Case Number: 3400343/2017

EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mrs E Couzens	**v**	Thomas Johnson Lower School

Heard at: Cambridge Employment Tribunal **On:** 24 -28 September 2018
14 November 2018
In Chambers: 10 January 2019

Before: Employment Judge King

Members: Mr Davie and Mr Eyre

Appearances For the Claimant: In person
For the Respondent: Mr A Tinnion (counsel)

RESERVED JUDGMENT

1. The claimant's claim for unfair dismissal fails and is dismissed.

2. The claimant's claims for detriments due to making a protected disclosure fails and is dismissed.

RESERVED REASONS

1. The tribunal heard evidence from the claimant. The tribunal heard evidence on behalf of the respondent from Ms Bloodworth (Assistant Head Teacher), Mrs Haines (Head Teacher), Mr Collins (Governor) and Mr Morris (Governor). The case was listed for five days. We heard evidence over 4 days and a large part of the first day of the hearing was absorbed in dealing with applications, issues over documentation including redaction and additional pages being added to the bundle by agreement. The Tribunal also had to undertake a significant amount of reading as one of the respondent's statements alone ran to 52 pages and 269 paragraphs which was not necessary or helpful. As a result the time estimate of four days was wholly inadequate.

2. The claims were identified as automatic unfair dismissal under s.103A of the Employment Rights Act 1996 and a claim for detriments for having made protected disclosures under s.43B of the Employment Rights Act 1996.

3. The issues as to liability were identified at case management hearing and confirmed at the outset of the hearing with the parties as follows:

Unfair Dismissal

3.1 What was the reason for the claimant's dismissal? The claimant does not have sufficient continuity to claim "ordinary" unfair dismissal. Thus, has the claimant established (the burden being on her) that the only or principal reason for her dismissal was because she made one or more protected disclosures? The respondent asserts that the dismissal was for reasons wholly unconnected with any such disclosures.

3.2 If the claimant was automatically unfairly dismissed:

3.2.1 If the dismissal was procedurally unfair, what adjustment, if any, should be made to any compensatory award to reflect the possibility that the claimant would still have been dismissed had a fair and reasonable procedure been followed/have been dismissed at or about the same time anyway? See Polkey v AE Dayton Services Ltd [1987] UKHL 8; paragraph 54 of Software 2000 Ltd v Andrews [2007] ICR 825;

3.2.2 Would it be just and equitable to reduce the amount of the claimant's basic award because of any blameworthy or culpable conduct before dismissal, pursuant to ERA section 122(2); and if so to what extent?

3.2.3 Did the claimant, by blameworthy or culpable actions, cause or contribute to dismissal to any extent; and if so, by what proportion, if at all, would it be just equitable to reduce the amount of any compensatory award, pursuant to ERA section 123(6)?

3.2.4 Has the respondent shown that any protected disclosure which caused the dismissal was not made in good faith?

S47B detriment from protected interest disclosure

3.3 The alleged nine protected disclosures the claimant relies on are set out at paras 5, 8, 9, 11, 13, 14, 16, 18 & 34 of her particulars of claim. (The claimant has not yet properly explained how each such disclosure falls within the provisions of s.43B of ERA. Nor has she yet properly particularised the detriment/s said to be sustained as a result of each such disclosure. She will need to do so).

3.4 Did the claimant make one or more protected disclosures (ERA sections 43B) as set out below. The Respondent accepts that the claimant made protected disclosures under s43B (1) (a-f) in August and September 2015 and that those disclosures only were in the claimant's reasonable belief in the public interest. The respondent disputes the remaining

disclosures were made for or in the public interest. The nine protected disclosures relied on are:

- *3.4.1 Hot pipes, boat and wires in August 2015 to the Head Teacher (paragraph 5 ET1);*
- *3.4.2 There was no phone (paragraph 8 of the ET1);*
- *3.4.3 The issues were discussed again on 15th October 2015 (paragraph 9 of the ET1);*
- *3.4.4 Wires and door and health and safety issues on 16th October 2015 (paragraph 11 of the ET1);*
- *3.4.5 The issues were revisited on 23rd October 2015 with the Head Teacher (paragraph 13 of the ET1);*
- *3.4.6 Concerns over the safety of the child with epilepsy in September 2015 (paragraph 14 of the ET1);*
- *3.4.7 The wiring, safeguarding and health and safety issues on 1st February 2016 (paragraph 16);*
- *3.4.8 Concerns over health and safety practices on 10th February 2016 (paragraph 18 of the ET1);*
- *3.4.9 Concerns raised again in the claimant's formal grievance on 27th January 2017(paragraph 34 of the ET1)*

3.5 Was the principal reason the claimant was dismissed that she had made one or more of the said protected disclosures?

3.6 Did the respondent subject the claimant to any detriments? Included within this issue are the questions of what happened as a matter of fact and whether what happened was a detriment to the claimant as a matter of law. The claimant relies on the following detriments:

- *3.6.1 The claimant's Head of Year refusing to witness work which the claimant had done as a requirement of being an NQT;*
- *3.6.2 The Head of Year cancelling the claimant's NQT time which she would otherwise have used for training, observations or other work connected with her NQT status;*
- *3.6.3 The Head of Year stopping the Claimant going on training;*
- *3.6.4 The claimant being humiliated by the Head Teacher in front of children and staff by reprimanding her for not keeping the door open during a class in which she was teaching cookery;*
- *3.6.5 The Head of Year humiliating the claimant in front of staff and students by asking her for assessments which were not late, as if they were;*
- *3.6.6 The Head of Year telling the claimant off in front of teaching assistants despite the claimant asking her not to do so because it was demeaning and undermined her;*
- *3.6.7 Being picked up for coming in late when she was not late, and despite her explaining how her hours were affected by child care;*
- *3.6.8 Being expected to do the outside area instead of the teaching assistant, whose responsibility it was;*
- *3.6.9 Giving the claimant a poor second formal assessment report as if she could do nothing right;*

3.6.10 The Head Teacher criticising her work plans, despite the claimant doing them in accordance with the Head of Year's recommendations;

3.6.11 The Head Teacher criticising the claimant for not including work on the hungry caterpillar when she had not been told this needed to be done.

3.7 Is so were any of these done on the ground that she made one or more of the said protected disclosures?

Time limits/limitation issues

3.8 Given the date the claim for was presented and the dates of early conciliation, some such complaints are potentially out of time, so that the tribunal may not have jurisdiction to deal with them.

3.9 Were all of the claimant's complaints presents within the time limits set out in section 48(3) & (b) of the Employment Rights Act 1996("ERA")? Dealing with this issue may involve consideration of subsidiary issues, namely whether there was a series of similar acts or failures and whether it was not reasonably practicable for a complaint of predismissal detriment/s to be presented with the primary time limit.

Remedy

3.10 If the claimant succeeds, in whole or in part, the Tribunal will be concerned with issues of remedy and in particular, if the claimant is awarded compensation and/or damages, will decide how much should be awarded. Specific remedy issues that may arise and have not already been mentioned include:

3.10.1 Did the respondent unreasonably fail to comply with a relevant ACAS Code of Practice, if so, would it be just and equitable in all the circumstances to increase any compensatory award, and if so, by what percentage, up to a maximum of 25%, pursuant to section 207A of the Trade Union & Labour Relations (Consolidation) Act 1992 ("section 207A")?

3.10.2 Has the respondent shown that any material protected disclosures which were made by the claimant were not made in good faith, and if so, ought the tribunal to reduce any compensation for pre-dismissal detriment which would otherwise be payable, by up to 25%?

3.10.3 Has the respondent shown that the claimant has failed to take reasonable steps to mitigate her losses?

The Law

Unfair Dismissal

4. Dismissal under s.95 of the Employment Rights Act 1996, not being in dispute the claimant does not have sufficient service to claim ordinary unfair dismissal. Instead she brings her complaint as one of automatic unfair dismissal.

s103A Protected disclosure.

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

Whistleblowing claims

5. The law on whistleblowing and specifically detriments can be found at s43B, s43C and s47B of the Employment Rights Act 1996 as follows:

s43B Disclosures qualifying for protection.

(1) In this Part a " qualifying disclosure " means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following—

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

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

(c)that a miscarriage of justice has occurred, is occurring or is likely to occur,

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

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

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

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

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

(4) A disclosure of information in respect of which a claim to legal professional

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

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

s43C Disclosure to employer or other responsible person.

(1) A qualifying disclosure is made in accordance with this section if the worker makes the disclosure ...—

(a)to his employer, or

(b)where the worker reasonably believes that the relevant failure relates solely or mainly to—

(i)the conduct of a person other than his employer, or

(ii)any other matter for which a person other than his employer has legal responsibility, to that other person.

(2) A worker who, in accordance with a procedure whose use by him is authorised by his employer, makes a qualifying disclosure to a person other than his employer, is to be treated for the purposes of this Part as making the qualifying disclosure to his employer.

s47B Protected disclosures (ERA 1996)

(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.

(1C) For the purposes of subsection (1B), it is immaterial whether the thing is done with the knowledge or approval of the worker's employer.

(1D) In proceedings against W's employer in respect of anything alleged to have been done as mentioned in subsection (1A)(a), it is a defence for the employer to show that the employer took all reasonable steps to prevent the other worker—

(a) from doing that thing, or

(b) from doing anything of that description.

(1E) A worker or agent of W's employer is not liable by reason of subsection (1A) for doing something that subjects W to detriment if—

(a) the worker or agent does that thing in reliance on a statement by the employer that doing it does not contravene this Act, and

(b) it is reasonable for the worker or agent to rely on the statement.

But this does not prevent the employer from being liable by reason of subsection (1B).

(2) This section does not apply where— (a) the worker is an employee, and

(b) the detriment in question amounts to dismissal (within the meaning of Part X).

(3) For the purposes of this section, and of sections 48 and 49 so far as relating to this section, " worker ", " worker's contract ", " employment " and " employer " have the extended meaning given by section 43K.

6. The respondent within its written submissions, drew our attention to a number of authorities (to which we have had regard) namely:

Abernethy v Mott Hay & Anderson [1974] IRLR 213; Haslam v GM Packaging UK Ltd. [2014] UKEAT/0259/13/A; Cavendish Munro v Geduld [2010] IRLR 38 EAT; Blackbav Ventures Ltd v Gahir [2014] IRLR 416, EAT.

7. On the claimant's behalf, she presented written submissions and oral submissions to us having been sent the respondent's submission well in advance in order to assist her.

8. The Tribunal also had regard to *Parsons v Airplus International Ltd* and *Chesterton Global Ltd and anor v Nurmohamed*.

Findings of Fact

9. The claimant was employed by Thomas Johnson Lower School from 1st Sept 15. She was an NQT. An NQT must pass an academic qualification but then must complete an induction year within a school environment. This is required in order to complete their induction and endorse their Qualified Teacher Skills (QTS). This enables the student to teach in state schools. The claimant passed her QTS with Grade 1 (outstanding) in July 2015.

10. The induction period is 1 year (3 terms) and the NQT must demonstrate competence against a list of individual teacher standards which cover teaching and personal/professional conduct. Each term is signed off via a report. This is usually completed by the mentor and each report includes a grade of A to E. Each report "passes" if grade C or above in order to pass the induction. It is necessary for the school to recommend to the Local Authority whether an NQT has satisfactorily completed the induction or not.

11. Prior to joining the respondent, the claimant had undertaken a training year elsewhere. The Bedfordshire Schools Training Partnership confirmed to the Head Teacher in January 2017 that the claimant's placement at her local village school broke down despite her links to the school as a volunteer/parent helper. The claimant made a formal complaint against the organisation's primary coordinator but this letter confirmed that the claimant had to be moved to a different placement after the first term to have a fresh start. The letter states that she "found it hard to maintain appropriate personal and professional relationships with her mentor and class teacher, relationships with other key staff' and ultimately the Head Teacher, broke down."

12. The letter also references a more successful second placement however she continued to experience ongoing minor difficulties with relationships but these were largely managed by staff in house.

13. The claimant's CV illustrates a number of previous employment positions which are numerous and short in duration. She had a legal background.

14. The respondent is a maintained school with a board of Governors. The claimant was employed in the early years foundation stage (EYFS) setting specifically in the nursery setting. She and a Teaching Assistant (whilst not always present) would supervise the nursery age children. The children would learn through play and be observed.

15. The classroom setting was a room with an additional room off the main room and a door to the outside play area used by nursery and reception children. It was separated from the main school. It was a small school with small numbers in the catchment area with a corresponding small number of personnel at the school.

16. The claimant started with the respondent on 9th July 2015 as a supply teacher for the day. The claimant then attended school during August 2015 to prepare the classroom for the forthcoming term as is normal practice.

17. It is not disputed that in August 2015 the claimant raised concerns about hot pipes, cat faeces, a wooden boat in the play area and electric wires/plugs in the adjoining classroom. The claimant raised these issues with Mrs Whomsley and Mrs Haimes. The respondent accepted that these disclosures amounted to protected disclosures.

18. We did not hear evidence from Mrs Whomsley to whom the claimant initially reported and who led the early years unit. We did not hear evidence from Mrs Piper, the nursery manager either. We are told that the claimant was informed that the current manager Mrs Piper was taking a step back to part time which did not materialise. The claimant made a number of changes to the setting over the summer/initial weeks which meant that their relationship did not set out on the right footing. It was clear there were issues with Mrs Piper and Mrs Whomsley.

19. In September 2015 the claimant raised concerns about the inability to contact staff in an emergency and a child with epilepsy not having her medication in school/sufficient staff training. Mrs Haimes confirmed the claimant raised these issues with her. The respondent accepted rightly that these were protected disclosures.

20. Mrs Haimes was initially the claimant's mentor. A meeting took place on 15th October 2015 in which the claimant says she made a number of disclosures concerning epilepsy, risk assessments, being left to supervise outside for long periods and bullying. Mrs Haimes accepts the claimant raised issues about spending more time outside and referenced bullying but has no recollection of risk assessments or other matters being discussed. There are contemporaneous notes of the meeting which set out that the claimant was told that the nursery door needed to be permanently open and setting out the reasons why this instruction was given. This was an EYFS requirement.

21. The claimant also raised an issue in that meeting about being outside more than other members of staff and in essence doing more than her fair share. One of the actions as a result of that meeting was to draw up a timetable so that outside areas are defined and there is no confusion or llfeeling. We know that a rota was then devised as this was produced for the tribunal. We are told by the claimant that this was not supported by others so it was not followed. The claimant did not ever raise this as an issue prior to the proceedings.

22. On 16th October 2015, the claimant says that she met Mrs Whomsley to talk about the issues she raised the day before. Given that we have not found that the claimant raised these issues in the minuted meeting the day before we do not find that the claimant raised these issues here. Her statement refers to health and safety and gives no specific information as to what she is said to have disclosed.

23. We had a number of witnesses before us for the hearing. It was clear to the tribunal that there were relationship issues between the parties which made the giving and receipt of evidence more challenging as the claimant represented herself particularly in her relationship with Ms Bloodworth. The tribunal felt that the claimant's account was honest but at times accentuated in its feelings. She used very emotive words to describe ordinary events. The tribunal found all witnesses credible.

24. Between October 2015 and December 2015 the claimant had to produce end of term assessment reports for the children within her setting. Mrs Whomsley asked the claimant to produce these by the Friday but then on the Wednesday the claimant alleges that she was asked for the assessments early as if they were late but is unable to explain how this was framed precisely. The claimant says this was in the staff room during a lunchtime break. Other staff were present. We accept that this request was made but we do not accept that she was "chastised" in the manner suggested.

25. The claimant invites us to find that she was told off in front of teaching assistants despite asking the head of year not to do so. Apart from the instances where we have made specific findings as to her treatment on the events that were pleaded/relied upon as specific examples. The more sweeping statement that the claimant was told off in front of teaching assistants the claimant provided no specific examples or dates or witnesses on when this is supposed to have happen so we make no findings in this regard as it is too vague and without substance.

26. On 21st October 2015 Mrs Haimes visited the claimant's classroom whilst they were undertaking a pumpkin soup making activity and queried why the outside door was closed which had been raised with the claimant a number of times. The claimant and her teaching assistant were involved and the claimant said that it was therefore necessary to close the door as there was no supervision outside. The clamant provides no further detail about what Mrs Haimes said or did in response and it would therefore appear that Mrs Haimes accepted that explanation. Mrs Haimes evidence was that she accepted the explanation on this occasion.

27. On 22nd October 2015 Mrs Haimes was approached by two other members of staff who have not been otherwise involved in these proceedings. Independently these staff members raised concerns about the claimant and her behaviour towards others in the team and her inability to listen to

feedback. The claimant confirms in her statement that Mrs Haimes informed her at the time that she had been approached by these two members of staff. There is no suggestion either member of staff was involved or aware of the "protected disclosures".

28. Mrs Haimes and the claimant had a meeting 23rd October 2015 where the claimant was told to leave the outside nursery door open. The claimant says she raised that there was a lack of supervision. There is however, no evidence that the claimant raised this at the time in either a failing in the outside rota or noted on the risk assessment (that she drew our attention to) that this risk was present or that she could not operate the open door policing due to insufficient staff. Notes of the meeting make no reference to it so on balance we do not find that this was said. During this period the claimant's mentor changed from the Head Teacher to Ms Bloodworth.

29. On 5th November 2015 there was an NQT meeting with the claimant. This made reference to there having "been some disagreements between the claimant and other staff members about the way the curriculum is being delivered" as well as "other disagreements with staff members involving the claimant". It was said that the claimant had "found this difficult to manage and understand these differences in opinion". One of her targets for development was "to develop effective professional relationships with colleagues, knowing how and when to draw on advice and specialist support."

30. In December 2015 the claimant had her end of first assessment period report which rated her a B. This report made a number of comments concerning the working relationship such as areas for development being "To deploy support staff effectively throughout the working day by developing effective relationships". Other comments included "Initially, Elaine found it difficult to adjust to the new role and working with new colleagues" and "she has worked really hard to build solid relationships with staff". Another area for development was listed as "to develop an effective working relationship with all colleagues including colleagues which are new to their role – by providing planning, giving clear expectations, communicating effectively and supporting others."

31. In the 1st December 2015 notes of the NQT/Induction tutor meetings between Ms Bloodworth and claimant, it was noted that there had been "brilliant improvement with professional relationships" and in the actions to be taken to meet targets that the claimant should "seek further advice from the senior leadership team (SLT) should conversations became challenging." Concerns were being raised about the claimant in her informal meetings. There is then a gap in the chronology where the claimant was not raising issues she now relies on as protected disclosures.

32. On 1st February 2016, the claimant, Ms Bloodworth, Mrs Haimes and Kate Charlton from Central Bedfordshire Council met. The meeting was called to discuss the respondent's concerns that the claimant may not meet her induction. The claimant raised the issue of the wires and the child with the epilepsy in this meeting.

33. An action plan was drawn up by the school for the claimant to follow. Kate Charlton suggested that the claimant find another channel for communicating concerns and arising out of the meeting a book was set up so that future review meetings could focus on the NQT induction matters. The book would record any other concerns the claimant had so these could be actioned by the school. Notes were taken of the meeting and an email sent to Ms Bloodworth and Mrs Haimes from Kate Charlton following that meeting. It was felt by the local authority and the school that the persistent raising of issues when her performance was being questioned was deflecting from the claimant's improvement and being able to meet the standards required which is why the separate book was suggested. Issues had not been raised by the claimant for some time until her performance was a concern.

34. In the 10th February 2016 meeting the claimant says she raised it all again. No record of this is noted in her meeting notes unlike on other occasions. The claimant says she refused to sign the meeting notes as they were not accurate. She felt that they did not record the concerns she was still raising. This would have been out of character as no other notes of this type were signed. They are more akin to file notes and are different to the NQT induction meeting notes which provide for signatures. The NQT plan accompanying those minutes provided for signatures which the claimant did not sign as she did not agree with the support plan. In essence the claimant did not take on board the feedback and could not see any issues with her performance.

35. On 11th March 2016 the claimant was asked not to take her NQT session planning afternoon as she would be out of school on an all day training course the following week. She was also told that her planning afternoon and formal review of the second term could not take place. In essence, the time was reallocated or rearranged. We accept that is was necessary in a school environment to adopt the timetable accordingly and adapt.

36. On 22nd March 2016 a meeting took place with the claimant, Mrs Haimes and Ms Charlton to discuss her second formal assessment report. The claimant's report had graded her as a "D" meaning that she "has sufficient areas of concern to warrant additional support from within the school/academy" and the recommendation was that her performance indicated that she was not making satisfactory progress against the teachers' standards for the satisfactory completion of the induction period. It outlines strengths, progress against teaching standards and areas for development. Targets were identified and Ms Charlton explained that she

had an option to move to another setting as a fresh start. The claimant walked out of the meeting.

37. On 23rd March 2016 a meeting was held between the claimant and Mrs Haimes at the end of the school which lasted for three hours. The claimant refused to sign her assessment report as she felt it should be rewritten. The school term ended the following day and the claimant did not return until 11th April 2016 for an inset day.

38. By letter dated 29th March 2016 the claimant was invited to attend a grievance meeting to discuss the circumstances of her sudden departure from school on the 22nd March 2016 and seeking an amicable resolution to the issue. A meeting was scheduled for 13th April 2016 but this was then cancelled and rearranged for 4th May 2016.

39. On the 11th April 2016 the claimant returned to school for an inset training day (teacher training day without pupils). She was asked about her planning for the new term. The claimant says that she had prepared for "Spring" but was then told by Mrs Whomsley that the planning should have been on the hungry caterpillar instead. We did not hear from Mrs Whomsley who has since left the school.

40. The parties agree that the claimant was given time during the inset day to do this planning. The parties agree that the planning was criticised. The claimant says she has prepared for the wrong topic and when she was told, the new planning was then criticised. The only evidence before us on the topic of the preparation for Spring was the claimant's which we accept. No evidence has been led as to the content or quality of the Spring planning. The claimant then produced her planning on the Hungry Caterpillar during that inset day which was criticised. We accept this was the case as the parties agree that there was a discussion on the topic.

41. A further meeting was held at lunchtime on the 12th April 2016 to discuss planning and again the claimant was told that her planning was poor. The parties roughly agree that this meeting took place and the topic. The claimant says that issues over her planning had not been raised before. Whilst she may not have expressly been told it was poor, we have seen evidence of multiple times where planning has been raised during her NQT or other meetings/observations during the induction which formed part of the evidence referred to by the parties in the Tribunal and some extracts of which are highlighted in these findings of fact above.

42. Also on 12th April 2016 the parties agree that the claimant attended work at approximately 8.20am. Children arrive from approximately 8.55am. Mrs Haimes was waiting for the claimant when she arrived as she felt she was late given that the nursery was not set up for the day (despite having been in the day before on the inset day) with no displays and no activities set out.

The claimant was immediately taken round to see other classrooms by Mrs Haimes to show the claimant the standard that expected and in essence to demonstrate in a practical way what was expected of her.

43. The claimant complains that Mrs Haimes shouted at her and lost her temper with her. We accept that Mrs Haimes was probably frustrated but prefer Mrs Haimes' version that she apologised for showing her around immediately before she had taken off her coat. The claimant's recollection of this event was that she was humiliated in front of the whole school which we do not accept. By doing it in this manner there were no students or parents present merely staff so we do not accept her recollection. It was a practical way to show the claimant the standard she was to aspire to.

44. The claimant attended a variety of relevant training courses during her induction year. The claimant confirms she attended two such courses in March 2016 for example.

45. On 13th April 2016 the claimant went off sick. She was signed off for two weeks. The 12th April 2016 was the last working day for the claimant and as such the detriments to which she complains all predated this date.

46. A grievance meeting took place on 4th May 2016 which concluded in an agreement that there would be another meeting on 17th May 2016 between the claimant and the NQT body. The school agreed to discuss the report with Ms Charlton of the local authority.

47. On 5th May 2016 the claimant was signed off until 13th May 2016 and she did not return to her substantive role. The claimant remained on sick leave until 21st July 2016. An occupational health report was sought.

48. On 17th May 2016 the local authority confirmed in the meeting that they were happy with the support the school had offered and an offer was made that the report could be made interim and she could complete two further terms and complete her induction elsewhere. The claimant declined this.

49. The claimant did not attend work between the start of the new term in September 2016 and January 2017. She did not submit any sick notes during this period. She was not paid but not disciplined for her absence.

50. On 12th January 2017, the claimant was invited to attend a hearing to determine whether her employment with the school could continue or whether she should be dismissed for some other substantial reason. The matter to be considered at the hearing was "as a result of a breakdown in personal relationships the school is unable to provide you with appropriate line management or performance management arrangements or with an induction tutor as required within the NQT induction process."

51. The meeting invite scheduled a meeting for over two weeks away on 27th January 2017. The claimant was given the right to be accompanied and provided with evidence in advance. She was invited to present any documentation seven days in advance but the claimant did not present any evidence in advance.

52. The claimant attended the meeting. Present at the meeting were also three governors who made the panel of decision makers, four HR/employee relations representatives including the note taker and Mrs Haimes. Notes were taken of the meeting. The claimant was given the opportunity to put her case and focused on issues she was unhappy with which included her health and safety concerns and relationships at the school. Mr Collins also gave evidence before us and had a health and safety background.

53. The Tribunal panel spent quite some time questioning Mr Collins about what was in the mind of the decision makers as a panel. He was directly asked by the panel whether the concerns of the claimant played any part in the dismissal, what significance he attached to health and safety concerns and whether the panel had considered whether the raising of the concerns had impacted on the relationship. The tribunal accept his evidence on these points and found his testimony to be balanced. The key issue was whether the relationship had broken down or not. His view was
that it had and that there was no way back or alternative to dismissal. The claimant was dismissed.

54. We did not hear evidence from the chair of the panel, Mr Meakins. We were however taken to an email written by him to Mrs Haimes on 22nd July 2016 to which we have had regard. Given he said that he would not accept the claimant's return to school this would have been highly damaging for the respondent in an ordinary unfair dismissal case given the timing. Again, one could criticise him for chairing the panel in such circumstances but this type of claim is not before this tribunal. We do however take the contents of the email into consideration when looking at the issues below.

55. The claimant appealed against her dismissal on 7th February 2017 and the dismissal appeal meeting took place on 10th March 2017. We heard evidence from Mr Collins who was on the appeal panel. The claimant's appeal was dismissed.

56. The claimant commenced ACAS early conciliation on the 23rd January 2017 which concluded on the 4th March 2017. The claim was presented on 8th April 2017.

Conclusions

<u>Section 43B detriment from protected interest disclosure</u>

Did the claimant make one or more protected disclosures (ERA sections 43B)?

57. The Claimant alleges that she made nine protected disclosures. Before we can determine whether she suffered from any detriments or indeed whether the dismissal was related, we need to determine whether we accept that the matter relied upon was a protected disclosure. The disclosures identified at the outset at paragraph 3.4 are taken in turn:

Disclosure 3.4.1 – Hot pipes, boat and wires in August 2015 to the Head Teacher (paragraph 5 ET1);

58. The respondent accepted that the disclosures in August and September 2015 were protected disclosures. The respondent accepted this was a protected disclosure and we agree.

Disclosure 3.4.2 - There was no phone (paragraph 8 of the ET1);

59. This relates to the concerns over the safety of the child with epilepsy in September 2015. The respondent accepts this was a protected disclosure and we agree.

Disclosure 3.4.3 - The issues were discussed again on 15th October 2015 (paragraph 9 of the ET1);

60. The original disclosures are accepted as protected. We do not find as a fact that the hot pipes, boat and wires were discussed again. The meeting focused on the claimant's perceived unfairness about spending more than her fair share of time outside and bullying. These matters (unfairness to the claimant and bullying) are not in the public interest and are not in our view protected disclosures.

Disclosure 3.4.4 - Wires and door and health and safety issues on 16th October 2015 (paragraph 11 of the ET1);

61. As with detriment 3.4.3 above we do not accept that the claimant raised these issues on wires, door and health and safety concerns on this day as she had not done so the day before and her evidence was that on this day she raised the same issues as the day before with Mrs Whomsley this time. We do not accept that these were raised and as such it cannot be a protected disclosure.

Disclosure 3.4.5 - The issues were revisited on 23rd October 2015 with the Head Teacher (paragraph 13 of the ET1);

62. We have found as a fact that the claimant did not revisit these issues on this occasion and therefore we do not accept that the issues were raised and thus that it was a protected disclosure.

Disclosure 3.4.6 - Concerns over the safety of the child with epilepsy in September 2015 (paragraph 14 of the ET1);

63. The respondent accepts that this was a protected disclosure and we accept that given the nature of the concerns.

Disclosure 3.4.7 - The wiring, safeguarding and health and safety issues on 1st February 2016 (paragraph 16);

64. We have found as a fact that the claimant did raise issues over the child with epilepsy and wiring in this meeting. When it came to our deliberations we spent a considerable period of time debating whether the claimant had a reasonable belief as required under s43C. We all agreed that at the outset the claimant had a reasonable belief but we spent some time discussing the point at which that objectively became no longer reasonable to mean that the claimant no longer had a reasonable belief.

65. The claimant was told by Mrs Haimes who had overall responsibility for safeguarding that there was no issue. Mr Collins gave evidence in his role as the health and safety governor he had looked into the various issues. The respondent commissioned a health and safety report (post dismissal) to show there was no issue so whilst not relevant to the claimant's knowledge and her belief shows there was no issue. The question mark in some of the panel's mind was as to the level of the claimant's knowledge that the issues had been resolved. They had been investigated, confirmed as not an issue and should have been resolved but for the claimant persistently bringing them up. The majority felt that this removed the claimant's reasonable belief as required for the protected disclosure.

66. Certainly by the 1st February 2016 the panel unanimously agreed that the claimant did not have a reasonable belief as the matter had been resolved and only raised at that time given the performance issues being addressed with the claimant. There had been nothing raised in the three months previously until this meeting with the local authority given concerns over the claimant's performance.

67. We therefore find that certainly by 1st February 2016 the claimant no longer had a reasonable belief and therefore the disclosure was not a protected disclosure. We have considered *Parsons* and *Chesterton* that a disclosure does not have to be made entirely in the public interest in order to be protected and that a partially self-interested disclosure could still qualify. In our view however whilst not directly comparable with this case, it is relevant that the issues "disclosed" were done at a time to deflect from performance concerns and had already been investigated and should have

been considered concluded and therefore the claimant cannot have had a reasonable belief as required.

68. Further, we have considered the context the disclosures were made in that this was in respect of children who would not be able to recognise or raise the concerns themselves within a school setting and this did not in our view mean the claimant had such a reasonable belief. The claimant also stressed in her evidence the serious nature of the concerns yet continued to work in that environment for by now over 5 months notwithstanding that she stressed at tribunal how serious they were.

Disclosure 3.4.8 - Concerns over health and safety practices on 10th February 2016 (paragraph 18 of the ET1);

69. In respect of this disclosure we find that the claimant did not have a reasonable belief for the reasons set out in disclosure 3.4.7 above and therefore this is not a protected disclosure.

Disclosure 3.4.9 - Concerns raised again in the claimant's formal grievance on 27th January 2017(paragraph 34 of the ET1)

70. In respect of this disclosure we find that the claimant did not have a reasonable belief for the reasons set out in disclosure 3.4.7 above and therefore this is not a protected disclosure.

Did the respondent subject the claimant to any detriments? Included within this issue are the questions of what happened as a matter of fact and whether what happened was a detriment to the claimant as a matter of law.

71. Given the findings above it is clear that the Claimant did make protected disclosures early on in her employment relationship.

72. The claimant relies on a number of detriments as set out in section 3.6 above. Taking each in turn:

Detriment 3.6.1 - The claimant's Head of Year refusing to witness work which the claimant had done as a requirement of being an NQT;

73. Turning first to the question of whether the detriment happened as a matter of fact, we heard no evidence other than in March 2016 (when it had to be rescheduled) that the claimant's head of year refused to witness her work. The claimant at no point prior to the D assessment (or even on the day she was given it) raised any issues about the NQT requirements not being met by the school. We find as a fact that there was no such refusal. It therefore follows that the claimant was not subject to a detriment in this regard.

Detriment 3.6.2 - The Head of Year cancelling the claimant's NQT time which she would otherwise have used for training, observations or other work connected with her NQT status;

74. We do not find as a fact that the claimant's NQT time was cancelled as she spent time the following week on an all day course. It was therefore rearranged not cancelled all together. Even if it had been cancelled this was one occasion and given she had spent the whole day training and the pressures on the school as a result we would not have found this to be a detriment on the ground that she made one or more protected disclosures.

Detriment 3.6.3 - The Head of Year stopping the Claimant going on training;

75. We do not find as a fact that the claimant was stopped from going on training. Even on the claimant's case that she made 8 separate disclosures whilst at work, her own evidence is that she attended two courses in March 2016 and one of these was for one whole day. We find as a fact that there was no such stopping of the claimant going on training and it therefore follows that the claimant was not subject to a detriment in this regard.

Detriment 3.6.4 - The claimant being humiliated by the Head Teacher in front of children and staff by reprimanding her for not keeping the door open during a class in which she was teaching cookery;

76. It is accepted that the claimant was spoken to about the door. The claimant provided an explanation which we have found as a fact Mrs Haimes accepted. The claimant's own evidence on this point makes no reference to being "humiliated" or being "reprimanded". The only staff present were the claimant, her teaching assistant and Mrs Haimes. It was a reasonable management request and Mrs Haimes took on board her explanation for having failed to comply with it. We therefore do not find as a fact that this occurred as alleged but instead is an example of the claimant's emotive description post event for a routine discussion on the issue. There was no humiliation or reprimanding on her own evidence. It therefore follows that the claimant was not subject to a detriment in this regard.

Detriment 3.6.5 - The Head of Year humiliating the claimant in front of staff and students by asking her for assessments which were not late, as if they were;

77. We have found as fact that the request was made but not that the claimant was "chastised". We do not find that this was humiliating nor that there were any pupils present. The claimant's own evidence was that this was during the lunch break in the staff room. We do not find that the claimant was humiliated and given she was outspoken we do not find that she would have not corrected the misunderstanding at the time. We therefore find that

he claimant was not humiliated as alleged and therefore it follows that the claimant was not subject to a detriment in this regard.

Detriment 3.6.6 - The Head of Year telling the claimant off in front of teaching assistants despite the claimant asking her not to do so because it was demeaning and undermined her;

78. As set out in our findings of fact, we do not accept that this occurred. It therefore follows that the claimant was not subject to a detriment in this regard.

Detriment 3.6.7 - Being picked up for coming in late when she was not late, and despite her explaining how her hours were affected by child care;

79. There was no evidence that the claimant was pulled up for being late. The only time this was raised before us was in relation to the incident on 12th April 2016 when Mrs Haimes took the claimant around the class rooms with her coat still on. We do not accept that timing was the issue here, the issue was the claimant's lack of preparation and that the classroom was not ready. There was no display and the classroom was not set up. This was why she was quite reasonably shown other classrooms. Had the claimant arrived at the same time but to a prepared classroom we do not find that Mrs Haimes would have taken issue or indeed walked her round the other classrooms to show her the contrast. There was no discussion around lateness or childcare but instead the reoccurring theme of the lack of preparation.

Detriment 3.6.8 - Being expected to do the outside area instead of the teaching assistant, whose responsibility it was;

80. Everyone should have taken a turn. A rota was introduced. The claimant raised this as an issue and it was addressed. The claimant did not raise this with the respondent at the time that the rota was not being followed. We find that given there was a rota in place which the claimant had not indicated was not being followed, we do not find that there was any such expectation. Further, we do not find that it was the teaching assistant's responsibility. It therefore follows that the claimant was not subject to a detriment in this regard.

Detriment 3.6.9 - Giving the claimant a poor second formal assessment report as if she could do nothing right;

81. It is an agreed fact that the claimant's second formal assessment was at "D". However, having had sight of the report it is not correct to say it is a poor report as she could do nothing right. The report outlines a number of strengths, it is a balanced review and does give the claimant some positive examples and positive behaviours. We therefore do not find that the claimant was given a poor report.

Detriment 3.6.10 - The Head Teacher criticising her work plans, despite the claimant doing them in accordance with the Head of Year's recommendations;

82. Planning was raised as an issue as early as 8th October 2015 and it was a theme of her time at the school. Her planning was focused on but this was as part of her developmental needs. The claimant did not provide any evidence that the Head Teacher criticised her work plans other than the example which forms the detriment complaint at 3.6.11 below. We therefore find as a fact that the Head Teacher did not criticise her work plans expressly and therefore it follows that the claimant was not subject to a detriment in this regard.

Detriment 3.6.11 - The Head Teacher criticising the claimant for not including work on the hungry caterpillar when she had not been told this needed to be done.

83. As identified above there were ongoing issues with regards to planning. The tribunal has found as a fact that when the claimant did prepare the plans for hungry caterpillar these were criticised. It is not clear why the claimant had not done the plan before. The claimant says that this is because Mrs Whomsley told her the wrong thing and we have not heard from Mrs Whomsley in this regard so accept the claimant's explanation as to why it was not done correctly before the day. It is of course not relevant as to why but more that it is agreed by all that the claimant did the plans that day and they were criticised.

Is so were any of these done on the ground that she made one or more of the said protected disclosures?

84. We do not see a connection between the claimant's disclosures and those acts she complains of as detriments. We have found that most did not occur as a matter of fact but even if we had, it is hard to reconcile given the performance issues.

85. On the claimant's case she raised six protected disclosures before she received the report which was positive in the first term. If the respondent had taken issue with the protected disclosures it does not follow in logic that it would have given her a positive report then when six disclosures had been made on her case and then the next term give her a negative report.

86. There is a clear gap in the chronology when the claimant only started raising issues again when she was under performing and the respondent tried to address this.

87. It is also relevant to consider that the relationship did not get off to the best start when unconnected with the protected disclosures, the claimant stepped on a member of staff's toes. She made changes to the setting on

the mistaken belief that the person responsible for it was leaving. Whilst not the claimant's fault this did not help the working relationship and had nothing to do with the protected disclosures.

88. The claimant was unable to consistently form positive relationships and this was an expected requirement of her teaching standards. Staff complained about her negative attitude and her employment history and first placement are also relevant contextual background.

89. The only complaint we have found as a fact is detriment 3.6.11 but for these reasons we do not find that this was on the ground that she had made one or more protected disclosures.

Time/limitation issues

90. Under s48(3) Employment Rights Act 196 the claimant must present her claim before the end of the period of three months from the date of the act or failure to act to which the complaint relates to. Her last working day and therefore the last day any of the above detriments occurred was 12th April 2016. The claimant needed to present her complaint by 11th July 2016 subject to any extensions given to her by the ACAS early conciliation provisions.

91. The claimant did not commence ACAS early conciliation until 23rd January 2017 and then presented her claim on 4th March 2017. Her complaint was over 7 months out of time at best in respect of any of the detriment claims.

92. Section 43(3) Employment Rights Act 1996 provides us with a discretion to extend the time within such further period as we consider reasonable where we are satisfied that it was not reasonably practicable to present the claim within the ordinary time limit. We are not satisfied in this regard.

93. The claimant has not provided any explanation as to why she did not take action sooner. We know from the documents we were referred to that she had taken advice during this period from the union. She was herself formally of a legal background so understood the importance of limitation periods albeit in a different area of the law.

94. Had we found that the claimant had been subject to a detriment on the grounds that she made one or more of the said protected disclosures we would have found that it was reasonably practicable to present her claim in time and that the claims are significantly out of time in this regard. This would mean the tribunal has no jurisdiction for the claim.

Unfair Dismissal

What was the reason for the claimant's dismissal?

95. The claimant must show that the reason or principal reason for her dismissal was that she made one or more protected disclosures. We know that she made some protected disclosures as we agree with the respondent's concession in this regard.

96. The respondent dismissed the claimant for a breakdown in the personal relationships "as a result of which the school is unable to provide you with appropriate line management and performance management arrangements or with an induction tutor as required within the NQT induction process."

97. It is clear to us as it was clear to the local authority that there was a relationship breakdown. We spent a considerable period of time considering whether the relationship breakdown was tainted by the protected disclosure. We appreciate the danger that a whistleblower may be perceived as a difficult colleague and it can be easy to conclude that the manner of blowing the whistle is the issue when it is in fact the whistleblowing itself.

98. We were asked to accept that the other relationships such as the claimant's first placement which had broken down were indicative that the relationship issues were not tainted by the protected disclosure. This is of course a consideration. The respondent is not the first person with whom the claimant has experienced a breakdown in the working relationship.

99. The local authority was involved by the Spring term as the claimant was not performing to the required standards. It was clear to the local authority contact, whose job it was to scrutinise such matters, that the relationship had broken down.

100. We may have reached different conclusions if the school had decided to dismiss her after the first assessment or if it had been a negative report as it was so close to the protected disclosures having been made. The school invested a significant amount of management time trying to assist the claimant and invested in her training notwithstanding her protected disclosures.

101. There was a further period when the claimant went missing she was not signed off sick, had not reported for work and not resigned. The school could have dismissed her then but did not do so.

102. We tested extensively the dismissing officer and his mindset as part of the panel. We tested whether the relationship had been tainted by those disclosures. The issue here was not that the claimant made protected disclosures, these were investigated and conclusions drawn that they were

health and safety concerns but the way the claimant raised all these issues when her performance was questioned to deflect from her own performance issues. She became fixated on the issues even when she could no longer hold a reasonable belief that they were being made in the public interest.

103. It was significant that the claimant was unwilling to listen or take on board what her colleagues had said to her. She was working with experienced professionals in an area to which she had newly qualified but when they tried to offer her support and guidance she was unable to accept it and felt she was being "chastised" "humiliated" "demeaned" and "undermined". She was simply unable or unwilling to listen to the feedback and find a positive way forward. Mrs Haimes had to hand over her supervision and it was clear to the panel that the relationship between Ms Bloodworth and the claimant had deteriorated to such an extent that they had to be reminded to act professionally even in the tribunal setting.

104. We conclude that the protected disclosures were not the reason or principal reason for the claimant's dismissal, it was her conduct and relationship with her colleagues that meant the placement had broken down. This was why the respondent decided to dismiss and these matters were genuinely separable from the protected disclosures made by the claimant. The claimant has not satisfied us otherwise and her claim for unfair dismissal fails and is dismissed.

_____
Employment Judge King

Date: 5th April 2019

Sent to the parties on: .....10/4/19....

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For the Tribunal Office