Lack of Quality Framework
- No competency or sign off process
- Performance Management not utilised correctly
- Risks not identified and highlighted correctly
- Lack of comprehensive induction programme
- Lack of Succession Planning
- Key Man dependencies across all operational areas
- Cross-skilling not utilised
- Lack of capacity planning
- Limited adherence to policies

Impact on business

- Potential of Tribunal Claims
- Breaches of DDA and Equality Act
- Junior Management Team are unable to deal with requests and leads to inconsistent approach
- Supervision is required as part of our SRA Code of Conduct and FCA Senior Management Regime
- Reputational Impact with client and increased follow up actions
- Lack of Ownership leads to increased risk to the business
- Lack of Quality Framework which prevents us obtaining Achilles & ISO9001
- No documented competency or sign off process
- Performance Management not utilised correctly which results with non-conformance goes unchallenged
- Risks not identified and highlighted correctly
- Lack of Succession Planning/cross skilling results with breaches of SLA's during peaks in volume

23. Miss Bagri's evidence was that in advance of this meeting she had identified that the business had "a great deal of exposure" in relation to failure to meet its regulatory obligations and needed to change its operating procedures "to avoid risks and breaches". She maintained that she had raised these concerns with Mr Baxter but he had been dismissive of them and had attempted to steer her away from discussing them with Miss Withers. She said that when she met with Miss Withers on 14 June 2016, her aim was to raise and discuss with Miss Withers her concerns about compliance. She said that she told Miss Withers that:
- a. she was concerned that the Company was not reviewing the accounts of vulnerable customers every thirty days as it was

- required to do by FCA obligations;
- b. she was concerned that claims were being issued and progressed without previous correspondence being checked, because of a backlog in monitoring the Company's inbox, and that this was a breach of the SRA's Code of Conduct and the FCA obligations to treat customers fairly;
 - c. she considered that the Company had not undertaken the required health and safety, fire or environmental risk assessments, in breach of the Company's health and safety legal obligations; and
 - d. she had heard a Chinese employee being called "Kung Fu Panda" and a black employee being called a "black monkey", potentially breaching the Equality Act 2010.
24. Miss Withers's evidence was that she and Miss Bagri discussed only the first four or five points on the first page of the presentation document under the heading "Overview of our key risks". As they went through these points, Miss Withers asked Miss Bagri what evidence she had to substantiate the existence of these risks and what she proposed to do to address them, but Miss Bagri was unable to provide any evidence or proposed action. As Miss Withers put it, "there was no substance to her". Miss Bagri did not attempt to link the list of risks she was identifying to the issues listed on the following page under "impact on the business". They did not talk at all about the treatment of vulnerable customers or a backlog in correspondence. Miss Bagri did make a couple of statements about a "Kung Fu Panda" comment having been made and Liam Jefferson having breached the data protection legislation, and that these might lead to litigation. She also mentioned in general terms the Company's fire safety policy.
25. Miss Withers's evidence was that she became increasingly alarmed at what Miss Bagri was saying during the course of this discussion. She felt that Miss Bagri was making ill-informed, generalised and unevidenced comments about risks to the business and attempting to "empire build" by maintaining that she was the person to save the business from those risks. Miss Withers was also concerned that, if Miss Bagri really had concerns about a number of compliance issues, she had delayed for some time in raising them. By the end of the meeting, Miss Withers was not only extremely irritated with Miss Bagri's presumptuousness about her own role but also alarmed by her growing perception that Miss Bagri was not competent.
26. The Tribunal prefers Miss Withers's account of the meeting on 14 June to that of Miss Bagri, and accepts Miss Withers's evidence on what her reaction was at the time to what Miss Bagri said in that meeting, for the following reasons.
27. The document that Miss Bagri took to the meeting is worded in very general terms. It is not consistent with the detailed description of risk that Miss Bagri said she gave. Miss Bagri provided Miss Withers with no documentary evidence to substantiate the issues in the presentation document, which in itself gave Miss Withers reasonable grounds to doubt her competence as a compliance manager.
28. Miss Withers was the co-founder and owner of the business. She had

been party to the Company's decisions voluntarily to take on the regulatory obligations of the FCA regime and operating under a consumer credit licence. She was herself familiar with the Company's compliance obligations. It is not credible that she would have decided to dismiss a compliance manager solely or mainly because she was raising genuine compliance concerns.

29. Miss Bagri herself accepted that she had suggested to Miss Withers at the meeting that her role should be expanded so that she could address all of the compliance-related concerns she was raising. She suggested that she should assume responsibility for all aspects of human resource management and quality assurance within the firm, even though she has no training or experience in human resource management.
30. The tone and content of the emails sent before and after the meeting, which are set out below, are consistent with Miss Withers's account. The overall picture that they paint is of Miss Bagri resisting being managed by Mr Baxter, attempting to build her own profile in the Company by "talking up" risks and her own role in her meeting with Miss Withers, then realising that she had overstepped the mark and attempting to back-pedal and smooth the waters with Miss Withers and Mr Baxter. They do not indicate that she had any serious concerns about compliance risks. The emails are also consistent with Miss Withers being extremely annoyed at what she perceived to be Miss Bagri's presumptuousness and ignorance.
31. After the meeting, Miss Bagri wrote Miss Withers the following email:

"Just wanted to say thank you for spending the time to catch up with me.

The conversation hadn't quite gone the way I had intended to.

I wanted to speak with you to clarify the direction in which I was taking the role. Any of the comments or examples were not intended to be critical of anyone's efforts. I have performed at Matts [Mr Baxter's] level for a number of years and I know how difficult, diverse and complex the role can be.

I entirely understand that the success of my area is interdependent with operations and I simply cannot implement any of the changes without their support, however, it needs to be highlighted that there will be differences of opinion on occasion.

My role is simply to protect the business and you as the approved person, so you are not unnecessarily exposed. I wouldn't be doing my job correctly if I wasn't entirely open and honest with you.

Whilst I am confident in my abilities to fulfil the actions I have specified in the plan, it is also vital that you satisfy yourself that I am the right person for the job. Therefore, I would encourage you to request references from DF [Drydens Fairfax solicitors, Miss Bagri's former employer]. Secondly, I am happy to supply you with the contact details for Arlene Rutter and Mark Dixon who were the Director and Heads of at the time of my employment and they will be in a position to verify

and support my experience in this area.

I really don't want it to be awkward or fraught between us. I genuinely believe I can close some of the risks that we are facing, which is why I insisted on speaking with you directly."

32. Miss Withers forwarded this email to Mr Barton with the text: "Sent last night following the 30 mins schedule catch up meeting. That turned into her bullet point business Slag of and how she can save the day".

33. The following day, Miss Bagri emailed Miss Withers to tell her that she had spoken to Mr Baxter and continued: "I think there were just some misunderstandings and it was good to get these cleared up" and that they were going out for a drink together once she got back from holiday. Miss Withers forwarded this to Mr Baxter with the text: "?" Mr Baxter replied that he had corrected Miss Bagri about her "misguided views" that he was defensive about operational risk, since she had never raised any such feedback with him. He added:

"Discussion with Saiqa [Miss Ahmed] backs up that mandip [Miss Bagri] is out for her own gains. Delagates everything. Saiqa is doing everything in there. . . Saiqa doesn't get any support on any compliance matters and said that she doesn't know the difference between a FOS [Financial Ombudsman Service] referral and investigation and just hands stuff over.

She is miles out of her depth Rach and is now using a chat with me to make it look like everything is rosey in the garden."

34. At some point, Miss Withers's concern about Miss Bagri's competence led her to ask Mr Baxter to talk to others about their experience of Miss Bagri. Miss Bagri's case was that she did this only after the meeting on 14 June, in order to find some pretext for dismissing her for the protected disclosures she had made. The Tribunal accepts Miss Withers's evidence, which was supported by that of Miss Ahmed, that she asked Mr Baxter to begin his enquiries before the meeting. In any event, whether Miss Withers asked Mr Baxter to make enquiries before or after the meeting, the Tribunal accepts that her reason for doing so was because she wanted to know whether her own concerns were borne out by the experiences of others, rather than to provide a pretext for dismissing Miss Bagri.

35. On 16 June Mr Baxter sent Miss Withers an email that included the following points:

Discussions with Saiqa highlighted that she is continuing to complete all BAU compliance tasks in the business, including tasks I have passed to Mandip which have been delegated and then passed by Mandip.

. . .

General feeling . . . was that the role is being used to propel to senior positions in this or other firms rather than developing the role. This view is backed up by Mandip pushing to qualify as a Lawyer with us two weeks ago and this week submitting a business case to change her role to Head of Risk and Compliance.

...

Having reviewed her CV and interview questions again, I have spoken with former colleagues at Dryden's who have confirmed off the record that the Mandip has not had the level of exposure to compliance as suggested in her CV. She has an operational background as a team leader/team manager in a repo sales team.

The decision to dismiss

36. Having read this email, Miss Withers immediately firmed up on her conclusion, which she had began to formulate after the meeting on 14 June, that Miss Bagri was not up to the job and should be dismissed. She was about to travel up to Glasgow again and so she decided to pass the implementation of the dismissal to Mr Barton. She did so in this email, to which she attached the above email she had just received from Mr Baxter:

"Can you please send her a meeting request for Friday at a time that suits you.

Below is some points you can use from Matt, plus the compliance plan she did for me to create the head of risk role in the business where she could do world domination was bullet points. No substance or basis, mostly just an opportunity to put an easy list of bollocks together and she has lied about situations with my managers to attempt to undermined them in my eyes.

Please don't tell her the information Matt got from his contact at Drydens about her role as it's off the record. But you can mention it says it all she put forward that have left drydens years ago to talk about her skills none of which were compliance related.

On Fridays email to me she said no hard feelings of she isn't the person for us. She isn't so she can leave. Her 3 months was up on the 14th June whilst she hasn't had a letter I agreed one could be given to her before all this insight to her because she was going for a mortgage. Not sure if that means she is confirmed or not so it's 1 weeks notice or 2 months.

Bottom line is I don't trust her and therefore can't work with her others now feel that way about her as well. She is a talker not a doer and it highlighted to me we need a heavy weight risk person now having gone through this tender processess we have a lot to put in place and she isn't the person to do so.

Tell her I would be doing this but didn't want to take it into next week with me being in Glasgow you are sorting.

The more I read though her Mickey mouse pitch document it angered me the cheek of her we have 5 years in this business without dropping a big ball and will do fine without her.

Apparently Amy got the job she went for which I don't think has worked out and we got her. Reject bin."

37. Mr Barton accepted Miss Withers's decision that Miss Bagri should be dismissed. As co-founders and owners of the firm, they worked together closely and had confidence in each others' decision-making ability. If he had wanted to challenge Miss Withers's decision, he would have delayed until her return from Glasgow, but he did not.
38. On 17 June 2016 Mr Barton met with Miss Bagri and told her that she was dismissed.

Conclusions

39. From the above findings, the Tribunal draws the following conclusions.
40. The Tribunal accepts that the comments Miss Bagri made at the 14 June meeting about a potentially racist comment and breaches of the data protection legislation by Mr Jefferson amounted to the disclosure of information which, in Miss Bagri's reasonable belief, tended to show that the Company had or was likely to breach its legal obligations under data protection and equality legislation. The Tribunal does not accept, however, that Miss Bagri believed at the time she was making these disclosures that she was making them in the public interest. If she was acting in that belief, the Tribunal would have expected her to have raised these issues with Miss Withers earlier and followed them up with her after the meeting, and she did not do so. The Tribunal considers that Miss Bagri was in fact raising these issues in the belief that they would bolster her case for expanding her role and status in the Company.
41. The Tribunal does not, therefore, accept that Miss Bagri made any qualifying, and hence protected, disclosures. Even if these comments had amounted to protected disclosures, the Tribunal does not accept that her making of them was the reason or principal reason for her dismissal. The Tribunal finds that the principal reason for Miss Bagri's dismissal was that Miss Withers no longer had any trust and confidence in her or her ability to fulfil the duties of the role of compliance manager in the Company.
42. Miss Bagri pointed out that there were inconsistencies between the Company's witness statements and its Grounds of Resistance in relation to the reason for dismissal. Further, she said, Mr Barton had raised several other issues with her at the meeting at which she was dismissed, and in email correspondence with her afterwards, that were not the same as the reason Miss Withers gave for dismissing her when giving evidence to the Tribunal.
43. The Tribunal accepts that there were inconsistencies between the witness statements and the Grounds of Resistance, which were drafted with input from Mr Barton. It also accepts that Mr Barton raised various other criticisms of Miss Bagri at the dismissal meeting and afterwards. The Tribunal does not consider it necessary to go into the detail of these. The Tribunal is satisfied that they do not affect its conclusions, which were supported by the emails sent and received around the time of the 14 June meeting, about who made the decision to dismiss Miss Bagri and why.
44. Miss Bagri also submitted that the fact that Miss Withers had signed off her probation period and agreed to her training as a solicitor undermined

the credibility of Miss Withers's evidence that she dismissed Miss Bagri because she had no confidence in her competence to perform her role. On the basis of Miss Withers's general workload and business commitments in Glasgow during this period, the Tribunal concludes that Miss Withers made these decisions because she was not monitoring Miss Bagri's performance closely enough to know that she was not performing satisfactorily. While that may indicate a shortfall in Miss Withers's performance as a manager, it does not affect the Tribunal's conclusion on the reason why Miss Withers eventually decided to dismiss Miss Bagri.

Conclusion

45. In summary, the Tribunal does not accept that Miss Bagri has established that the sole or principal reason for her dismissal was that she had made a protected disclosure.
46. Miss Bagri's claim of unfair dismissal therefore fails and is dismissed.

Employment Judge Cox

Date: 24 July 2017