# *EMPLOYMENT TRIBUNALS*

***Claimant:*** *Mr P T Shaw*

***Respondent:*** *Tayto Group Limited*

***HELD AT:*** *Manchester* ***ON:*** *16 – 19 & 26 April 2018*

***BEFORE:*** *Employment Judge Sharkett*
*Mr AG Barker*
*Mr TA Henry*

***REPRESENTATION:***

***Claimant:*** *Miss M Williams of Counsel*
***Respondent:*** *Mr Liberadski of Counsel*

# *JUDGMENT*

*The judgment of the Tribunal is that:*

*1. The claimant's claim of automatic unfair dismissal Under section 103 Emplyment Rights Act 1996 (on the basis of protected disclosure), is not well-founded and is dismissed.*

*2. The claimant's claims of detriment under section 47B of the Employment Rights Act 1996 are not well-founded and are dismissed.*

*3. The claimant's claim of ordinary unfair dismissal is not well founded and is dismissed.*

*4. The claimant's claim for breach of contract (notice pay) is not well founded and is dismissed*

## *REASONS*

*1. The claimant brings claims of automatic unfair dismissal under section 103 of the Employment Rights Act 1996 (ERA1996), on the basis that he made a number of protected disclosures, and further claims of detriment as a result of making protected disclosures under section 47B ERA 1996. He also brings an claim of ordinary unfair dismissal and breach of contract (notice pay).*

*2. The claimant was represented by Miss Williams of counsel and the respondent by Mr Liberadski of counsel. The parties had produced two joint bundles of documents to which further documents were added when disclosed during the course of the hearing.*

*3. Miss Williams called the claimant to give evidence in support of his claim, and Mr Liberadskil called:*

*Mr Andrew Symonds – Head of Human Resources for Great Britian;*

*Ms Anne Gilroy – Group Legal counsel*

*Mr S Moss – Investigating Officer and site manager*

*Mr I Barnes – Dismissing Officer*

*Mr R Wharton – Appeal Officer*

*The witnesses gave evidence in chief by way of written witness statements which had been exchanged and were taken as read by the Tribunal. The Tribunal was also asked to consider the written statements of two witnesses who did not attend the hearing. In preparation for the hearing the parties produced two bundles of documents consisting of 868 pages. Any reference to page numbers in this Judgment are references to pages in those bundles unless otherwise stated. A further bundle consisting of party to party correspondence was also produced which the Tribunal was not invited to consider. In addition to written skeleton arguments from both counsel the Tribunal heard closing submissions from Miss Williams for the claimant and Mr Liberadski for the respondent. The Tribunal has had regard to all evidence and submissions when reaching its conclusions.*

*4. Having considered all the evidence, both oral and documentary, the Tribunal make the following findings of fact based on the balance of probabilities. These findings of fact do not reflect all the evidence heard but are the salient facts upon which the Tribunal reached its decision. It is for this reason that all the evidence heard is not rehearsed below all the evidence has been considered in the round before reaching a decision.*

***Findings of Fact***

*5. The claimant was employed by the respondent as a maintenance engineer from 11 March 2011 until his dismissal on 21 April 2017.*

*6. The respondent is a manufacturer of crisps and snacks and employed the claimant at its Westhoughton site as part of an engineering team. At the time of his dismissal the claimant reported to an engineering manager, Mr V Guney (Mr Guney), and prior to that had been part of a team of three, two full time employees of which the claimant was one, and one who worked part time.*

*7. The events which form the basis of the claimant's complaints date back to April/May of 2014. It is necessary at this stage to provide some detail of those events as it is the claimant's case that his later conduct, to a great extent has informed the way in which the claimant behaved at work, which ultimately led to his dismissal.*

*8. On Friday 25 April 2014 the claimant witnessed a male colleague Mr Peachy conducting himself in what he considered to be an unacceptable manner, towards a pregnant female colleague (A). The claimant had previously had a good working relationship with Mr Peachy, and other colleagues reported that they had previously had a close relationship. Mr Peachy was known for his workplace 'banter' with female colleagues but according to the claimant's written note of the matter (p101) Mr Peachy overstepped the mark on Friday 25 April when he shouted sexually offensive comments to A; firstly across a room and again through the doors of a changing room. A further incident occurred on Friday 2nd May 2014, which the claimant records as 'filthy abuse' that had gone on for months and must be stopped. He recorded that he intended to have a word with Mr Peachy at the soonest opportunity (p102). According to the claimant's written records the claimant duly spoke to Mr Peachy on Saturday 3 May 2014 and told him that if it happened again he would report him. He also told him that as long as he followed the rules he would keep their conversation private. The following Tuesday (6 May 2014), Mr Peachy approached the claimant and told him that he could not work with the claimant's threat hanging over him. Mr Peachy did not think he had done anything wrong as he considered it was only banter. He asked the claimant asked if they could draw a line under the whole matter. The claimant told him that if he could not stick to the bargain he would not hesitate to report him. He told him that if it happened again he would give him 20 minutes to resign before he reported him (p107).*

*9. On Saturday 17 May 2014, the claimant records that there had been no further incidents of abuse by Mr Peachy and that A had been absent from work due to illness. In oral evidence that claimant confirmed that A had neither asked nor wanted the claimant to act as her protector but he believed that because she was pregnant and of a different ethnicity to others, she was vulnerable, and in need of protection. This was the reason why, when he had breakfast, with Mr Peachy on the morning of 17 May 2014, he told him that when A returned to work he was not to go near her, that he could come and go as he wanted but he was to take his breaks separately to A and stay away from her (p108). Mr Peachy objected to the claimant's demands repeating his belief that he had done nothing wrong; it was his view that to ignore A as the claimant was demanding would be rude. The claimant told him that he was not prepared to back down 'one inch' (p108) and decided that he would wait to see if Mr Peachy changed his mind over the weekend (p104).*

*<u>Reporting Mr Peachy – the first disclosure</u>*

*10. On the first day of A's return to work, which was around 8 June 2014, the claimant observed Mr Peachy stopping at a table to chat with some of the women. A was one of the women sitting at the table and the claimant followed Mr Peachy outside to challenge him about what he had just seen. Mr Peachy was not prepared to engage with the claimant, and told him that the claimant could do what he wanted. The claimant did not take immediate action but on 10 June he decided to report the matter to Ms Merna, the site co-ordinator and the person responsible for people matters at the West Houghton site. Ms Merna told the claimant that his complaint would be investigated (p106). The claimant relies on the reporting of this matter as his first Protected Disclosure.*

*11. Having reported the matter the claimant did not believe that Ms Merna was taking the matter seriously so he asked a colleague to keep an eye on two of the women who he knew were strong supporters of Mr Peachy. When the claimant was*

*informed that Mr Peachy had been seen talking to female colleagues he became convinced that he would be trying to influence what they said when questioned as part of the investigation. The claimant explained in oral evidence that, having seen what Mr Peachy was trying to do (i.e. interfere with the investigation), he decided he would covertly record his colleagues so that he could gather evidence to prove this. He did not seek permission to record his colleague's conversations and they were unaware of what he was doing. He took his recordings to Ms Merna but instead of getting a positive reception she made it clear that his actions were unacceptable and that he could well face trouble himself for recording other people's conversations without them knowing. As far as the claimant was concerned Ms Merna's response merely re-enforced his view that she was not taking his complaint seriously.*

*12. Mr Symonds, the Head of Human Resources for Great Britain was appointed to investigate the claimant's complaint and was given a copy of the documents the claimant had given to Ms Merna. He held an initial meeting with the claimant on Friday 20 June 2014, the signed notes of which are at p105. During the meeting the claimant was asked a number of questions about his complaint and he confirmed that the "ladies" (including A), were not supporting his complaint against Mr Peachy. In oral evidence the claimant confirmed that the sole purpose of his complaint was to protect A from further abuse from Mr Peachy. He clearly expressed the view that any effect Mr Peachy's behaviour may have had on his other colleagues was of no interest to him and did not form any part of his reason for reporting Mr Peachy. The claimant also confirmed that the resolution he was seeking was that Mr Peachy should be punished to an extent that he (the claimant) deemed suitable; the claimant made it clear that the only suitable punishment would be dismissal.*

*13. On 26 June 2014, Mr Symonds sent a copy of the notes of the meeting for the claimant to sign. His signature was requested on the understanding that if he was not happy to sign, Mr Symonds would amend as required (p110A). The claimant provided his signature on 30 June 2014, but subsequently expressed his dissatisfaction at the content of the notes on the basis that they did not fully reflect all that was discussed in the meeting.*

*14. The Tribunal accept that the notes are not a full account of what was said in the meeting because in oral evidence Mr Symonds explained that during the course of the meeting he expressed his personal view that he thought the claimant's demands of Mr Peachy amounted to blackmail. Mr Shaw in oral evidence confirmed that he had made the demands referred to above and whilst he could see how Mr Symonds might come to the view that this amounted to blackmail it was not reasonable for him to do so.*

*15. The Tribunal find that whilst the claimant's demands may not meet the legal definition of blackmail, it is understandable that they could be deemed as such in layman's terms. It is the claimant's case that at the time he did not know what a grievance was or that a disciplinary or grievance process existed; he said that in real terms such processes were only made known to him as a result of these proceedings (W/S para 7). Having had regard to the oral and documentary evidence before it the Tribunal find that this statement is somewhat disingenuous, the claimant makes a number of references to what the respondent should and should not be doing in relation to policies and process, and from an early stage was indicating his intention to take his complaints against the respondent to a solicitor. In one of his covert recordings with colleagues where a discussion about workplace matters is taking place*

*the claimant is recorded as telling a colleague who disagrees with him that she does not know the law, which in the context of that conversation suggests that the claimant is of the view that he does. The claimant was also aware of his rights under the Data Protection Act and knew his remedy for a breach lay with a complaint to the Information Commissioner. He was also aware that a number of other employees, including Mr Peachy had been disciplined in the past and makes reference in his handwritten note of 19 October 2014 to getting the full disciplinary record of Mr Peachy (p178). In addition, by 19 October 2014, the claimant was clearly contemplating taking the respondent to a Tribunal where he records he intends to "tell the full story" (p178). In light of the evidence before it the Tribunal find that the claimant was aware of the fact that he was able to take his complaint to management from the outset. However instead of following the correct course of action he decided to take matters into his own hands. In doing so he denied the respondent the opportunity of safeguarding the welfare of all members of staff at the earliest opportunity and denied Mr Peachy the opportunity of responding to the allegations. It was only when Mr Peachy refused to bow to the pressure of the claimant's threats that he informed his employer of the incident.*

*16. Having made his complaint, the claimant decided to continue to gather evidence against Mr Peachy to make sure he would be sacked. He made his intention clear to all his colleagues including Mr Peachy. As a result of the way he allegedly then started to behave in building his case, Mr Peachy then raised a grievance against the claimant (p 113), and other female colleagues complained that the claimant had been pressuring them to back him in his complaint (115E& 115H). Mr Peachy complained that the claimant made no secret of the fact that he wanted him dismissed and that he would do whatever it took to achieve that. He complained that the claimant had told others that he was "building a case" against Mr Peachy because he did not believe that he was being justly punished. He was also asking others if Mr Peachy was doing his work correctly or if they had anything else which might help his [the claimant's] case. Mr Peachy had explained that he had been reluctant to raise a complaint about the claimant but that he had reached the stage where he no longer wanted to come to work. He offered that although his apology to the claimant had been rejected, he was still willing to sit down to sort things out with him so that matters could move on.*

*17. In oral evidence the claimant accepts that he was gathering evidence against Mr Peachy and asking others for information which might help him achieve his objective of getting him sacked.*

*<u>The second disclosure to Ms Merna – photographs of structural damage</u>*

*18. On 24 July 2014, the shift supervisor had observed the claimant using his mobile phone to take photographs in the warehouse and areas of production. He reported the matter to Ms Merna because the claimant was in breach of the respondent policy on mobile phones in the workplace As a producer of food products mobile phones were banned in these areas unless being used by an authorised user (p116 & 60A). Ms Merna reminded the claimant of his obligations under the policy and instructed the claimant to delete the photographs which the claimant maintains showed pictures of structural damage to the property. The claimant did not know how to delete the pictures so handed the phone to Ms Merna to do so. The claimant relies on this incident as a Protected Disclosure because the photographs showed damage to walls in the factory which he considered to be a health a safety matter. He accepts*

*that he did not say what the photographs were for nor was he asked. It is his case that Ms Merna must have looked at the photographs when she was deleting them and would therefore have seen what they were and known that he was raising a health and safety matter. It is also his case that she would have known what the photographs referred to because the Quality Manager had already photographed the same areas.*

*Discosure two detriment– Ms Merna's threat to call the police in relation to the claimant taking photographs and her bullying and intimidating behaviour.*

*19. The claimant maintains that as a result of making the second disclosure he was subjected to intimidating and bullying behaviour by Ms Merna who threatened to call the police. The Tribunal note that in relation to matters about which the claimant is unhappy he was in the habit of making written notes to record the event. In respect of this encounter there is no written record and it is dealt with in very little detail in the claimant's written witness statement. In his written statement (paras 32& 33) the claimant explains that he took photographs of the factory where walls were damaged because he considered this to be a health and safety matter that was being ignored. His written evidence that he discussed the photographs with Ms Merna is inconsistent with his oral evidence that he did not, as is his written evidence that he was not aware that staff were not meant to carry phones in the workplace which he clearly accepted he knew in oral evidence. On the basis of the claimant's oral evidence the Tribunal find on the balance of probabilities that the claimant did not discuss the photographs with Ms Merna and he was aware that the use of phones in workplace areas was not allowed unless authorisation had been given. The Tribunal note the proximity of the claimant taking of these photographs to the claimant making covert recordings of colleagues, about which Ms Merna had also had to speak to the him. In the circumstances the Tribunal find on the balance of probabilities Ms Merna's interests at that time would have lay with stopping the claimant taking photographs and would not have had much regard to what they actually were.*

*Disclosure one detriment – being subjected to disciplinary allegations, grievances being raised by others and being threatened with suspension*

*20. Meanwhile the claimant had been asking for a further meeting with Mr Symonds to find out what was going on with his complaint. Mr Symonds arranged to see the claimant again on 31 July 2014 (p120). At the beginning of the meeting the claimant started to complain about the notes from the previous meeting. Mr Symonds stopped the claimant and told him he need go no further because his grievance was 'granted', because Mr Peachy had admitted what he had said to A. The claimant maintains in both his oral evidence his written witness statement, that in the meeting he was not told anything other than the fact that his grievance had been granted. He maintains that it was only at a later meeting with Anne Gilroy that he was told that Mr Peachy had apologised. In addition, in oral evidence the claimant says he was never told that Mr Peachy had made a complaint about him. The Tribunal find that this is inconsistent with the prepared note of what Mr Symonds intended to say at the meeting (p121-122) and the claimant's own handwritten note of the meeting in which he records Mr Symonds as saying "he [Mr Peachy] has apologised to everyone but you won't accept his apology". There is also reference to Mr Symonds telling the claimant that there had been a complaint made about him and the claimant hearing the complaint. It is also clear from the claimant's note and further note prepared by him (p524) that the claimant refused to draw a line under 'it' and threatened to take the matter outside to a solicitor. On the basis of these contemporaneous notes the Tribunal find that the*

*claimant did know that Mr Peachy had apologised for his conduct towards A and that he had raised a complaint against him.*

*21. The claimant's notes record that he made clear in the meeting that he objected to the suggestion that when Mr Peachy was disciplined the likely sanction would be a warning in view of his apology and length of service. The claimant was extremely unhappy at the proposed outcome and challenged the use of a warning in light of the fact that Mr Peachy had had "umpteen final warnings" In oral evidence the claimant expressed his view that given what Mr Peachy had done it was unacceptable that he had not been sacked and that the matter needed to considered by an independent manager. It is the claimant's evidence that Mr Symonds became aggressive when he said this and told the claimant that information about other employees is subject to the Data Protection Act.*

*22. During the course of the exchange the claimant produced a list of further points about Mr Peachy on which he wanted action taken, and he accused Mr Symonds of a 'cover up' Ultimately, Mr Symonds told the claimant that it seemed to him that the claimant had a personal vendetta against Mr Peachy and that it was not his place to monitor Mr Peachy at work. He was not his supervisor and that if he carried on as he was, he would have to suspend him. In evidence Mr Symonds accepted that he had said this to the claimant and explained that the reason he did so was to ensure that the claimant was not able to interfere with any further investigation. The fact that the conversation was heated is supported both by oral evidence and the claimant's note for example he makes reference to the meeting being turbulent (p125), to arguments and comments about the meaning of the words used in the meeting (p124), and the claimant indicating that he would take the matter outside (p123) and that when he asked for his tape recorder back and threatened to go to the police "there and then" if the tapes were erased before being given back to him (p125).*

*23. At the same meeting Mr Symonds spoke to the claimant about other matters that had come to light during the course of the investigation. Other employees had said that the claimant had been giving money and cleaning equipment/ toiletries to A, and Mr Symonds wanted to establish whether the claimant saw himself as something more to A than a work colleague which might explain the change in his behaviour that others had observed since the incident with Mr Peachy. The claimant was also told that he should not be selling these products at work without permission, something which the claimant admitted he was doing. When speaking about the change in the claimant's behaviour since the incident staff had also said that during break times the claimant would sit staring at them tapping his fingers on the table and giggling and the claimant was told that he had to stop doing this. The claimant refers to being told this as having restrictions being placed on him. He maintains that he should have been advised in writing about what he was to stop doing and that because Mr Symonds said them so quickly the claimant did not know what was expected of him. The Tribunal does not accept that the claimant did not know what he was supposed to stop doing, firstly because he makes reference to the nature of the restrictions in his own written notes (p126B) and secondly because it was made clear to him that he was to stop antagonising colleagues in pursuit of his desire to see Mr Peachy sacked. It is the claimant's case that the matters raised in the meeting amounted to disciplinary allegations and grievances against him. It is his case that these matters were only raised as a result of his protected disclosures and these, along with the threat of suspension from Mr Symonds, amount to detriments.*

*24. The claimant was unhappy with the outcome of the grievance and remained determined that he was not going to accept the situation. He continued to monitor and make notes on Mr Peachy's activities and report anything that he considered might strengthen the possibility of him being sacked (p126B & 126D). For example he records that on 8 August 2014 he observed Mr Peachy talking to female members of staff and saw one of them smiling before she pushed Mr Peachy which then caused all of them to laugh. A was among the staff present and the claimant thought she had also laughed at this encounter. Mr Peachy then left the area as the claimant walked towards the camera to see if it would have recorded what had happened. When he reached the camera the claimant noted that a number of boxes were obstructing the line of vision to the group of females so the claimant asked other members of staff whether they had seen anything. No one had, and headed towards the workshop to do so. It is the claimant's case that he then went to the changing rooms to change, so that he could report the matter, and it was when on his way he was subjected to a violent confrontation with Mr Peachy. This was a matter that was explored at some length in cross examination and it was accepted by the claimant, that it was he who started what was in reality was a verbal exchange between the two men, when he sarcastically invited Mr Peachy to "have a nice weekend". The claimant confirmed that Mr Peachy had neither physically nor verbally threatened him with violence or anything else. According to the claimant's written notes Mr Peachy acknowledged to the supervisor who was present at the time that he knew the claimant was going to report him for talking to a female member of staff and told the claimant that he was sick of his games and was not playing them. On the basis of the oral and documentary evidence before it, the Tribunal find that the claimant was not subjected to a violent confrontation by Mr Peachy contrary to the claimant's written evidence.*

*25. The next morning the claimant reported to Ms Merna what he had seen happen with Mr Peachy and the women the previous day. The claimant explained in oral evidence that although he was not near enough to hear what Mr Peachy said to the member of staff he could think of no other reason that she would have pushed him other than he had come out with an abusive comment. His evidence was " I could only surmise that this was a continuation of the behaviour I had witnessed previously and clearly the warning had done nothing" (para 26 W/S). In oral evidence he explained that this was Mr Peachy"s "modus operandi" and he had assumed that he must have been talking abusively. The claimant went on to explain that his reasons for reporting the incident were "all to do with [A]" because she had been present when the incident took place and he believed that she was vulnerable and in need of protection.*

*26. The claimant remained dissatisfied with the outcome of his grievance and sought the involvement of someone in a more senior position to look at his complaint. Mr Symonds sought advice from the then HR Director Ms Sterritt and a decision was made that she and Ms Gilroy,(Group legal counsel), would go to the Westhoughton site to see if they could resolve the matter, and as Ms Gilroy said in oral evidence "bring peace back to the camp". Ms Sterrit and Ms Gilroy attended the Westhoughton site on 26 August and 3 September 2014, to meet with both the claimant and Mr Peachy. Mr Peachy advised the two women that he remained willing to engage to talks to resolve the issue with the claimant and said that if this was possible he would wish to withdraw his grievance; if it was not then he wished to continue with it. However, the claimant, having been told again that although no decision had yet been made it was unlikely in the circumstances that Mr Peachy would be dismissed, made it clear that nothing short of his dismissal would satisfy him and he was not prepared to consider a shaking of hands. At the meeting the claimant was told that they had now*

*completed the investigation and the matter would be passed into the hands of a manager to decide if any disciplinary action needed to follow.*

*27. At the meeting the claimant explained that he was not satisfied that a full investigation had been carried out by Mr Symonds and raised further allegations against Mr Peachy. Ms Gilroy explained she and Ms Sterrit felt they had to investigate these further allegations and duly did so (p135-160). Although the claimant has made reference to raising allegations of a "chronic record of theft, ethnic harassment and sexual abuse" in this meeting (p35), the Tribunal has not been taken to or told of any evidence relating to such allegations. The Tribunal find that the only further allegations raised at this meeting were those relating to Mr Peachy. They are recorded as*

*a. The incident with the female pushing Mr Peachy referred to above*

*b. An incident where Mr Peachy lifted a female colleague off the ground and held her there for a minute*

*c. An incident involving A eating a boiled sweet, although it was not clear how this related to Mr Peachy.*

*28. During the course of the meeting with Ms Skeritt and Ms Gilroy, the claimant handed over tapes of recordings he had made of his colleagues. These were transcribed for the purposes of the investigation but the claimant was told that the practice of recording colleagues was not allowed and he must not bring the recorder on the premises again. Although today in oral evidence the claimant says he agreed to comply, it is recorded that the claimant refused to give an assurance that he would abide by this instruction and instead said that he would 'follow his principles' (p134). The claimant made his own note of the meeting two days later in which he confirms that he is not prepared to stop doing this and that he would do what he considered to be necessary (p132). On the basis of the evidence before it the Tribunal find that the claimant made it clear that he would not agree to their request to stop bringing his recorder on the premises or recording his colleagues. His notes also record his resolve to take the matter outside and get advice from a solicitor if Mr Peachy is given a final written warning (p133).*

*29. While the further investigation was ongoing the claimant continued to raise complaints about the fact that Mr Peachy was still speaking to female staff and he maintained a record of Mr Peachy's activities. A record of his handwritten notes was produced to the Tribunal but was not referred to in evidence. The Tribunal did however read the notes produced in order to ensure it had as full a picture as possible before reaching it's conclusions.*

*30. The further investigation carried out by Ms Gilroy and Ms Sterrit, was conducted using a pro-forma questionnaire prepared specifically for this investigation and all employees were interviewed in person (p135-160). The records of the interviews together with the transcripts of the claimant's taped recordings were then forwarded to Mr N Davies who was the Group Head of Manufacturing and as a senior manager had been asked to take the matter forward. Mr Davies and Mr Menzies, another senior manager who the claimant had been keen to see involved, attended the Westhoughton site to meet with the claimant on 18 November 2014. Mr Davies did not attend to give oral evidence before this Tribunal but did provide a written statement. Mr Menzies*

*attendance at the meeting of 18 November 2014, had been in the capacity as a witness only and he has since retired from the respondent.*

*31. At the meeting Mr Davies advised the claimant that his complaints had been fully investigated and that whilst he found Mr Peachy's comments to be unacceptable, Mr Peachy was genuinely sorry for his actions and A had accepted his apology. The claimant again expressed his dissatisfaction at the outcome and Mr Davies expressed a view that he thought the claimant's continuing behaviour was upsetting a lot of people and he thought he was being irrational. His explained to the claimant that his complaint had been investigated on three occasions and that he needed to respect the decision of the business. He told him that he should accept that the matter was now at an end and draw a line in the sand and move on. When the claimant insisted that he still had outstanding disciplinary matters with Mr Symonds he was told that he should just get on with his work (p522). In response the claimant told Mr Davies that he would "rather pay for his advice" and would "take the matter outside".*

*32. On 10 December 2014 the claimant asked to be given documentation relating to his complaint (p192). Mr Menzies met with the claimant to confirm to him that as far as the respondent was concerned the investigation had been completed and the matter was closed. The claimant advised Mr Menzies that the reason he wanted copies of the documentation relating to his complaint was to enable him to take it 'outside'. Mr Menzies soon after left the respondent and the request for documentation was passed over Ms Gilroy*

*<u>Detriment – change of shift pattern</u>*

*33. Not long after the meeting of 18 November the claimant was told his shift pattern was to change with effect from 24 November 2014 (p186). Mr Moss was the site manager at Westhoughton and he took the decision to swop the claimant's shift pattern with than of another engineer Mr Warsap. Ms Moss explained in evidence that his reason for taking this decision was to redress the skill balance on each shift. Both engineers worked the same but opposite shifts and hours, alternating each week. The shift worked by Mr Warsap meant he worked alongside the supervisor, Mr Crompton. Mr Moss explained that both Mr Crompton and Mr Warsap had skills and operational knowledge of some of the machines that the claimant did not have. Mr Moss was of the belief that by changing the shift pattern the claimant could learn from the supervisor Mr Crompton. The claimant has spoken only in positive terms about Mr Crompton and in oral evidence confirmed that he did not view the change as a punishment, just a disruption that did not make any practical difference. His complaint was that he had not been given a proper explanation for the change until some time later and he took this as a personal insult. Mr Moss had not had any direct involvement with the claimant's grievance but the claimant believed that the decision was not one that was actually taken by Mr Moss; it was his view that Mr Moss was just a peripheral figure and after 7 years of working with her he was convinced Ms Merna would have been instrumental in influencing his decision to make the move because he had complained about Mr Peachy.*

*34. In March 2015, the engineers were told through Mr Robb the supervisor, that they would be required to start clocking in and out when taking their breaks. This was a practice already taking place at other sites and it was decided that the engineers at Westhoughton would be the first to try the practice there. The claimant had a low opinion of Mr Robb and complained that he used to say instructions had come from*

*management when in fact it was just him that was giving the instruction. Consequently, when Mr Robb told the engineers of the new clocking arrangement the claimant rang Ms Merna for confirmation that the instruction had come from her and he also wanted an explanation of why they were being required to do it. Ms Merna did as the claimant asked and put the instruction in writing by means of a memo to the engineers. The engineers were required to sign for receipt of the memo but the claimant refused citing previous misrepresentation when he had given his signature in the past as his reason for not signing (p207).*

*35. During his call to Ms Merna about clocking, the claimant asked for the paperwork in relation to his 2014 grievance to be made available to him. When Ms Merna told him that the matter was closed, he informed her that as far as he was concerned the matter was not closed and he intended to involve the union.*

*36. On 11 March 2015, Ms Merna met with the claimant to remind him that break times were being monitored and that it had been noted that he had taken longer than the allocated time for breaks. He was told that a note to file would be made to record the fact that he had been spoken to about this. On his daily work sheet the claimant records the meeting as a 'disciplinary' with Ms Merna. The entry was corrected by Ms Merna to record the fact that the meeting was not a disciplinary and that all that had occurred was that a note about the fact that he had been told about his breaks was to be put on his file. The claimant challenged Ms Merna and refused to meet with her to discuss it any further. He finally agreed to meet with her in the presence of Mr Moss who also explained that the meeting was not a disciplinary and the note was merely a mild advice (p215). A week later the requirement to clock in and out of breaks was extended to all staff with the warning that failure to do so could result in disciplinary action (p 210A).*

*<u>Protected disclosure – illegal access of personal file and disclosure of confidential data.</u>*

*37. Although the claimant continued to monitor Mr Peachy' activities (p212), the next significant incident occurred on 17 March 2015 when Mr Robb approached the claimant saying the words "retirement age 10 July; 65 eh" (p217). The claimant considered that this was a serious breach of his confidential data, told Mr Robb it was a sackable offence and demanded to know who had told him. Mr Robb initially named a member of staff as being the person who told him but the claimant did not believe him and went to see Ms Merna. Ms Merna immediately explained that it was her who had told Mr Robb because she had asked him to ask the claimant what his current intentions were once he reached retirement age. In oral evidence Mr Symonds explained that a number of staff across different sites were either coming up to or over the age of 65. He was conscious that it was often difficult to recruit engineers and other key staff and he had asked the managers to ask those who were close to being eligible to retire what their intentions were. He explained that he asked them to do this so that he would be able to plan ahead if they were intending to leave. The claimant did not believe this explanation despite Mr Moss assuring him that he was sure that this is what had happened and that the cabinets were locked when Ms Merna went home (p218). The claimant was of the view that the locks on the cabinets were personnel data was stored were not particularly secure and as the cabinets had recently been moved there would have been an opportunity for Mr Peachy to access his information because he had been seen up in the office.*

*38. In oral evidence the claimant explained that he had been noting Mr Peachy's movements and decided that he had had the opportunity to access the claimant's files and would be the only one who would be interested in what was in them. He said he could read Mr Peachy's mind and was confident that he was the only suspect. The claimant told Mr Symonds that he believed his data had been accessed by Mr Peachy during the investigation of his formal complaint raised on 7 April 2015. He complained that his personal file had been illegally accessed and his confidential data disclosed. The claimant suggested to management that camera footage from 17 March 2015 should be retained to see if it contained footage of people accessing the office. He also advised the respondent that he intended to contact the Information Commissioner which he later did (p220).*

*39. It had been Mr Moss who had forwarded the claimant's complaint to Mr Symonds and he advised him that he was not of the opinion that camera footage would assist in the investigation as the cameras did not cover where the files were kept and sound was not recorded (p221). The Tribunal note that Mr Symonds took a considerable length of time to deal with this matter and it was not until 9 June 2015 that the claimant and his union representative were invited to a meeting to discuss the matter notwithstanding that it had been chased by both the claimant and Mr Moss prior to that (p235). It may be that there had been some misunderstanding between him and Mr Moss as to who was doing what but this was not a matter that was subject to questions from either party during the course of this hearing. In oral evidence the claimant accepted that the respondent had investigated this grievance.*

*40. As a result of a subject access request made by the claimant and his complaint to the Information Commissioner that the respondent had not dealt with it, the claimant gained access to his personnel file. In doing so the claimant discovered a number of notes on his file that had been put there by Mr Robb. The notes record complaints Mr Robb had about the claimant and cover a period from January -September 2014. The claimant was never informed of these matters and no action was ever taken in relation to them. Mr Robb had not raised these complaints with anyone else and had given the notes to Ms Merna to place on the claimant's file without management being made aware of the content. Mr Moss assured the claimant that if they were not true they would be removed (p256). The Tribunal note that Mr Robb had started to make these notes before the claimant reported Mr Peachy in June 2014.*

*41. By letter of 19 June 2015 the claimant was invited to a meeting with his union representative to discuss his further concerns about his personnel file and the data held on it. The claimant raised a complaint about the security of his data because when Ms Merna was in the process copying information for the claimant following his subject access request he had observed that a drawer in a filing cabinet had been left open. Mr Symonds immediately questioned Ms Merna about this incident and was told that it had been the claimant's training records that she had been photocopying and the drawer that had been left open was the drawer containing training records not personnel files (p243)*

*42. On 15 June 2015, the respondent issued a memo reminding staff about the rules relating to food and drink in the smoking area. This memo had come about because the Quality Manager had observed staff throwing cups and other rubbish into an external area near an oil tank. Staff were asked to sign for receipt of the memo but the claimant refused to do so and challenged Ms Merna demanding to know who had reported the matter to her. The claimant believed that someone had reported him for*

*doing this and that is why the memo had been issued. Ms Merna assured him that no one had reported him but the claimant became irate and would not accept what she was saying, and accused her of being a liar. In oral evidence the claimant said that he didn't think he had called her a liar but that he probably suggested that she was not telling the truth. He disputes that he raised his voice and was abusive to her and suggests that reports of others hearing him were fabricated. When asked about his refusal to sign for the memo he told the Tribunal that he saw no reason why he should sign something that was not related to health and safety.*

*43. A further issue arose at the beginning of July 2015 when Ms Merna told the claimant he had to wear a full chemical suit and a heated argument followed. The claimant was convinced that someone must have complained about him for her to tell him to put on a chemical suit and he demanded to know who it was. After this incident all the engineers were called to a meeting on 7 July where they were told what they had to wear when carrying out certain parts of their job. The claimant's note (p257) records that he had prepared a list of reasons why he would not be prepared to wear a full chemical suit and challenged Ms Merna about who had made the decision. Ms Merna advised him that the decision had been taken by the Group Health and Safety manager but did not engage with him further when he demanded several times to be told the name of the person concerned. The claimant then refused to sign or take a copy of the form handed round to all those present. He told both Mr Robb and Mr Moss that he would not sign anything and he would not wear the suit.*

*44. Mr Moss was unhappy with the way in which the claimant was behaving and was aware that there were a number of matters that needed to be formally addressed. He had spoken with HR about his intention to formally speak with the claimant but was told that all matters could be rolled up and addressed at a meeting Mr Symonds was going to have with him on 10 July 2015 to discuss his personal data grievance. (p237).*

*45. The claimant was accompanied at this meeting by his union representative who made a note of the main points covered (p261-266). The notes from 267A show that the meeting was not intended to cover just the claimant's grievance but was also convened to cover other issues as well. Mr Moss attended the meeting with Mr Symonds. Mr Symonds had prepared a script of the matters he intended to address at the meeting (p274), the first of which was the claimant's grievance. It was agreed that the further information the claimant had provided at this meeting including a list of names that the claimant wanted to be interviewed would form part of the investigation that would follow into his alleged breach of his personal data(p267B).*

*46. The note records that the meeting then moved on to a discussion about the future (p267B). The discussion included the alleged abusive behaviour towards Ms Merna, failing to carry out work he was asked to do and failing to sign the memo about chemical suits. It is not disputed that the claimant's union representative told the claimant that it was not unreasonable for the respondent to ask him to sign such a memo and that if he did not sign he would end up being sacked. The claimant followed the advice of the union representative and no further action followed. The claimant was not told that he would be subject to disciplinary action as a result of these matters. It is the claimant's case that he should have been notified of these allegations before he attended the meeting, and if he had been he would have had no complaint. He maintains that the respondent should have followed the correct process and formally notified him in writing of the allegations and invited him to a disciplinary meeting.*

*47. The investigation into the claimant's data protection grievance took some time but the claimant was kept updated as to progress and was ultimately told that his complaint was not upheld. Mr Symonds concluded from the interviews held and the CCTV footage available, that there was no evidence of a breach of his personal data. He further concluded that the enquiry into the claimant's intentions once he reached the age of 65 was legitimate and in those circumstances, it was not unreasonable to ask his supervisor to approach him. The Tribunal accept that this was the reason why the claimant's age had been made known to Mr Robb. Whilst the Tribunal accept that this was the true position it is also of the view that this matter, together with most of the matters which involved the input of Mr Symonds, was poorly handled.*

*48. The claimant remained unhappy at work and continued to insist that the outstanding disciplinary 'charges' should be made known to him in writing and a proper process followed. The Tribunal note that Mr Moss told the claimant that he had misinterpreted what Mr Symonds had said at the meeting of the 10 July where the three matters the claimant was referring to had been raised. He told him that as far as he was concerned there were no outstanding disciplinary issues because he had followed his union representative's advice and agreed to sign the form. The claimant challenged Mr Moss insisting that there were charges against him and refused to accept that there were not. The Tribunal find that although the three issues raised at the meeting could have given rise to the claimant being invited to a disciplinary meeting no further action was taken and it was not reasonable for the claimant to persist in his demands that he be 'charged' and invited to a disciplinary meeting. In oral evidence the claimant accepted that the charges had been dropped but asserts that he should not have been charged at his grievance meeting. The Tribunal find that the questioning of the claimant about these matters was of an investigatory nature and the forum in which they were raised is not relevant. Although it is often the practice to keep grievance and disciplinary matters separate it is not unacceptable to use one investigatory meeting as a means of raising other matters as well especially in circumstances where issues are arising on a regular basis.*

*<u>Third disclosure – safety maintencance documentation</u>*

*49. Further complaints arose in relation to the claimant's conduct and in particular the fact that he was refusing to carry out planned preventative maintenance (PPM), on machinery when asked to do so. Mr Barnes, the new factory manager considered that the allegations raised by the claimant's supervisor were serious as they could potentially compromise health and safety at the site. Mr Barnes met with the claimant on 27 August 2015 (p687). The claimant did not give Mr Barnes any reason why he refused to carry out the requests of his supervisor, other than the fact that he did not trust that others would alter what he wrote and he thought that Mr Robb was setting him up. The claimant did not explain why it was that he thought others might alter what he wrote. In oral evidence the claimant maintains that although he did not say to Mr Barnes that signing the forms could lead to a health and safety issue, Mr Barnes should have known that this is what he was saying because he had made out that the knew everything about engineering; he had told the claimant that he was an engineer as had been his father.*

*50. Mr Barnes initially intended to recommend that disciplinary action should be taken against the claimant for his failure to complete PPMs, but on reflection he decided to give the claimant the benefit of the doubt because he had concerns about the credibility of Mr Robb. The concerns he held were not only in relation to the*

*claimant but also in Mr Robb's dealings with other engineers as well. In oral evidence the claimant explained that Mr Robb did not really have any friends at work and would use people for his own devices. Whilst the claimant did think he was trying to set him up he explained that Mr Robb would seek to blame anyone but himself. In light of his concerns about Mr Robb, Mr Barnes decided to make sure the engineers had clear guidelines in place regarding maintenance checks and to make sure that happened he met with all the engineers on 1 September 2015 where he briefed them fully on what he expected of them (p309).*

*51. Mr Barnes explained to the engineers the use of condition monitoring and the 'bath tub curve'. He explained to the Tribunal what was meant by these terms in oral evidence. All the engineers agreed to his proposal for monitoring the condition of machinery and to sign the PPMs, except the claimant who remained silent; he did however appear to nod his head in assent when asked. It later transpired that the claimant had not given his agreement when he nodded his head and was of the firm opinion that Mr Barnes was not a man that he could trust or one who knew what he was talking about. In oral evidence the claimant explained that he was a very good judge of character and that as soon as he saw Mr Barnes getting out of his car at 7.30am one morning, he could tell straight away what he was like. The claimant thought that the proposal put forward by Mr Barnes was a complete fraud (para 84 C/WS), and he was "having none of it". The Tribunal accept that the method of monitoring the condition of machinery as explained by Mr Barnes is a well established and legitimate method adopted widely by engineers. The Tribunal has not been taken to any evidence that supports the claimant's contrary view other than his bare assertion. It has been clear in oral evidence and from the claimant's notes that he was of the view that he knew better than anyone else to the extent that he challenged why he would need to be supervised or managed. He also told the Tribunal that he took it as a personal insult when Mr Moss suggested that he could have re-training. The Tribunal note that the claimant refers to Mr Robb 'having the nerve' to ask him to carry out PPMs (p302), and that he "just ignored him" as "no one took any notice of him" [Mr Robb]*

*52. Following the meeting on 1 September 2015 the claimant continued to refuse to sign the PPMs and in December 2015 Mr Robb raised further complaints. He complained about the claimant's refusal to follow his reasonable request to carry out PPMs and the abusive language the claimant had used towards him in response to a request to carry out the work (p318). This matter was investigated by Ms Merna on 3 December 2015 (P319). The Tribunal find that it is reasonable for an employer to carry out an investigation when allegations of misconduct are raised to establish whether there is any foundation to the allegation. On the basis of the information obtained in the investigation by Ms Merna, Mr Moss had intended to commence disciplinary action with the claimant in respect of these matters. Before doing so he spoke with HR and was advised that Mr Barnes did not want Mr Moss to pursue the matter at that present time because he still had concerns about the credibility of Mr Robb that he needed to deal with. Mr Barnes decided that in order to address his concerns about Mr Robb he would alter the structure of the engineering departments across the Westhoughton and Wolverhampton sites. He intended to remove the role of engineering supervisor and introduce a new role of engineering manager to cover both sites.*

*53. Mr Robb left the respondent towards the end of 2016 but prior to his departure Mr Moss continued to communicate frequently with the claimant about a number of other issues including the PPM forms. These other issues have not been raised in the*

*schedule of detriments provided by the claimant but include such matters as an occasion later in December 2015 when Mr Robb reported the claimant for failing to put chemicals away correctly. Mr Moss made enquiries about this incident and discovered that the chemicals could have been left out by a number of other people and not just the claimant. As it was not possible to identify who was responsible for the matter no further action was taken and all staff were reminded of the correct procedure to follow. However, the claimant was still refusing to comply with the requirement to wear protective clothing and follow correct procedures. This led to many conversations with the claimant where Mr Moss tried to find out what it was that the claimant was objecting to, apart from the fact that he did not agree that processes in place were workable. It was the claimant's view that the respondent needed to invest financially in the equipment on site and until it did so it would remain non-complaint with what he believed to be its health and safety obligations. He had decided that until it did so, he would play no part in assisting the respondent to gain accreditation from the BRC. It is clear from the transcripts of the many covert recordings the claimant made, and his oral evidence before this Tribunal, that the claimant did not properly understand the concept of accreditation despite a clear and cogent explanation being given to him. This is further evidenced by the fact that the claimant wrote to the BRC to complain about the respondent even though he had been told that the respondent was not accredited by it, a fact that was further explained when BRC responded to the claimant's email.*

*54. Mr Moss was becoming increasingly frustrated with the claimant's intransigence and the fact that he continually referred back to his dissatisfaction with the way in which his 2014 grievance had been handled. The claimant refused to accept that it had been agreed at the meeting with Mr Davies that a line would be drawn in the sand and they would all move, nor would he accept that he was not subject to disciplinary action as a result of the matters raised in his meeting with Mr Symonds in July 2015. It is clear from the transcripts provided that the claimant did not give any cogent reasons for his behaviour and to a great extent simply refused to engage with Mr Moss unless things were done his way.*

*55. In a meeting with Mr Moss on 17 May 2016 (p352A), the claimant raised the fact that an employee had breached the clocking procedure by failing to clock out before leaving the site during his break. His complaint was that the respondent was applying double standards by not doing anything about it. Mr Moss assured the claimant that he would investigate the matter and asked the claimant for the name of the person concerned. The claimant refused to give a name and told Mr Moss that he would be able to find out himself if he investigated stating "its not Columbo is it".*

*56. Mr Moss assumed the person the claimant was talking about was likely to be be Mr Peachy as the claimant had not moved on from his dissatisfaction with the outcome of his grievance in 2014, and the fact that Mr Peachy had not been sacked. In oral evidence Mr Moss explained that he was able to identify who the person was that the claimant was referring to from CCTV footage. It was as he anticipated Mr Peachy who, he discovered, had been given permission to leave the site but had failed to follow the clocking procedure before doing. Mr Moss duly spoke to Mr Peachy to remind him of his obligations under the clocking policy and no further action was taken. The claimant complains that there was not a note to file put on Mr Peachy's record unlike the note that was put on the file of the claimant. The Tribunal find that there was no formal system for putting notes on personnel files nor was there one of keeping notes of every conversation a manager might have with an employee. The Tribunal*

*find that many of the claimant's meeting with Mr Moss were by way of discussions and not formal meetings. Whilst it may be good practice to formally record any transgression of a working practice in reality this is not always practicable in a busy work environment and where the matter can be dealt with by means of a conversation rather than the adoption of formal procedures for every small matter raised.*

*57. During the same meeting of 17 May 2016 Mr Moss told the claimant that he also wanted to discuss PPMs with him and all the engineers. Mr Moss told the claimant that he was going to have a meeting with them all so that this could be discussed. Mr Moss had identified that there were inconsistencies in the PPM forms and the way in which they were completed could be improved. He also identified that there could be a risk that some of the information requested may lead to some inaccuracy in the current form. Mr Moss suggested that the claimant, along with the other engineers, could contribute their ideas on how the form could be improved so that the claimant could sign the forms and the matter would be resolved. In response the claimant once again raised his dissatisfaction with the way in which his 2014 grievance had been handled and his complaints about Mr Symonds. Mr Moss told the claimant that he did not want anyone to feel they had to falsify documents but he did want to re-introduce PPMs as it was important that they should start the discipline of doing them. He told him that he wanted to work with the claimant and the other engineers to improve the form so that a satisfactory outcome could be reached and the claimant would sign the forms. The claimant later made it clear that he did not consider that it was his responsibility to have any involvement with the forms and refused to engage in such an exercise. In oral evidence he also explained that the forms were not important to him because the information could be found elsewhere. The claimant accepted in oral evidence that he did not ask for clarification about his concerns about the PPM forms or CAM sheets, because past history told him it would not be worth it.*

*58. A further issue arose in July 2016 when Mr Robb reported the claimant for removing cardboard from site without permission. It appears that this particular complaint was initially reported to Mr Robb by another employee, Mr Blackburn who the claimant confirmed in oral evidence was the same with everyone and was not targeting the claimant. In the event Mr Moss spoke to the claimant, established that the cardboard was not of a type that was of value to the respondent and was at pains to let the claimant know that he felt his time had been somewhat wasted by the matter being brought to his attention in the first place. He told the claimant that he was happy to give the him permission to take the cardboard. It was not disputed that there were types of cardboard on site that had a value to the respondent and on that basis the Tribunal accept the evidence of Mr Moss that while employees frequently did take cardboard for their own personal use, it would be usual for an employee to ask before doing so. As the claimant had not made such a request it was reasonable for Mr Moss to make enquiry to establish the type of cardboard that had been taken.*

*59. In September 2016 the claimant met with Mr Moss to complain that he had not received written confirmation that there were no outstanding disciplinary charges against him. Although Mr Moss had previously told the claimant that there were not he non the less contacted Mr Symonds again on the claimant's behalf. My Symonds asked him to assure the claimant that there were no investigations being undertaken (p366). The Tribunal find that the claimant had been given this information on more than one occasion albeit not in the format he wanted. In evidence the claimant explained that he believed that the respondent had not followed a correct process; it is his case that he should have been formally charged and invited to a disciplinary*

*meeting. If he was not to be charged he says he should have been notified in writing so that he could 'clear his name'. It is unfortunate that Mr Symonds did not see his way to providing this information to the claimant in writing as requested, however the Tribunal find that the claimant was not 'entitled' to insist on being issued with such a letter especially as he had been verbally reassured on a number of occasions that none of the meetings he attended were disciplinary meetings and he had not been 'charged' with anything. As an aside the Tribunal observe that the claimant's determined pursuit of a 'correct' disciplinary process during the course of his employment with the respondent, is evidence of further inconsistency with his evidence that it was only during the course of these proceedings that he became aware that grievance and disciplinary processes existed.*

*60. It was also around autumn of 2016 that the claimant had threatened to report the respondent to the Health and Safety Executive (p381). Because he had made this threat he was concerned that management would think that a 'surprise raid' that had been carried out by the Health and Safety Executive would be attributed to him. However, there is no evidence that any investigation or action against the claimant followed this visit and the Tribunal note that the visit itself resulted in the respondent receiving a "clean bill of health" from the inspection (p381).*

*61. By October 2016, the respondent had placed an advertisement for a new engineering manager with a view to improving standards at the site by the introduction of a computerised system called 'Frontline'. It was an internal advertisement as the respondent was hopeful that it would be able to fill the vacancy from its own workforce. The claimant took exception to the advert and complained to Mr Moss that it was 'illegal' and a 'fait accompli'. It is not at all clear in what way the claimant alleges that the advert was illegal or how the respondent could have been forced to re-advertises the vacancy. The Tribunal have had sight of the advertisement and in the absence of any explanation from the claimant, are unable to see that there is anything in the advert produced that may have given rise to potential problems under any legislation known to the Tribunal. The claimant did not apply for the position and told the Tribunal he had harboured no desire to do so.*

*62. The position was ultimately filled by a Mr Guney who had previously been employed as an engineer at the Corby site. Mr Robb left the respondent at the end of 2016 and Mr Guney started work at the Westhoughton site on 1 January 2017. Mr Guney was responsible for the management of the engineers at both the Westhoughton and Wolverhampton sites and part of Mr Guney's remit was to introduce the Frontline computer system to record the maintenance and repair of equipment.*

*63. From the outset the claimant was not of the opinion that Mr Guney had the experience to lead the department. Prior to his formal appointment Mr Guney had attended the Westhoughton site to carry out some work and is described by the claimant as 'trying to advise me' when he was fixing a belt. The claimant did not invite his advice and his written note about the exchange between him and Mr Guney records him as saying "I did it my way" (p374).*

*64. When Mr Guney started as Engineering Manager at West Houghton he expected the engineers to carry out and sign PPMs (also referred to as CAM sheets). When Mr Guney discovered that one of the CAM sheets was not completed the claimant readily admitted that it was him who had left it incomplete and told Mr Guney*

*that he had no intention of signing the forms if they were going to be used either for health and safety reasons or to help the respondent obtain BRC accreditation. He told Mr Guney that he would not sign the forms because he was not prepared to take responsibility for any information he may put in them. Mr Guney was not satisfied that the claimant had given a reasonable explanation for refusing to sign the form and raised it as a matter of concern with Mr Moss.*

*65. In addition to refusing to signing the maintenance forms the claimant had also refused to submit a holiday request form to Mr Guney insisting that he did not have to get permission from him to take a holiday. The claimant had removed a communications sheet that Mr Guney had placed on the wall of the engineers' office and when Mr Guney challenged him on this he told him that had no right to put the sheet on the wall. He also told him that if he put it back up he would take it down again In the conversation with Mr Guney that the claimant covertly recorded the Tribunal note that Mr Guney goes to some lengths to try to find out what it is that the claimant has a problem with but as the Tribunal have noted from the transcripts of other meetings with the claimant that have been recorded, the claimant did not give him any straight answers and essentially told him that he would do as he liked and would only give the information in a meeting with Mr Moss.*

*66. Mr Guney reported all these matters to Mr Moss on 2 February 2017 (p388). Around the same time another complaint was raised by a Mr Abrahams who was responsible for IT equipment and training. Mr Abrahams had approached the claimant to sign the IT and blogging policy of the respondent so that he could train him in the use of the computer system. This was so the claimant would be able to use the Frontline system which was being introduced. The claimant refused to sign the forms or have the training. He told Mr Abrahams that he had not needed a computer to do his work in the last six years and therefore did not need to use one. In oral evidence the claimant has sought to give the impression that he would not sign the policy because he had no need to use a computer and that he had not been briefed about the Frontline system. However, the Tribunal note the content of the transcripts of the meetings with both Mr Guney and Mr Moss during which the claimant takes offence at any suggestion that he had not foreseen the introduction of the computer system. The Tribunal find that on the balance of probabilities the claimant refused to sign the internet policy until he could be reassured that he would not run the risk of any disciplinary action if he used a computer at work. The Tribunal find that the claimant was aware that the frontline system was being introduced and that he would need to use a computer to do his job moving forward. His demand for assurance that he be guaranteed that he would not be exposed to a risk of disciplinary action if he used a computer was unreasonable because the respondent could not have been sure that the claimant would not breach the terms of the IT and blogging policy especially as he refused to read it. The claimant was offered a copy of the IT and blogging policy which would have explained the respondent's expectations of employees in this respect but the claimant refused to look at it*

*67. Further to the complaints of Mr Guney and Mr Abrahams, Mr Moss held an investigatory meeting with the claimant on 3 February 2017. The meeting was recorded although Ms Pilkington was also in attendance to take brief notes. Mr Moss made it clear from the outset that the meeting is not a disciplinary meeting, that it was being recorded and that the claimant would be given a copy of the transcript. It is clear from the transcript that the claimant constantly jumped from one subject to another making it almost impossible for Mr Moss to progress the meeting. For example when*

*Mr Moss indicates that one of the purposes of the meeting is to find out why the claimant is not signing the CAM sheet the claimant asks Mr Moss to clarify for the purposes of the recording why it is called a CAM sheet so that he can write it down. The transcript record shows that the meeting very much proceeded in this vein with the claimant constantly introducing other matters, referring back to his dealing with Mr Symonds and overall failing to provide an explanation for the reasons why he would not sign the CAM sheets or the internet and blogging policy. He refused to listen to what Mr Moss had to say and told Mr Moss that he had now got his evidence and was ready to go to Tribunal and he thanked Mr Moss for it. (p679).*

*68. Mr Moss then prepared a report in which he set out the background of the complaints i.e. failure to follow reasonable requests and insubordination to his line manager and concluded that having reviewed the statements of the two complainants, and the explanations given by the claimant in the investigation that there was a disciplinary case to answer (p471). These conclusions did not however form part of the disciplinary pack that was subsequently provided to the claimant and Mr Barnes as the disciplinary officer.*

*69. A disciplinary meeting was arranged prior to Mr Moss going away on holiday. Mr Moss was concerned that given the claimant's refusal to acknowledge Mr Guney as his line manager it was important to at least start the process of addressing the matter before Mr Guney was left in charge while Mr Moss was away. The meeting was arranged for 4 April 2017 and on 29 March 2014, Mr Moss asked the claimant to come up to his office so that he could give him the letter of invite and supporting documentation. Mr Moss had not told the claimant why he wanted to speak to him and as soon as the claimant became aware he became agitated and refused to accept the letter from Mr Moss. The claimant wanted to know whether Mr Moss also had a letter from Mr Symonds about his previous complaint. He told Mr Moss that he would not accept the letter unless a copy was also sent to the head of the respondent and when Mr Moss indicated that this would not be appropriate he told Mr Moss that due process was not being followed. Mr Moss had not anticipated the claimant's response and was concerned about the way in which the meeting was going especially as there were no other witnesses present. He told the claimant he would discuss the matter with him later and then rang him to come back once Mr Guney was also in attendance. The claimant refused to discuss the matter with Mr Moss and the phone call was ended (p429&p476). About half an hour later Mr Moss and Mr Guney went down to the shop floor to see the claimant and waited until the claimant had finished his break before approaching him. The claimant told Mr Moss that he "wasn't having it' and left the shop floor refusing to speak to Mr Moss. Mr Moss and Mr Guney waited outside the changing rooms for the claimant and again attempted to speak with him. The claimant refused. The Tribunal note the transcript of the recording made by the claimant at that time (p552) which includes the following:*

*Claimant: it's now about twenty five to eight on the 29th and Steve Moss followed me from the workshop to the toilets. I am not going to let them read me a statement, simple as that. I think they will still be waiting outside the toilets, here we go"*

*…….*

*Claimant: You've got an option, I am refusing to discuss it now, you'll have your chance at court old pal, unless you have got a letter from Andy Simmonds[sic], I am not interested. Disciplinary matters will be taken in chronological order.*

*There then follows an exchange between Mr Moss and the claimant where Mr Moss asks the claimant to please listen to him to which the claimant responds "no chance". In response to Mr Moss's suggestion that the claimant gets one of his colleagues to accompany him the claimant makes it clear he was not having a meeting until the next day. In response to Mr Moss's assertion that what he is asking the claimant to do is a reasonable management request the claimant told him that he had shooed him out of his office was not going back "simple as that". The claimant then excused himself and said he had work to do. He walked away from Mr Moss who continued to encourage the claimant to speak to him but the claimant continued to refuse suggesting that he would go home if that is what Mr Moss wanted.*

*70. The claimant turned on a pump so that any further discussion was impossible because of the noise and when Mr Guney turned the pump off to facilitate a conversation, the claimant immediately turned it back on, and then did so again following Mr Guney's second attempt to turn it off. Mr Moss continued to try to engage with the claimant over the noise of the pump and encouraged him to get someone else to be with him and act in a reasonable way. He told him that if he continued to behave in the manner in which he was he would have no alternative but to suspend him. The claimant told him that this was all he could do and finally after many attempts to deal with the matter in a reasonable manner Mr Moss advised the claimant that he was suspending him. The claimant was agitated before leaving the building and told Mr Moss and Mr Guney that there would have to be an investigation but named a number of individuals that he said would be unacceptable to carry it out because of "their record and service"*

*71. The claimant's suspension was confirmed by letter of 30 March. The letter explained why he had been suspended and what was expected of him during the period of his suspension. Enclosed with it was a letter of invitation to the disciplinary hearing and the supporting documentation. This letter set out the allegations against the claimant as (a) failure to sign the company IT policy on 2 February 2017 (b) refusal to sign the engineering sections of the Engineers Work Order Request Sheet and (c) Insubordination in that he refused to accept Mr Guney as his manager and refused to recognise the legitimacy of his appointment and the manner in which it was made. The letter advised the claimant of his right to be accompanied and that the outcome of the disciplinary hearing could result in his summary dismissal if the allegations, deemed to be acts of gross misconduct by the respondent, were found proved.*

*72. The disciplinary hearing subsequently took place on 11 April 2017. The claimant was accompanied by his union representative Mr Gaudie and the Hearing was chaired by Mr Barnes, the factory manager; Ms Bates from HR was also in attendance. A transcript of the meeting recorded by the claimant can be found from p816 of bundle two. Prior to the meeting starting the claimant confirmed to Mr Gaudie that he had received a copy of the letter of invitation to the meeting. It is clear from the transcript that during his initial conversation with the claimant Mr Gaudie had tried to explain the allegations raised against the claimant and tell him that he thought that what was being asked of him by the respondent was not unreasonable. He told the claimant that this was his view in respect of both the signing of the IT and blogging policy and the appropriate section of the PPM forms. Whilst the claimant accepted much of what Mr Gaudy explained to him he continued to assert that "it all goes back to fraudulent complaints being put in my file without my knowledge and not being dealt with. In other words, other people can break the rule but I have been victimised in the past and they have not dealt with it" (p820). Mr Gaudy listened to what the claimant*

*had to say about his previous data access grievance and advised him that he should move on from historical issues. In respect of the allegation that the claimant refused to recognise Mr Guney as his line manager, the claimant denied that he had ever said that he refused to accept him as a line manager but accepted that he had refused to get his holiday form signed by him. He told Mr Gaudie that the reason for this was because the form said it had to be signed by the area manager and Mr Guney was the engineering manager. The claimant told Mr Gaudie that he did not consider it was correct procedure for him to have the form signed by Mr Guney and in order to get the position clarified he was of the view that a meeting would be needed with Mr Moss. In response Mr Gaudie told the claimant that he was 'on a loser on that one' and that he needed to be "very very careful" as he could basically come across as "too bloody argumentative"*

*73. Once the meeting commenced Mr Gaudie asked the claimant if he would mind if he spoke on his [the claimant's] behalf. The claimant agreed and Mr Gaudie then put his case on the basis of his prior discussion with the claimant. Mr Barnes asked if it was the claimant's case that he was admitting all the allegations but was seeking to justify his actions and propose a route forward. Mr Barnes also raised the fact that there had previously been a number of lengthy meetings with Mr Moss with a view to progressing the matter with the claimant but to no avail. When the claimant was asked whether he thought it would be possible to move matters forward, he said "well we can if you give us some direction on the procedures because we've had". Mr Gaudie interrupted the claimant to stop him at that stage and there followed some dialogue where the Tribunal find the claimant was clearly imposing conditions on his agreement to comply with the requirements to sign documents. Mr Gaudie once again interrupted to tell Mr Barnes, what the claimant was agreeing to. Following a short adjournment Mr Barnes expressed his concern about a pattern of unreasonable behaviour that had been evidenced in respect of the claimant and asked how the respondent could be sure going forward he would be constructive and reasonable (p826M). His response was that he was a sensible person and that is the sensible way to be. Mr Barnes expressed concern at the claimant's resistance to progressing matters with his managers despite many attempts on their part to do so and said that it was not reasonable to have a situation where matters had to get to a disciplinary hearing with a union official in attendance, before the claimant turned around and said "yeah ok I'll do it". The claimant did not offer his own assurances but Mr Gaudie did assure Mr Barnes that should any similar situation arise with the claimant before his imminent retirement he personally would give the claimant short shrift. When asked for his comment the claimant said that he thought Mr Gaudie expressed best what the situation was.*

*74. At the end of the meeting Mr Barnes reserved his decision so that he could reflect on what had been said. He confirmed in evidence that the decision had been his alone and in reaching it he had considered all the evidence before him. Mr Barnes found that although the claimant had now indicated that he would sign the forms, he had no confidence that he would change his behaviour. He had denied that there was any problem with Mr Guney even though this was inconsistent with the evidence before him. He was also aware that this was not the first time that the claimant had refused to sign documents and was not confident from what he had heard in the disciplinary hearing and his previous behaviour and poor attitude that they would not find themselves in the same position again. In oral evidence Mr Barnes explained that whilst he accepted that on a previous occasion the claimant had agreed to sign forms once his union representative had advised him it was reasonable to do so, he was not*

*confident that they would not find themselves in the same position again with the claimant. Although Mr Gaudie was giving personal assurances on behalf of the claimant, the claimant remained silent despite being asked for comment. He also confirmed that although the way in which he behaved towards Mr Moss on 29 March did not form part of the allegations set out in the invitation letter to the claimant it was produced to him as evidence and he took this into account as another example of insubordination which he considered to be serious. Mr Barnes explained that he had quickly come to the conclusion that the claimant's actions amounted to gross misconduct but that he took some considerable time to consider whether he could be confident in Mr Gaudie's submission that the claimant would keep his word. In doing this he confirmed in oral evidence that he had considered all the evidence before him including the fact that the claimant had an unblemished service record. Mr Barnes ultimately decided that he could not be confident that the claimant would do as Mr Gaudie had said and summarily dismiss the claimant by reason of gross misconduct. He confirmed his decision to the claimant by letter of 20 April 2017 (p485).*

*75. The claimant appealed his dismissal on the basis of the level of sanction (p485) and an Appeal Hearing was held on 18 May 2017. Mr Worall chaired the meeting and was assisted by Mr Powell the HR Director. The claimant was again accompanied by Mr Gaudie the trade union representative whose handwritten notes are at p491A of bundle 2. The claimant also recorded the meeting (p726).*

*76. The Tribunal heard from Mr Worall who told it that as Mr Barnes' immediate line manager he was best placed to hear the appeal. He said he had the authority to uphold or dismiss the appeal and had considerable experience of dealing with disciplinary matters spanning over some thirty years. The Tribunal found that Mr Worall was well aware of his responsibility in respect of the appeal and whilst he had indicated to the claimant that the appeal would be a review of the disciplinary hearing, he had been prepared to listen to anything else that the parties wished to raise. At the beginning of the meeting Mr Worral invited the claimant to explain the grounds of his appeal but as before Mr Gaudie stepped in and asked whether he could speak on the claimant's behalf. The claimant indicated his consent and Mr Worrall acquiesced. The Tribunal note that Mr Gaudie referred to the claimant in this meeting as an awkward employee who was difficult to manage and made further submissions that the claimant had been unaware that he was able to put comments on the worksheets. The crux of Mr Gaudie's argument was that this was a matter that had been badly handled by inexperienced managers and should never have got to this point; whilst the allegations were admitted, the claimant had not been aware that his refusal to sign the worksheets and IT policy would be taken so seriously and he was unaware that either Mr Moss or Mr Guney had taken offence at anything he had done or said to them. He accepted that the claimant was very pedantic but said that it was for this reason that the claimant needed to be given careful explanations. In oral evidence and in response to Mr Worall's assertion that the claimant did not respond to Mr Worall's invitation to make comments himself, the claimant maintains that he was just letting the union representative get on with his job. However the Tribunal note from the transcript that the claimant does have verbal input elsewhere in the meeting but that when Mr Gaudy raises the matter about the record stating that the claimant had not shown the appropriate contriteness [or poor behaviour] and told Mr Worall that he had asked to claimant to actually speak for himself in relation to this and how he perceives on going forward with the company, the claimant instead of assuring Mr Worrall says nothing more than 'yeah yeah I'm with you I'm just listening very carefully" He did not, despite the very clear invitation from his union representative, say anything in response.*

*77. Later in the meeting Richard Whorral invited the claimant to add anything further to which he replied " Yeah, as you know this is a very very small but nice pleasant factory, a pleasant place to work. I've always been open with Steve Moss, had a good relationship with him and we've always spoken openly together and erm tried to do the same with Vic and we don't have any problems working together to maintain production and I had no idea that either Steve or Vic had taken offence" He was asked to respond to the three particular issues that gave rise to his dismissal to which he replied 'Well I had no idea that not going on the internet would be that big a problem. I didn't know the internet was taken that seriously. "As for the day to day work sheets I've always completed them in the past, always signed on a daily basis and it was always taken very casually if one was missing or say an engineer hadn't completed them for a few days it was more or less treated casually" He confirmed to Mr Worral that he had signed them in the past and that the reason he was not signing was related to the need to sign to account for his tools which he would not agree to do because it had never been put into the procedure and because of this he did not know whether it was practical to do it or not.*

*78. Mr Gaudie accepted that the process had been handled perfectly and appealed only about the level of sanction. In oral evidence the claimant suggests that Mr Gaudie was not acting in his best interest and was somehow in cahoots with the respondent. There is no evidence to support this contention save for the claimant's assertion; he did not raise it either before or after the meeting and was content for Mr Gaudie once again to speak on his behalf. Mr Worrall did not uphold the claimant's appeal and in oral evidence explained that although the claimant through Mr Gaudie admitted the allegations this was not borne out by his behaviour at the appeal meeting and the fact that Mr Shaw continued to say that there was no problem between him and Mr Guney despite all that had gone on. In oral evidence Mr Worrall explained that in all his experience of dealing with disciplinary matters he had never experienced anyone who had made less of an effort to get his job back. Although he had stated in the disciplinary hearing that he would sign the documents and accepted Mr Guney was his line manager, this was not something that he restated at the appeal meeting despite being invited to contribute to the meeting himself over and above the representations made by his union representative. In answer to a question about why he had not afforded the claimant the opportunity to show that he was willing to do as he was asked, Mr Worrall explained that he was of the view that the allegations were of sufficient seriousness to dismiss. He considered the whole range of options open to him having regard to the short period of time over which these serious disciplinary offences occurred and the context in which they did. He had regard to Mr Gaudie's submissions but was of the view that the claimant had made no effort to assure him that his behaviour would change. Whilst he said he accepted the allegations he proceeded on the basis that he did not know that his behaviour was a problem. Overall Mr Worrall considered that the decision taken by Mr Barnes was right and one that was reasonable in all the circumstances based on the evidence before him. Mr Worrall confirmed that his decision was not based on anything other than the notes he was given and what he had heard during the course of the appeal hearing from those present. By letter of 23 May 2017 Mr Worrall confirmed to the claimant that the decision to dismiss him. which had been taken by Mr Barnes, was upheld and that his appeal was dismissed.*

***Submissions***

*79. Mr Liberadski accepts that whilst there is little evidence of the claimant being untruthful in his evidence, the basis upon which he makes many of his allegations is speculation and assumption and not supported by evidence. He gives examples of the claimant assuming that it could only have been Mr Peachy who had access to his personnel file and that it was Karen Merna who convinced Mr Moss to change his shift pattern. He also asks the tribunal to have regard to the claimant's incorrect assumption that Mr Barnes was responsible for Health and Safety at Corby. He submits that the claimant's perception of people and their motives is unusual and that the way he sees things and the Tribunal should have regard to this when reading his notes.*

*80. Mr Liberadski submits that there is a wealth of evidence to support a finding that the claimant was dismissed because of his conduct. He accepts that the claimant attempted to excuse his behaviour for refusing to sign the PPMs but his objections were dismissed as a defence to his conduct. The claimant had refused to acknowledge Mr Guney as his manager, he refused to have him sign his holiday form and had taken down the communication sheet put up by Mr Guney. He had also refused to sign the PPMs when asked or sign the IT policy. He submits that the claimant's evidence that he would have done as he was told if he had been 'ordered' to do so as opposed to it simply being referred to as a reasonable request, is unreasonable and that any employee would understand that he was being told to do something and was expected to do it. Mr Liberadski accepts that although the decision to dismiss the claimant on this occasion may have been harsh, it is nonetheless within the band of reasonable responses open to a reasonable employer and it is not for the tribunal to substitute its own view. He submits that Mr Barnes carried out a fair process and did not even look at the claimant's file before the hearing. The extent of his knowledge in respect of past issues was restricted to whether there were any outstanding disciplinary of grievances, and that in order to ensure his objectivity he asked a colleague to check the file for the information. He submits that there is no thread between the claimant's past disclosures and his dismissal. The only thread he submits is the claimant's contemptuous attitude towards his manager. He asks the tribunal to have regard to the fact that the claimant has said that he knew that the respondent was looking for a reason to sack him, that they were introducing a new computer system and new forms and that Mr Guney was to be his manager, yet he still went on to behave in the way he did in full knowledge of the implications of his actions. He submits the claimant has made it clear that he did not think that he needed to be managed when in oral evidence he asked "why do engineers need to be supervised". He is, submits Mr Liberadski an intransigent and stubborn man who made disparaging and unfounded comments about his manager and others.*

*81. Mr Liberadski refers the Tribunal to some of the reasons the claimant has given for refusing to sign his name to work he had done and submits that none are acceptable. The claimant was employed as an engineer and was meant to carry out work and record that he has done it. The forms provide for recording any problems with the machinery. In respect of his signature being used fraudulently this, he submits, is disingenuous, the claimant was simply holding the respondent to ransom until he got everything he wanted.*

*82. In respect of the disciplinary process Mr Liberadski submits that Mr Barnes was permitted to reach the conclusion that he did based on the claimant's conduct during the meeting. Whilst the union representative was doing the talking the claimant is*

*neither shy nor taciturn and it is clear that he will speak out if he wants to say something. Mr Barnes came to the conclusion that he was told what the claimant and his union representative thought he wanted to hear and, having reflected on the options open to him did not have confidence that the claimant would change. His decision to dismiss was, Mr Libradski submits, within the band of reasonable responses.*

*83. Mr Libradski also asked the tribunal to consider the evidence of Mr Worrall and his impression of the claimant at the appeal hearing. His view was that in 30 years of hearing appeals he had never seen anyone make less effort to get their job back.*

*84. Miss Williams submits that the claimant is an honest man who is old school and something of a pedant. She accepts that his prolific note making may indicate a sense of paranoia, but submits that his notes and the transcripts of the tapes sit well together. The claimant she says is a man that is not prepared to take part in anything he considers to be dishonest and he will not be pushed into doing so. Prior to his dismissal he had an unblemished record having never been subjected to any formal action. He had been refusing to sign the PPMs for a long period of time and it is his evidence that Mr Moss had approved his refusal. When the new forms were brought in on 1st February 2017 he did complete them but just refused to put his name to them. Miss Williams submits that this is a positive change in the claimant's behaviour that the respondent has failed to acknowledge.*

*85. In respect of the previous issues Miss Williams submits that the respondent knew what the claimant was like and although it is not mandatory to provide notes and outcomes of all the meetings the respondent had with him, the respondent should have known that the claimant would have wanted clarification in writing that there were no outstanding charges against him. She submits that the respondent's dealing with the claimant left a lot to be desired and has led to his suspicion that management are trying to intimidate him. She gives examples of the way in which alleged misdemeanours of the claimant were raised with him and then merely left to peter out without any further action being taken. Added to this she submits is the fact that despite Mr Peachy's behaviour it is the claimant who has notes to file and not him. This she submits is different treatment which again has led to the claimant's belief that he is being targeted.*

*86. Miss Wiliams accepts that the claimant gave no specifics when he complained about health and safety but submits that any reasonable employer should make enquiry into the same. She submits those responsible adopted a lazy process and should have investigated.*

*87. She submits that Mr Barnes must have had the claimant's previous disclosures in mind when he decided to dismiss him as must Mr Worrall when he dismissed his appeal because there is reference to historical matters, although she accepts that there is not much. However, she submits that the history of all that has gone on before is why the claimant was behaving as he was prior to his dismissal yet the respondent refused to go back to look at the history. She submits that it is not right to say that the claimant refused outright to fill in the forms completely, because his refusal was only conditional.*

*88. Miss Williams submits that the claimant did not initially appreciate the seriousness of his behaviour as he had not previously been formally disciplined. At the*

*disciplinary and appeal meetings he merely followed the advice of his Trade Union representative. It was not, she submits, for the claimant to show how he intended to change his behaviour at the disciplinary and appeal hearing as that would be an unfair burden on him. Similarly, it is not for the claimant to know he is expected to apologise or show that he is fighting hard enough for his job; in any event she submits he did not have the opportunity to do so. She submits that the respondent wanted the claimant out and wanted a quick fix. The claimant was a danger to their BRC accreditation and it had been the respondent's intention to get him out the door from the beginning. If his disclosures were not in the mind of the respondent at the time of dismissal then she submits the reason relied on falls outside the band of reasonable responses because there were other options available to the respondent which were not considered.*

***The Law***

*89. It is the claimant's case that he was dismissed because he made a protected disclosure under Part IV A of the Employment Rights Act 1996.*

*90. Section 103 of the Employment Rights Act 1996 provides:*

> *"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."*

*91. Under section 43A a protected disclosure is defined as a qualifying disclosure which is made by a worker in accordance with any of the sections 43C-43H of the Employment Rights Act 1996. Under section 43B a disclosure will be a qualifying disclosure if it is a 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 and 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 one of the preceding paragraphs has been or is likely to be deliberately concealed.*

*92. It is clear therefore that there must be a disclosure of information and a further requirement that there must be both a reasonable belief on the part of the claimant and that the relevant disclosure is made in the public interest.*

*93. The Court of Appeal had provided recent guidance on what is meant by information in* ***Kilrane v London Borough of Wandsworth*** *[2018] EWCA Civ 1436. In this case the Court of Appeal explained that the concept of information as used in s43B(1) is capable of covering statements which might also be characterised as 'allegations'. But s43(B)(1) should not be glossed to introduce a rigid dichotomy between these two terms. The question in each case is whether a particular statement or disclosure is a 'disclosure of information which tends to show one or more of the [matters set out in paragraphs (a) to (f), Grammatically the word 'information' had to be read with the qualifying phrase 'which tends to show [etc]" There has to be sufficient factual content and specificity capable of tending to show one of the relevant matters in subsection (1). That was a matter for an evaluative judgment by the ET in light of all the facts. The Court of Appeal explained the concept with reference to a dirty hospital ward where a worker might bring his employer down and gesture to the sharps left lying around when saying 'you are not complying with Health and Safety requirements', the statement there would derive force from the context in which it was made and taken in context would constitute a qualifying disclosure, in contrast to an employee who walks into an office and simply says 'you are not complying with Health and Safety requirements.*

*94. The reasonable belief test requires that the claimant must have a reasonable belief that the information disclosed tends to show that one of the relevant failures has or is likely to occur. Whilst the test is largely subjective there must be some basis upon which the claimant reasonably holds that belief. The EAT in* ***Korashi v Abertawe Bro Morgannwg University Local Health Board*** *2012 IRLR 4, EAT, held that reasonableness under S.43B(1) 'involves of course an objective standard', meaning that those with professional or 'insider' knowledge will be held to a different standard than laypersons in respect of what it is 'reasonable' for them to believe. The question for the Tribunal is whether on the facts believed to exist by the claimant, a judgment must be made as to whether or not: first, the belief was reasonable; and secondly, whether objectively on the basis of those perceived facts, there was a reasonable belief in the truth of the complaints* ***Phoenix House Ltd v Stockman and anor*** *2017 ICR 84, EAT. The fact that the claimant may have been mistaken about the facts does not mean that he would be unable to avail himself of the statutory protection as long as his belief was reasonably held as above.*

*95. The public interest test will be satisfied if the claimant had a reasonable belief that his disclosure was made in the public interest.* ***In Chesterton Global Limited v Nurmohamed*** *[2017] EWCA Civ 979 Underhill LJ stated that :*

*…..where the disclosure relates to a breach of the worker's own contract of employment or some other matter under s43B(1) where the interest in question is personal in character), there may nevertheless be features of the case that make it reasonable to regard disclosure as being in the public interest as well as in the interest of the worker… The question is one to be answered by the Tribunal on a consideration of all the circumstances…*

*He then went on to refer to four classification of relevant factors to be considered (subject to a strong note of caution in relation to the number of employees whose interests the matter disclosed may affect)*

*96. Under section 43C a disclosure will be a qualifying disclosure if it is made in accordance with this section if the worker makes the disclosure to his employer.*

*97. The claimant claims that as a result of making a protected disclosure he was subjected to detriments, Section 47B provides that:*

> *1 A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure.*
> *(1A) A worker ("W") has the right not to be subjected to any detriment by any act, or any deliberate failure to act, done—*
> *(a) by another worker of W's employer in the course of that other worker's employment, or*
> *(b) by an agent of W's employer with the employer's authority, on the ground that W has made a protected disclosure.*
> *(1B) Where a worker is subjected to detriment by anything done as mentioned in subsection (1A), that thing is treated as also done by the worker's employer*

*98. In **Fecitt v NHS Manchester** [2012]IRLR647 Lord Justice Elias Held that*

> *45….s47B will be infringed if the protected disclosure materially influences (in the sense of being more than a trivial influence) the employer's treatment of the whistleblower. If parliament had wanted the test for the standard of proof to be the same as for unfair dismissal it could have used precisely the same language but it did not do so.*

*Tribunals are advised to adopt a step by step structured approach to claims of detriment for having made a protected disclosure. The Tribunal is required to identify which disclosure is alleged to have attracted which detriment in accordance with the guidance given by HH Judge Serota QC in **Blackbay Ventures Ltd v Gahir** [2014] IRLR 416. Therefore, it is necessary for the Tribunal to consider the individual detriment alongside the individual related protected disclosure, to determine whether the detriment was on the grounds of the related disclosure. The question is not the reasonableness of the respondent in imposing the detriment but rather whether the detriment was materially influenced by a particular disclosure.*

*99. The time limit for bringing a claim of automatic unfair dismissal or detriment is set out in s48 (3) ERA 1996 and provides that a complaint shall be brought*

> *(a) before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them, or*
>
> *(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months*

*and at s48 (4) or the purposes of subsection (3)—*

> *(a) where an act extends over a period, the "date of the act" means the last day of that period, and*

*(b) a deliberate failure to act shall be treated as done when it was decided on;*

*and, in the absence of evidence establishing the contrary, an employer…… shall be taken to decide on a failure to act when he does an act inconsistent with doing the failed act or, if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the failed act if it was to be done.*

*It is the respondent's case that the claimant's claims in respect of any protected disclosures and detriments are out of time but for the last one, and that he has not been able to show why it was not reasonably practicable to bring his claims before the end of the prescribed period. Ms Williams submits that there was on ongoing course of conduct when the claimant complained about the same issues and the same individuals which were not resolved and that these therefore form a series of act or failures for the purpose of s48(3) ERA such as to be in time. In making this submission she relies on the case of* ***Arthur -v- London Eastern Railway Ltd*** *[2007] ICR 193, which gives guidance on the meaning of 'a series of similar acts'.*

*100. If the claimant has not been dismissed by reason of making a protected disclosure then he claims that he has been dismissed unfairly under ordinary principles. This unfair dismissal claim is brought under Part X of the Employment Rights Act 1996. The primary provision is section 98 which, so far as relevant, provides as follows:*

*"(1) In determining for the purposes of this part whether the dismissal of an employee is fair or unfair it is for the employer to show –*

*(a) The reason (or, if more than one, the principal reason) for the dismissal; and*

*(b) That it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal*

*(c) of an employee holding the position which the employee held.*

*(2) A reason falls within this subsection if it relates to the conduct of the employee.*

*(3) …*

*(4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) –*

*(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the*

*employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee; and*

*(b) shall be determined in accordance with equity and the substantial merits of the case."*

*101. If the employer fails to show a potentially fair reason for dismissal (in this case conduct) dismissal is unfair. If a potentially fair reason is shown the general test of fairness in section 98(4) must be applied.*

*102. In a misconduct case the correct approach under section 98(4) was helpfully summarised by Elias LJ in* ***Turner v East Midlands Trains Limited*** *[2013] ICR 525 in paragraphs 16-22. Conduct dismissal can be analysed using the test which originated in* ***British Home Stores v Burchell*** *[1980] ICR 303, a decision of the Employment Appeal Tribunal which was subsequently approved in a number of decisions of the Court of Appeal. The "****Burchell*** *test" involves a consideration of three aspects of the employer's conduct:*

*(a) Did the employer carry out an investigation into the matter that was reasonable in the circumstances of the case?*

*(b) Did the employer believe that the employee was guilty of the misconduct complained of?*

*(c) Did the employer have reasonable grounds for that belief?*

*103. Since* ***Burchell*** *was decided, the burden on the employer to show fairness has been removed by legislation. There is now no burden on either party to prove fairness or unfairness respectively. If the three parts of the* ***Burchell*** *test are met, the Employment Tribunal must then go on to decide whether the decision to dismiss the employee was within the band of reasonable responses, or whether that band fell short of encompassing termination of employment.*

*104. It is important that in carrying out this exercise the Tribunal must not substitute its own decision for that of the employer. The band of reasonable responses test applies to all aspects of the dismissal process, including the procedure adopted and whether the investigation was fair and appropriate (****Sainsbury's Supermarkets Limited v Hitt*** *[2003] IRLR 23). The focus must be on the fairness of the investigation, dismissal and appeal and not on whether the employee has suffered an injustice. The Tribunal must not substitute its own decision for that of the employer but instead ask whether the employer's actions and decisions fell within that band.*

*105. The appeal is to be treated as part and parcel of the dismissal process (****Taylor v OCS Group Limited [2016] IRLR 613****).*

*106. In a case where an employer purports to dismiss for a first offence because it is gross misconduct, the Tribunal must decide whether the employer acted reasonably in characterising the misconduct as gross misconduct, and also whether it acted reasonably in going on to decide that dismissal was the appropriate punishment. An assumption that gross misconduct must always mean dismissal is not appropriate as there may be mitigating factors.*

*107. The EAT in **Mbubaegbu v Homerton Univeristy Hospital NHS Foundation Trust EAT 0218/17** has confirmed that there is no authority to suggest that there must be a single act of gross misconduct to justify summary dismissal or any authority which states that it is impermissible to rely on a series of acts, none of which would by themselves justify summary dismissal. In other words, it is possible for a series of acts demonstrating a pattern of conduct to be of sufficient seriousness to undermine the relationship of trust and confidence between the employer and employee to justify summary dismissal.*

*108. Similarly, even if the misconduct in question is not properly characterised as 'gross misconduct' this does not necessarily mean that the employer cannot reasonably dismiss for a first offence if the relationship of trust and confidence is destroyed. In **Quintiles Commercial Ltd v Barongo EAR 0255/17** the EAT pointed out that s98(4) ERA does not lay down any rule that, absent earlier disciplinary warnings, a conduct dismissal for something less than gross misconduct must be unfair. In many cases an Employment Tribunal may find such dismissals fall outside the band of reasonable responses, but there is no automatic assumption that this will be so, absent an act of gross misconduct.*

***Reasons and Secondary findings of fact***

*109. Whilst it has been necessary to make considerable findings of fact in this matter the claimant's claim, (save for his ordinary unfair dismissal and breach of contract claim) is restricted to only three alleged protected disclosures and eight claims of detriment, excluding his dismissal. The claimant sets out in a schedule the alleged protected disclosures and the detriments that relate to each particular disclosure.*

*<u>The first disclosure – reporting Mr Peachy for his behaviour towards A.</u>*

*110. There can be no doubt that reporting this matter to Ms Merna amounted to a disclosure of information and was more than a mere allegation as the claimant gave particulars of what it was that had been said to A and how Mr Peachy had behaved. The Tribunal find that the claimant held a reasonable belief that Mr Peahy's actions amounted to potential criminal behaviour. The respondent accepts that the behaviour was a breach of the Equality Act 2010 although this is not pleaded on behalf of the claimant. The disclosure was one that tended to show one of the one of the factors set out in s43B ERA 1996 and the claimant had a reasonable belief that it did. A further requirement is that the disclosure is made in the public interest. The claimant when questioned in oral evidence made it clear that his only interest in reporting the matter (apart from getting Mr Peachy sacked) was to protect one individual only and that was A. His evidence was that he was not concerned about anyone else in the workplace in respect of Mr Peachy's behaviour and confirmed again that his only concern was A and not anyone else. In addition, the Tribunal note that had Mr Peachy done as the claimant asked and kept away from A or alternatively resigned, he would have 'kept the matter private' as between the two of them. On that basis the Tribunal find that it cannot be said that the claimant had a reasonable belief that his disclosure was in the public interest because he would not have made it if he had got his own way he made clear that his reason for finally doing so was to protect only A. Consequently, his disclosure is not a qualifying disclosure for the purposes of s43B ERA 1996. As the disclosure is not a qualifying disclosure the claimant is not protected from acts of detriment at the hands of his employer under s47B ERA 1996. However, the Tribunal has considered for the sake of completeness what the position would have been had*

*the claimant's disclosure been one that was made in the public interest and therefore protected, on the basis that all other requirements were met.*

*111. The claimant has complained that having made the disclosure to the respondent and pushed for a more satisfactory outcome he was subjected to retaliatory grievances and disciplinary matters. He further complains that he was threatened with suspension by Mr Symonds. The Tribunal have carefully considered the chain of events that followed once the claimant reported Mr Peachy. It finds that even though the claimant had reported the matter to the respondent, notwithstanding that he had delayed in doing so in order to pursue his own demands, he did not then leave it to the respondent to follow proper procedure and investigate the matter. Instead he embarked on his own one-man campaign to gather further evidence against Mr Peachy which included making covert recordings of the conversations of colleagues. He made it widely known to everyone at work, including Mr Peachy, that he intended to make sure that Mr Peachy was sacked. It is not surprising then that when he exerts pressure on others to support him in his campaign and to monitor and report back on Mr Peachy's movements at work, that some members of staff object to his approach. This has nothing at all to do with the fact that the claimant had reported the matter to the respondent. It is the fact that, despite the respondent carrying out its own investigation, the claimant decided to pursue his own campaign against Mr Peachy. It is not surprising then that others, including Mr Peachy, might not unreasonably object to and complain themselves about the claimant's behaviour. The Tribunal does not find that these were retaliatory grievances they were legitimate complaints raised in an attempt to stop the unreasonable behaviour of the claimant. The respondent had a process in place and the claimant should have allowed that process to be followed without interference from him. It was his interference in the process and his determination to build a case against Mr Peachy that also led to Mr Symonds threatening to suspend him so that the respondent could investigate the matter properly.*

*112. In respect of the disciplinary matters referred to, during the course of the investigation it came to light that the claimant was selling goods at work. It is a fact that this was what the claimant was doing, and that although he sold the products to other staff he gave them to A along with money. This was a fact that understandably came to light as a result of the investigation into Mr Peachy's conduct and it was reasonable to ask the claimant about it in particular for the reasons given by Mr Symonds as set out above. The respondent was unaware that the claimant was selling goods in the workplace and he had not sought permission to do so. He was asked about it and no further action was taken. Whilst all these matters may have arisen during the period of the investigation into what he had reported, the Tribunal find that they did so as a result of the claimant's own actions following his complaint, as outlined above, and not because of it.*

*113. The Tribunal do not find that the respondent failed to adequately investigate or provide an outcome to his complaint about Mr Peachy's conduct in a timely manner, because it is clear that, in all, the respondent investigated the matter on two occasions, the first by Mr Symonds and the second by Ms Skeritt and Ms Gilroy who also investigated the further incidents he raised with them. He was then formally advised of the outcome in a meeting with Mr Davies. The fact that the claimant did not like the outcome or agree with it did not mean that the matter was continuing. He was told that he should accept the decision of the respondent and move on. Whilst the claimant may have wanted confirmation of the outcome in writing, and it may perhaps have*

*been helpful to provide him with the same, it cannot be said that he was not provided with an outcome to his complaint.*

*114. For the above reasons, the Tribunal find that even if the disclosure of information about Mr Peachy's behaviour was a qualifying disclosure for s43B ERA 1996, anything that happened to the claimant was not materially influenced by his complaint. The Respondent has been able to show that the reason for the treatment, whilst arising at the time of the investigation into the complaint, was for reasons relating to the claimant's subsequent conduct and other matters not related to the disclosure.*

*The second disclosure to Ms Merna – photographs of structural damage*

*115. It is the claimant's case that the photographs he took around 24 July 2014, were of structural damage to the factory which he claims showed that the health and safety of individuals in the workplace were at risk. The Tribunal note that by the time the claimant had decided to take these photographs he been told that Mr Peachy was not going to be sacked and he was extremely dissatisfied with the respondent. It is not clear why the claimant took the photographs or what he was going to do with them as the Tribunal has been told that the damage to the walls in the factory was already known to the respondent; the claimant told the Tribunal that the photographs had already been taken by the quality manager. The circumstances in which this disclosure was made was that the shift supervisor had reported the claimant to Ms Merna for using his phone in breach of the respondent's policy (p116 & 60A). Given the importance of avoiding contamination in an area where food products are made it was not unreasonable for Ms Merna to speak to the claimant about what he had done. The Tribunal bear in mind that this incident occurred around the same time period as the claimant covertly recording colleagues, another matter which Ms Merna had not unreasonably spoken to the claimant about.*

*116. The Tribunal note that in relation to matters about which the claimant is unhappy he was in the habit of making written notes to record the event. In respect of this encounter there is no written record and it is dealt with in very little detail in the claimant's written witness statement. In his written statement (paras 32& 33) the claimant explains that he took photographs of the factory where walls were damaged because he considered this to be a health and safety matter that was being ignored. His written evidence is that he discussed the photographs with Ms Merna however this is inconsistent with his oral evidence that he did not. In his written evidence he also states that he was not aware that staff were not meant to carry phones in the workplace but in oral evidence accepted that he was aware that he was not meant to use his phone but said that lots of people ignored the rule. The Tribunal have regard to the reason why this rule was in place at the respondent, and the fact that the use of mobile phones formed part of a discussion covertly recorded by the claimant which confirms that phones are only used by authorised users. It is clear that the claimant was openly using his phone to take photographs in the workplace and it was the responsibility of the supervisor to report the matter as he did.*

*117. The Tribunal has had the benefit of hearing from the claimant and reading the transcripts of many of the meetings he has had with various managers of the respondent. Most of these meetings involve challenge by the claimant and a refusal to move on from his complaints about how he perceived his complaint against Mr Peachy had been inadequately handled. The Tribunal find that it was not unreasonable for Ms Merna tell the claimant to delete the photographs. It was also not unreasonable,*

*in the circumstances of this case and the manner in which the claimant has conducted himself in meetings as evidenced by the transcripts of his own covert recordings, to tell him that if he did not desist from what he was doing and delete the photographs she would go to the police. The claimant was not permitted to take photographs in the workplace, just as he was not allowed to covertly record his colleagues. In circumstances where the claimant displayed little regard for the instructions of his employer, the response of Ms Merna to his behaviour whilst a hollow threat, was not unreasonable. The claimant could not reasonably conclude that he had suffered a detriment even if the incident amounted to a protected disclosure.*

*118. The claimant has told the Tribunal that photographs of the damage to the factory walls had already been taken by the quality manager so the respondent was already aware of the damage. In addition, in oral evidence he accepted that he did not have any discussion with Ms Merna about what the photographs were, or the reason he had taken them. It is his case that when he passed the photographs to Ms Merna to delete them she would have known what they were and would have known that he was raising a health a safety matter. The fact that she had already been given similar photographs taken by the quality manager e says would also have alerted her to what the photographs were and why he had taken them. Whilst the Tribunal have regard to the fact that 'disclosure of information' for the purposes of s 43B ERA1996 can take many forms, it does not accept that being handed a phone in order to delete photographs taken in breach of the respondent's policy on mobile phones meets that definition. The claimant accepted that there was no conversation about the subject matters of the photographs and given the claimant's recent unusual behaviour prior to this event it was not encumbant on Ms Merna to enquire as to the reasons why he took the photographs as suggested by Ms Williams in submissions.*

*119. The Tribunal find that this incident did not amount to a disclosure of information and is not a qualifyng disclosure for the purposes of s 43B ERA1996. Had there been a disclosure of information that was protected the Tribunal find in the circumstances of this case, instructing the claimant to delete the same and telling him that she would report him to the police if he did not do as she asked, did not amount to intimidating of bullying behaviour for the reasons given above.*

*120. The claimant also maintains that the respondent changed his shift pattern because he made this disclosure. Mr Moss was responsible for the change of shifts and has quite clearly explained the rationale behind change which is set out in the facts above. The Tribunal finds the reason given for the change is understandable and was done to balance out the knowledge and skills of Mr Crompton and Mr Warsap. The Tribunal finds that the change was in no way connected to the claimant's disclosure and his assertion that it was Ms Merna who instigated the change and not Mr Moss is not borne out by any evidence. In oral evidence the claimant made light of the fact that his shift had been changed and stated that he did not view the change as a punishment, his complaint was that he had not been provide with a full explanation for the reason, which is not a detriment raised in his schedule. The Tribunal is satisfied on the basis of the evidence of Mr Moss that both men were told of the change and the reason for it, that the claimant was aware of reason for the change in shift pattern and that he did not reasonably conclude that the treatment had been to his detriment, as confirmed by his oral evidence.*

*<u>Third disclosure – Breach of confidentiality and data security</u>*

*121. The Tribunal accept that the claimant had a reasonable belief that the respondent had failed to comply with a legal obligation in respect of the storage of his personal sensitive data. The claimant raised a formal complaint on 7 April 2015 that his personal file had been illegally accessed and his confidential data disclosed. The claimant had been told how Mr Robb had come to know how old he was but he did not accept the explanation and was not satisfied that the data held by the respondent could not be easily accessed by others. This was clearly a disclosure of information and was not a mere allegation. The Tribunal does not accept Mr Liberadski's submission that this was not a disclosure made in the public interest. The Tribunal find that the claimant's complaint did not just relate to the breach of his own data but the fact that the respondent was failing to safeguard all the data held in the filing cabinet. This would inevitably include the data of all the employees which, in accordance with the guidance of Underhill LJ in* ***Chesterton Global*** *(above) would meet the public interest requirement. The fact that the claimant unreasonably attributed this breach to Mr Peachy on the basis as he said in oral evidence that he could read his mind, is irrelevant. The Tribunal find that this was a disclosure that was protected under s43A ERA1996.*

*122. The Tribunal find that there was some degree of delay before the claimant was advised of the outcome of his complaint, but that is not pleaded as a detriment in relation to this disclosure in the claimant's schedule. The Tribunal note that Ms Williams appears to attempt to introduce it as a detriment in her written submissions in that she submits that the matter was not investigated adequately and he was not provided with an outcome in a timely fashion. As set out in the findings of fact above this was not a matter that was dealt with by the parties at this hearing and it is not a detriment listed in the schedule. The detriment relied on in his schedule is that he was subject to a retaliatory grievance/disciplinary matters and that he was not notified in writing that the 'charges' were not pursued.*

*123. The claimant accepted in oral evidence that the respondent had investigated this complaint and the Tribunal also find based on the evidence before it that a reasonable investigation was carried out and an explanation given to the claimant. Whist there was some degree of delay in the claimant receiving the outcome of his grievance the Tribunal note that the claimant had raised additional information following his original complaint and that this also needed to be investigated before the outcome could be delivered. In the circumstances given that the claimant was kept updated as to progress, the Tribunal do not find that this was an unreasonable delay and the claimant did not reasonably conclude that the delay had been to his detriment .*

*124. In respect of the pleaded detriment, the Tribunal note that the meeting convened to discuss the claimant's complaint about his data was also attended by his union representative. During the time that the claimant had been awaiting the outcome of his complaint there had been a number of incidents involving the claimant's conduct which Mr Moss considered was conduct which fell below what was expected of him. Mr Moss intended to formally address these matters with the claimant through the disciplinary process put on advice from HR he had been told that Mr Symonds was going to meet with the claimant about his data protection grievance and that everything could be rolled up into the one meeting. The Tribunal find that this way of dealing with matters would be more commonly seen in small to medium owner managed business and not large organisations with a dedicated HR team such as the respondent, however the Tribunal note that Mr Symonds seemed to adopt this approach to most*

*of the matters he dealt with. The Tribunal find that whilst not best practice, it is not unacceptable in circumstances where there are a number of matters ongoing at the same time. Had this been a formal disciplinary meeting clearly the Tribunal would have viewed the matter entirely differently, but it was not.*

*125. The matters of concern to Mr Moss included, the way in which the claimant spoke to Ms Merna following the memo about staff throwing coffee cups and other rubbish near an oil tank, and his refusal to sign the memo about wearing chemical suits or wear one. The notes of the meeting clearly indicate that this was not a meeting intended to cover just the claimant's grievance, it was also convened to cover other issues as well. The claimant's grievance was dealt with first and it was agreed that further investigation would be carried out in light of the information the claimant had given. The meeting then moved on to a discussion about the future. It was not a disciplinary meeting but issues discussed were of a nature that could give rise to disciplinary action. The claimant's representative who was present at the meeting advised him that his failure to sign the memo about the chemical suits would result in him being sacked (albeit not that day). In the event the claimant agreed he would sign the form.*

*126. It is clear that the claimant was not expecting to be told the outcome of his grievance at this meeting as he brought further information that raised the need to interview other people. The meeting was in essence a continuation of an investigation into his complaint. When this had been dealt with there was a clear shift in the meeting to move onto other matters. The meeting resulted in the claimant agreeing to sign the chemical suit memo and no further action was necessary. It is not reasonable for the claimant to expect to be informed in advance as he suggests as no action against him was anticipated at the meeting. Matters were merely brought to his attention and he could not reasonably have concluded that he was subjected to a detriment. In addition the issues raised by the respondent about his treatment of Ms Merna and his failure to sign the chemical suit memo were legitimate concerns of the respondent and were in no way connected to the claimant's disclosure about his personal data. Similarly the claimant was told verbally on numerous occasions that he was not the subject of any outstanding disciplinary proceedings or investigations and it was not reasonable for him to demand that he be given this information in writing. The fact that he wanted a letter confirming this, did not give rise to a right to have one. The claimant cannot have reasonably concluded that he was subjected to a detriment by not getting a letter confirming what he had already been told verbally on more than one occasion, irrespective of the fact that he is a pendant as submitted by Ms Williams, or not.*

*127. After the further investigation into the claimant's complaint had been carried out he was notified that his complaint was not upheld because there was no evidence that his personal information had been compromised. The respondent had told Mr Robb about the claimant's age with a view to ascertaining his intentions about retirement and the Tribunal accepts that this was the reason. The Tribunal also accepts the reasons given about the need for this question to be asked as it is reasonable for an employer to be able to plan ahead in circumstances where there are known difficulties in recruiting engineers. Whilst the Tribunal accept that this was the true position it is also of the view that this matter, together with most of the matters which involved the input of Mr Symonds, was poorly handled.*

*<u>Fourth disclosure – safety maintenance documentation</u>*

*128. The claimant's refusal to complete or sign his name to PPMs or, forms of any other name that recorded work done by the engineers, had been ongoing for a considerable length of time. It appears that he did sign them in the past and that it was only following the Mr Peachy matter that he started to object. These forms were the subject matter of many meetings between the claimant and Mr Moss and others, some of which were recorded. Even by the end of this hearing the Tribunal is not clear what it was that the claimant objected to and why. He maintains that the forms were a fraud and a falsification of health and safety documents. He has not however, provided any detail about how he says that this is so. His evidence about why he refused to sign the forms has varied but has included the fact that he was not prepared to fill them in because the information could be obtained elsewhere. If that is the case it is difficult to see why he took such strong objection to signing these documents other than he was simply being pedantic about his perceived need to have everything introduced through a formal process. He also maintains that staff were falsifying the forms, but has provided no evidence or explanation to support this argument. It is right that some entries recorded that a particular machine was 'knackered' but again it is difficult to see how this is falsification, or how it gives rise to a health and safety risk because the engineer in those circumstances is clearly highlighting the condition of the machine.*

*129. Mr Moss did say that the forms could be improved as some of the information required in the format at the time could have been misinterpreted. However, there is no evidence to support the fact that the claimant held a reasonable belief that completing these forms created a health and safety risk for others. In addition, other than stating that this was the case he provided no further information to explain what he believed the problem was. Ms Williams submits that the respondent should have enquired further; the Tribunal find that it did. The claimant was asked on many occasions why it was that he refused to sign, but all answers led back to the claimant's stance that he was not prepared to sign anything until his historical complaints had been resolved to his satisfaction. The Tribunal find that the claimant did not make a disclosure of information relating to safety maintenance and what he disclosed was nothing more than an allegation. This was not a qualifying disclosure for the purposes of s43B ERA1996 and is not protected. The Tribunal find that Mr Moss and Mr Barnes went to some lengths to ensure that the engineers understood their responsibilities in relation to the maintenance of machinery and why, for health and safety reasons, it was important for them to follow the procedure in place. All other engineers followed this direction save for the claimant. It is true that he did not believe in 'condition monitoring' as explained by Mr Barnes, but the Tribunal find that the claimant's belief was not reasonably held given that condition monitoring is a well-recognised and accepted method of practice within the engineering industry.*

*130. Turning to the claimant's dismissal. It is the claimant's case that he was dismissed by reason of making protected disclosures and Ms Williams submits that the respondent wanted to rid themselves of the claimant because he was a risk to their accreditation with BRC. It is her submission that throughout the disciplinary process the respondent clearly had in mind the claimant's previous disclosures and was influenced by these in reaching the decision to dismiss the claimant. The Tribunal has found that the claimant made only one disclosure that was protected for the purposes of ERA 1996 and that is in relation to the complaint he raised about breach of his personal data. The Tribunal has carefully considered the reasons why the claimant was dismissed by Mr Barnes and asked itself whether the reasons were in any way connected to this disclosure. The Tribunal has no doubt that the claimant's dismissal was because he refused to sign the safety maintenance documentation and his*

*insubordination. Although the claimant was not satisfied that all his historical complaints had been dealt with to his satisfaction, the matters had non the less been dealt with and the respondent had moved on. The Tribunal find that the fact that the claimant continued to complain about the people who had dealt with his complaints and in particular Mr Symonds, would not have influenced Mr Barnes' decision to dismiss. The only reasons for his dismissal was his insubordination and the fact that he refused to sign the forms. He had been given frequent opportunities to give a reason why he was not prepared to sign but had maintained his stance throughout, in meetings with both Mr Moss and Mr Guney, that they would not be getting his signature and that he would be taking the matter outside. The Tribunal find that any historical issues related to the previous issues involving the claimant's conduct, and in particular when he had refused to sign the chemical suit memo until his union representative told him he should. The Tribunal find that it was open to Mr Barnes to have in mind the claimant's past conduct and that any references he makes to the past does not relate to any of the complaints he raised. For these reasons the Tribunal find that the claimant was not dismissed by reason of making a protected disclosure and his claim under s 103 ERA 1996 is not well founded.*

*131. The Tribunal then went on to consider whether the claimant's dismissal was fair in accordance with s98 ERA 1996. Under these provisions the respondent is required to show that it had a potentially fair reason for the dismissal. The respondent in this case relies on the potentially fair reason of conduct. The Tribunal does not intend to rehearse again all that took place that led up to the claimant's dismissal but in summary he had previously refused to sign forms that related to the recording of work done by engineers. Ms Williams submits that Mr Moss had allowed the claimant to carry on without signing PPMs. The Tribunal find that there may have been a period of time where Mr Moss had allowed this to happen, but from the transcript provided it is clear that Mr Moss was no longer willing to tolerate that position and made it clear to the claimant that he wanted him to start signing them. The transcript also clearly records the claimant's abject refusal.*

*132. Ms Williams submits that there had been a positive change in the claimant because he had started to fill the forms in but was just refusing to sign them. The Tribunal find that is really somewhat missing the point. The claimant was an engineer and was required to fill in and sign the forms when he had completed the work he carried out. His signature was necessary so that he could be identified as the engineer who had carried out the work and the Tribunal find that it was reasonable that the respondent would require him and the other engineers to do this. Mr Moss had tried on many occasions to find out what the claimant objected to but he did not provide any reasonable answer.*

*133. In addition to refusing to sign the forms, the claimant refused to acknowledge Mr Guney as his line manager. He may well have got on with Mr Guney, but again it is clear from his own notes and the transcripts of the meetings that he had little respect or regard for Mr Guney and would not accept that he would have to put holiday requests through him.*

*134. Prior to disciplinary action being taken against the claimant Mr Moss had met with the claimant to ask once again what the problem was. It cannot be said that the respondent did not afford the claimant every opportunity to say why in his opinion it was reasonable for him refuse to sign. The transcript of the meeting he had with Mr Moss clearly shows that the claimant had no intention of signing anything at all until*

*his demands were met in relation to his historical complaints. The Tribunal find both from the content of transcript of the meeting and having heard from the claimant himself, that the claimant had become entrenched in his own belief about how he should be treated and displayed a lack of trust and confidence in the respondent. It is clear both from the transcripts of the recording of the meeting with Mr Moss and the conversation with Mr Guney that he was absolutely determined that he would not be signing the documentation.*

*135. Having read the transcript of the meeting between the claimant and Mr Moss in full, the Tribunal find that it was not unreasonable for Mr Moss to recommend that disciplinary action should follow. The Tribunal will not rehearse again the events of 29 March when the claimant refused to accept the disciplinary letter but in light of those events the decision of Mr Moss to suspend the claimant was not unreasonable.*

*136. The claimant was provided with the information he needed to respond to the allegations of misconduct against him and was accompanied to the disciplinary meeting by his union representative Mr Gaudie. The Tribunal note that Mr Gaudie took over representation at the meeting and interjected when the claimant spoke to put his own explanation forward. For example, when the claimant was asked by Mr Barnes whether he thought it would be possible to move matters forward, he said "well we can if you give us some direction on the procedures because we've had". Mr Gaudie interrupted the claimant to stop him. After that there followed some dialogue where the Tribunal find the claimant was clearly imposing conditions on his agreement to comply with the requirements to sign documents and Mr Gaudie interrupted again to tell Mr Barnes, what the claimant was agreeing to. Mr Barnes was clearly concerned about what he saw as a pattern of unreasonable behaviour, because the claimant had previously refused to sign forms. When he looked for reassurance that this would not happen again, the claimant merely told him that he was a sensible person. The claimant did not offer his own assurances and it was left to Mr Gaudie to assure Mr Barnes of what his reaction would be if there was repetition of his behaviour.*

*137. Having considered all the evidence the Tribunal find that it was not unreasonable for Mr Barnes to have concerns that the claimant would not change his behaviour. He had considered all the evidence before him including the fact that the claimant had previously refused to sign forms until his union representative told him he should. He also had concerns about the fact that the claimant said he accepted the charges but continued to deny that there was any problem between him and Mr Guney, which was clearly not the case. The Tribunal find that Mr Barnes did have a genuine belief in the claimant's misconduct and that the belief was held on reasonable grounds because Mr Moss had carried out an investigation and provided Mr Barnes with his findings. The Tribunal also find that Mr Barnes considered all the options open to him before taking the decision to dismiss the claimant but in light of the evidence before him he took the decision to dismiss for the reasons he gave.*

*138. The Tribunal find that this was a decision that was open to Mr Barnes even though the claimant had a clean disciplinary record. The fact that he had not previously been disciplined did not meant that the claimant was unaware that his behaviour was unacceptable because he had been told it was by Mr Moss. The claimant cannot have been under any illusion that Mr Moss or Mr Guney were accepting of his behaviour because it was clear from their discussions with him that they were not. Similarly he could not have thought that his failing to sign the PPMs and the IT policy was not a serious issue because it was made clear to him that it was. The Tribunal find that in*

*the circumstances of this particular case, even though the claimant had not been formally disciplined previously, the decision of Mr Barnes to summarily dismiss the claimant fell within the band of reasonable responses open to a reasonable employer. The Tribunal make this finding because, based on the evidence before him he did not have confidence that the claimant would change his behaviour. The Tribunal find that the fact that Mr Barnes took into account the insubordination of the claimant of 29 March does not render the dismissal unfair because Mr Barnes explained that he viewed this as simply further evidence of the claimant's unreasonable behaviour.*

*139. Mr Worrall carried out the claimant's subsequent appeal against his dismissal on the grounds that the sanction was too harsh. The Tribunal have read the transcript of the meeting and heard oral evidence from Mr Worrall and find that Mr Worrall approached the meeting with an open mind and willing to listen to anything the claimant had to say. Unfortunately, although invited to comment by his union representative he did not and he left Mr Worrall with a belief that the claimant was not interested in getting his job back. Whilst there is no obligation on an employee to essentially 'sell' himself to the employer, the Tribunal have regard to the context in which this arose. Mr Barnes did not have confidence that the claimant would change his behaviour and this had been high-lightened in the letter of dismissal. Mr Gaudie had raised it in the appeal meeting and said that he was going to leave that up to the claimant to speak for himself, but he did not. In those circumstances it was not unreasonable to reach the conclusion that he did. He considered that the decision to dismiss was one that was reasonable open to Mr Barnes and that in all the circumstances it was the right decision. Nothing he had heard at the appeal meeting led him to believe any differently to Mr Barnes. The claimant was given the opportunity to say how he could assure the respondent that he would change but took the decision not to. The decision of Mr Worrall to uphold the decision to dismiss was one that was open to him and in the circumstances of this particular case was one that was within the band of reasonable responses.*

*140. The Tribunal considered whether the claimant was entitled to payment in lieu of his notice period. It is clear from the transcripts of the meetings had with the claimant that he did refuse to acknowledge Mr Guney as his line manager because he refused to have is holiday form signed by him. It is also not disputed that he refused to sign the PPM forms in breach of the procedure of the respondent. Both these acts were deemed as serious acts on the part of the respondent and as such the respondent was entitled to summarily dismiss the claimant without notice or payment in lieu of notice.*

*141. Finally, although somewhat academic the Tribunal has considered the time limits in bringing the protected disclosure and detriment claims. The Tribunal find that save for the last complaint about safety maintenance documentation in February 2017, all other complaints raised by the claimant are out of time. The Tribunal does not find that they form a series of acts or failures to act as submitted by Ms Williams. The only link back to the claimant's complaint about Mr Peachy is his persistent refusal to move on from it. It may be that his dissatisfaction with how he perceived his complaint was handled materially influenced his own behaviour but that is not sufficient to give rise to a series of continuing acts.*

***Conclusion***

*142. For the reasons given above the Tribunal find that the claimant's claim that he was dismissed because he made one or more protected disclosures, is not well founded.*

*143. The claimant's dismissal was not automatically unfair under s103 ERA 1996.*

*144. The claimant did not suffer detriments under s47B*

*145. The claimant was not unfairly dismissed and the respondent was entitled to summarily dismiss without notice or payment in lieu of notice.*

*146. None of the claimant's claims are well founded and all are dismissed*

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*Employment Judge Sharkett*

*Date 8 October 2018*

*RESERVED JUDGMENT AND REASONS SENT TO THE PARTIES ON*

*8 October 2018*

*FOR THE TRIBUNAL OFFICE*