EMPLOYMENT TRIBUNALS

Claimant: Ms M Spychaj

Respondent: Dr K Lomax

Heard at: Southampton On: 12 September 2022

Before: Employment Judge Dawson

Appearances

For the claimant: No attendance
For the respondent: Mr Wayman, counsel

JUDGMENT

1. The claimant's claim of breach of contract succeeds and the respondent is ordered to pay the claimant the gross sum of £3432.

2. The claimants other claims are dismissed.

REASONS

Introduction

1. By a claim form presented on 12 December 2020 the claimant presented claims of unfair dismissal and for notice pay. The claim form was accompanied by Particulars of Claim, drafted by solicitors, which stated that the claim was brought under sections 101(1)(c) ERA 1996, 104 ERA 1996 and section 103A ERA 1996.

2. A response was entered and the claim proceeded to a preliminary hearing before Employment Judge Roper on 10 August 2021. The claimant did not attend. She was ordered to provide further information in relation to each of the three types of unfair dismissal claim. Employment Judge Roper helpfully summarised the claim as follows:

> By way of general background, the claimant was employed by the respondent as a carer for his elderly parents who suffer from dementia from 4 May 2019 until 28 August 2020. The claimant was engaged through an agency initially, although the respondent concedes that more latterly he employed the claimant directly. The respondent asserts that he terminated the claimant's employment on notice by reason of capability and/or conduct following a number of complaints .

3. The claimant provided some further information and a further preliminary hearing took place before Employment Judge O'Rourke on 2 March 2022 where the claimant was, again, required to give further information. At that hearing it had been possible to identify the issues with more precision, including identifying the disclosures which the claimant relied upon for the purposes of the "whistleblowing" claim.

4. The matter then came before Employment Judge Roper on 11 July 2022 at which hearing the respondent conceded that the claimant was entitled to notice pay of 3 weeks and the claimant withdrew her claims of unfair dismissal for asserting a statutory right and for health and safety reasons. Thus the remaining claim to be determined by the tribunal was whether the whistleblowing unfair dismissal claim was made out or not. A judgment was issued recording the claimant's withdrawal of her claims as set out above and dismissing those claims.

5. The claimant applied for written reasons in respect of the issued judgment and for reconsideration of that judgment. By order dated 5 August 2022 Employment Judge Roper refused to provide written reasons on the basis they had already been given and refused the request for reconsideration of the judgment.

6. The case proceeded towards a final hearing but, on 5 September 2022, solicitors for the claimant wrote to the tribunal stating that the decisions of Employment Judge Roper had been appealed to the Employment Appeal Tribunal and asking for an adjournment of the final hearing to allow for that appeal to take place.

7. On 7 September 2022 Employment Judge Midgley refused the application for an adjournment giving reasons.

8. On 9 September 2022 the claimant wrote to the tribunal stating

> "I want to inform you and apologise, that because of financial and work issues I'll be unable to represent myself at the curt on coming Monday 12/09/2022.

> I believe, that the upcoming court hearing may be held in my absence.
>
> My lawyer and I will be able to do this at the upcoming appeal.
>
> Once more please to accepted my apology for my absence." (sic)

9. On the same day the claimant's solicitors, K L Law Limited wrote to the tribunal stating that they were no longer instructed to represent the claimant at the hearing but remained instructed with regard to the appeal.

10. Having reviewed the file at the outset of the hearing, it seemed apparent to me that the claimant was not asking for an adjournment because she was unable to attend due to financial and work issues. The implication of the email of 9th September 22 was that the claimant wanted the case to go ahead in her absence. Nevertheless, I asked the clerk to telephone the claimant to confirm her position. Both numbers which the tribunal had for the claimant were not answered. The respondent had attended in person from Germany because he was unable to give evidence by video and had instructed counsel.

11. Having regard to rule 47 of the Employment Tribunal Rules of Procedure and the overriding objective, I concluded that it was in the interests of justice to proceed with the hearing in the absence of the claimant. It seemed to me that was what the claimant was anticipating would happen, she had not applied for an adjournment on the basis that she could not attend due to financial or work issues, she was aware that the case was listed for a final hearing and it would be unfair to the respondent to adjourn the case in the circumstances. Moreover, I did not consider it fair to simply dismiss the claim given that the claimant had clearly engaged in the process, she had provided a witness statement and there is no obligation on a party to attend a hearing. The respondent did not ask me to dismiss the case but, instead, asked me to hear the case in the claimant's absence, which I agreed to.

Issues

12. The claimant was employed by the respondent to provide caring services to his elderly parents who both had dementia. She had been engaged since around 18 April 2019, initially by an agency called Right at Home and then, after her dismissal by that agency, directly by the respondent. Although there was, at some point, an issue about whether the claimant was employed or self-employed the respondent's witness statement states that he now recognised that the claimant's employment status was more likely to be a worker or employee and there was no submission made that the claimant did not have standing to bring this claim.

13. The claimant was dismissed by email on 28 August 2020. The claimant says that was because she had made protected disclosures on 1st and 19th June 2020 to social services (at paragraph 9 of the claimant's witness statement she describes the disclosure has been made to Julie Cochrane from social services; the list of issues describes Ms Cochrane as being a care manager at the Adult

Community Team of West Sussex County Council. I do not believe there is a difference and will use the term “social services” below).

14. The issues, therefore, are those set down in the Case Management Summary provided following the hearing on 11 July 2022 as follows

> 1. **Wrongful Dismissal – Claim for Notice Pay**
>
> The respondent now concedes that the claimant’s contractual notice period was three weeks and that this has not been paid, and that three weeks’ pay is due and owing to the claimant.
>
> 2. **Protected Public Interest Disclosures (‘Whistle Blowing’)**
>
> 2.1 Did the claimant make one or more qualifying disclosures as defined in section 43B of the Employment Rights Act 1996? The Tribunal will decide:
>
> 2.1.1 What did the claimant say or write? The Claimant relies on two disclosures to Ms Julie Cochrane, a Care Manager at the Adult Community Team of West Sussex County Council. The first disclosure is said to have been made verbally on 1 June 2020 (and the claimant has yet to confirm whether this was by telephone or face-to-face), and the second disclosure is said to have been made on 19 June 2020 when the same allegations were reiterated in an email to Ms Cochrane. In each case the claimant asserts that she made the following disclosures:
>
> 2.1.1.1 the respondent’s parents (the persons who were then in the claimant’s care) were being provided with alcohol; and
>
> 2.1.1.2 the respondent’s sister took her parents to a rugby match, leaving her mother unattended, during which time her mother fell and broke her pelvis; and
>
> 2.1.1.3 the respondent’s sister attempted to arrange for her mother to attend a driving course and purchase a car, with the plan of driving to Germany, despite her having dementia and Alzheimer’s; and
>
> 2.1.1.4 the respondent’s sister provided her mother with large quantities of sweets and cakes, despite her diabetes; and
>
> 2.1.1.5 the respondent’s sister burdened her father concerning her family and work problems, leaving him confused, nervous and unsettled, as he did not understand what was being said to him; and
>
> 2.1.1.6 the respondent’s sister attempted to prevent her father from using a walking frame, insisting he use a stick

instead, as she came to be a shame to be going out with him using a frame; and

2.1.1.7 during COVID-19 lockdown, the respondent's sister and her family and friends, of up to groups of six people, visited her parents on several occasions, despite the restrictions at the time and with no social distancing.

2.1.2 Were the disclosures of 'information'?

2.1.3 Did the claimant believe the disclosure of information was made in the public interest?

2.1.4 Was that belief reasonable?

2.1.5 Did the claimant believe it tended to show that the health or safety of any individual had been, was being or was likely to be endangered?

2.1.6 Was that belief reasonable?

2.2 If the Claimant made a qualifying disclosure, was it a protected disclosure because it was made to a person other than her employer in relation to any other matter for which this person has legal responsibility pursuant to section 43C(1)(b)(ii) of the Act?

3 Whistle Blowing Unfair Dismissal (s103A of the Act)

3.1 Was the making of any proven protected disclosure the principal reason for the claimant's dismissal? The respondent asserts that the claimant was dismissed because of concerns about the performance of her role, as carer for his parents, and that in any event, he was unaware of any alleged protected disclosure made by the Claimant.

3.2 The Claimant did not have at least two years' continuous employment and the burden is therefore on the claimant to show jurisdiction and therefore to prove that the reason or, if more than one, the principal reason for the dismissal was the protected disclosures.

15. In respect of the list of alleged qualifying disclosures, the respondent accepted that those disclosures had been made to Julie Cochrane and that they amounted to disclosures of information and only disputed that the claimant reasonably believed that the disclosures were made in the public interest.

Conduct of the Hearing/Approach to the Evidence

16. I had the benefit of witness statements from the claimant, the respondent and a witness for the respondent, Ms Wakeman, which I read. Those witness statements were to stand as the evidence in chief of those witnesses, although neither the claimant nor Ms Wakeman attended the hearing.

17. I gave little weight to the evidence of Ms Wakeman given that she had not been available for cross-examination, but noted that she did provide some corroboration for the evidence of the respondent.

18. It seemed to me that I should give some weight to the witness statement of the claimant, although it was not signed (at least in the version I had). Whilst I take account of the fact that the respondent has not had the benefit of cross-examining the claimant, it seems to me that;

    (1) Where there is no dispute, I should accept the claimant's evidence.

    (2) Where there is a dispute between the claimant and the respondent as to what happened, I should take account of the points made by the claimant in evaluating the respondent's evidence.

    (3) If I reject the respondent's account of events, perhaps because of its inconsistency with contemporaneous documents, I might accept the claimant's version of events.

    (4) Where the witness statement refers to documents in the bundle which have not been challenged by the respondent, I should take that part of the statement into account (as well as the documents in the bundle).

    (5) I should also take account of the points made within the claimant's witness statement as to why she believes that the real reason for her dismissal was that she had made protected disclosures.

19. That said, it was not appropriate for me to become an advocate for the claimant and embark upon a cross examination of the respondent simply because the claimant did not attend. I asked the respondent about certain matters in order to ensure that I understood his position properly and where it seemed to me that the contemporaneous documents might contradict his witness statement.

20. I was referred to a bundle running to 271 pages and references to page numbers below are to the bundle except where stated.

The Law

21. S.103A Employment Rights Act 1996 provides that

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

22. Under section 43A of the Act a protected disclosure is a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H.

23. Under Section 43C(1) a qualifying disclosure becomes a protected disclosure if it is made– (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.

24. S43B Employment Rights Act 1996 provides

> (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

Reasonable Belief

25. The test on belief in the public interest was set out the case of *Chesterton Global v Nurmohamed* where it was reiterated that the tribunal must ask

    (1) whether the worker believed at the time he was making the disclosure that it was in the public interest and,

    (2) if so, whether that belief was reasonable

26. More than one view may be reasonable as to whether something is in the public interest

27. Moreover an employee can attempt to justify the belief after the event by reference to matters which were not in his head at the time as long as he had a genuine belief at the time that the disclosure was in the public interest. Moreover that belief does not have to be the predominant motor.

28. The tribunal could find that the particular reasons why the worker believed the disclosure to be in the public interest did not justify his belief but nevertheless find it have been reasonable for different reasons. All the matters is that the subjective belief was objectively reasonable (*Nurmohamed* paragraph 29)

29. In considering whether the belief was reasonable, factors include;

(1) the numbers in the group whose interests the disclosure served

(2) the nature of the interests affected

(3) the extent to which they are affected by the wrongdoing.

(4) the nature of the wrongdoing

(5) the identity of the wrongdoing

Unfair Dismissal

30. In respect of a claim of unfair dismissal, in Kuzel v Roche [2008] IRLR 530, the Court of Appeal held (taken from the headnote in the IRLR reports)

> "When an employee positively asserts that there was a different and inadmissible reason for his dismissal, such as making protected disclosures, he must produce some evidence supporting the positive case. That does not mean, however, that in order to succeed in an unfair dismissal claim, the employee has to discharge the burden of proving that the dismissal was for that different reason. It is sufficient for the employee to challenge the evidence produced by the employer to show the reason advanced by him for the dismissal and to produce some evidence of a different reason.
>
> Having heard the evidence of both sides relating to the reason for dismissal it will then be for the employment tribunal to consider the evidence as a whole and to make findings of primary fact on the basis of direct evidence or by reasonable inferences from primary facts established by the evidence or not contested in the evidence.
>
> The employment tribunal must then decide what was the reason or principal reason for the dismissal of the claimant on the basis that it was for the employer to show what the reason was. If the employer does not show to the satisfaction of the employment tribunal that the reason was what he asserted it was, it is open to the employment tribunal to find that the reason was what the employee asserted it was. But it is not correct to say, either as a matter of law or of logic, that the tribunal must find that, if the reason was not that asserted by the employer, then it must be that asserted by the employee. That may often be the outcome in practice, but it is not necessarily so".

Findings of Fact

31. In the absence of any serious challenge by the respondent, I find that the claimant was employed by the respondent to provide caring services to his parents from 3 May 2019, that being the date when the claimant's employment was terminated by Right at Home.

32. The reason which Right at Home gave to the respondent for terminating the claimant's employment was that "yesterday she had asked one of the carers to take her somewhere today when the carer comes for the 2 hour break and to

lie on her report to say that the carer took [the claimant's parents] for a walk instead. This is something we will not tolerate." (Page 87). I need make no finding on the truth or accuracy of that allegation.

33. Thereafter, the claimant was employed directly by the respondent.

34. The claimant was engaged to undertake a number of roles and I accept the claimant's description in her witness statement that her work included awake – night duty; bathing and toileting; cooking/preparation of meals and assisting with eating/mealtimes; dressing; laundry, to include ironing; social activities; shopping and some cleaning.

35. While the claimant was engaged, additional caring support was provided by an agency called Helping Hands to enable the claimant to take breaks.

36. The respondent had 3 siblings who were all engaged in the welfare of their parents but it was the respondent, who lived in Germany, who had the employment relationship with the claimant and gave her direction and assistance. He tended to do that by WhatsApp message. He also communicated with his siblings by WhatsApp message, as did the claimant.

37. Reading the witness statements of both the claimant and the respondent, as well as the WhatsApp message transcripts within the bundle, I find that the respondent had a more positive relationship with the claimant than his siblings did- in particular, Zoe.

38. Although there was some tension between the claimant and Zoe, the respondent, initially at least, backed the claimant and was pleased with the work which she was doing.

39. In June 2019, the respondent sent a WhatsApp message to his family stating "in case it needs saying, please do all you can to help [the claimant]" and in July 2019 he described the claimant as "the best carer we have had by far" (pages 118 and 120).

40. On 10 September 2019, the respondent wrote to the claimant enclosing a copy of an email which he had sent to his siblings stating "the purpose of that email was to reinforce and remind them of what great work you do… I took hours writing it." (Page 130). The context of that email was that in September 2019 the claimant took a break and a carer called Ada was provided by the Helping Hands agency in her place. The respondent's sisters were delighted with Ada and suggested that she should replace the claimant. The respondent was resistant to that.

41. The claimant's case is that she had concerns around Zoe, because she gave her parents alcohol which interfered with their medication, because she had taken her parents to a rugby match during which their mother broke her pelvis, because she signed their mother up for a driving course, because she would provide too many sweets and cakes which was inconsistent with the fact that their mother was diabetic and because she failed to respect social distancing during lockdown (amongst other things). Having regard to the issues in the case

I need make no findings of whether those allegations are true or not. It was about these matters which the claimant contacted social services.

43. I accept the claimant's evidence that she told the respondent by WhatsApp on 19 June 2020 that she had emailed Julie Cochrane and, further, sent a copy of that email to the respondent, as is apparent from page 189 of the bundle.

44. However, in his evidence before me, Dr Lomax was adamant that he did not know what the claimant had disclosed to social services. I pointed out to him that the body of the email sent to Ms Cochrane appeared to be within the WhatsApp messages sent to him, at page 189 of the bundle.

45. Dr Lomax explained that he read what was written at page 189 as simply being further complaints to him by the claimant about Zoe. If Dr Lomax had read the WhatsApp message properly it would have been difficult for him to have that view because it contains statements such as "I spoke to Ken …" (who is the respondent). However, having said that it is not obvious from the WhatsApp message that what has been pasted there is the text of an email to social services. The claimant has not copied the salutation and the message to the respondent simply starts "I did not contact the police in connection with Zoe (the daughter)…"

46. It does appear, and I find, that on 19 June 2020 the claimant had sent Dr Lomax a large number of messages and having observed him give evidence and read the transcripts of the WhatsApp messages from that day, I accept his explanation that he did not realise that the message at page 189 was the text of a message which had been sent to social services. However, it is not in dispute that he knew that social services had been told about Zoe by the claimant. When I asked him whether he was interested in knowing, at the time, what social services had been told, he told me that he was not. He explained that the claimant would often be in contact with social services because they were involved in the care of his parents. Thus the simple fact that social services had been contacted was not remarkable. Moreover, he knew that the claimant believed that Zoe was behaving badly and he had accepted and shared that claimant's belief at the time. Thus he was content for social services to get involved in the hope that they could persuade Zoe to be more cooperative with the claimant. I accept that evidence. Obviously, it was not challenged by way of cross examination but it is also consistent with the fact that Dr Lomax had been backing the claimant against his sister. Given that he believed his sister was in the wrong, it would not be particularly surprising if he was unconcerned by the claimant contacting social services. If, as he did at that point, he trusted the claimant, it is also not particularly surprising that insofar as he was trying to deal with matters from Germany, he was content to leave the report to social services to the claimant.

47. Thus I find that although the claimant knew that the claimant had contacted social services on 19 June 2020 about Zoe, he was not troubled by that and did not consider it to be a significant event.

48. The claimant's witness statement states that "I was of the honest opinion that my disclosure was made in the public interest. I was not in any way motivated

by any feelings I had against the respondent sister Zoe. In fact, aside from my concerns around Zoe's behaviour, I found her pleasant enough as a person." (Paragraph 24). The statement does not, however, explain why the claimant believed that the disclosure was in the public interest. Whilst it is possible for me to think of various reasons why it may be said that the disclosure was in the public interest, I do not believe that it is open to me to impute those reasons to the claimant. The claimant has not said what she considered the public interest to be and I can make no finding on that point.

49. On 1 July 2020 the respondent gave the claimant a pay rise to £200 per day (page 214). I accept the respondent's argument that that is not something he would have done if he had been cross with the claimant for contacting social services shortly before then.

50. The respondent explains that around that time he was, however, receiving information which caused him to become increasingly concerned about the claimant and questioned whether he had been correct to back her.

51. On 5 May 2020 the Sussex Partnership Trust had written to him by its Community Dementia Liaison Nurse stating "could you please advise [the claimant] that she needs to allow professionals in and that she also needs to administer the medication that is prescribed. This situation could have been dealt with a couple of weeks ago if [the claimant] had not refused the visit from the LWWD team, who were the right people to deal with the presenting issues. They have the psychiatrist working with them….They would have also followed up how your mother responded to the medication…".

52. On 25th June 2020, the respondent received a written complaint from Helping Hands. The email is at page 201 of the bundle. It stated "Firstly, April reported to us that she is concerned for the overall safety of [the respondent's parents] as [the claimant] openly admitted to April that she "grabbed [the respondent's mother] by the wrist and forced her to take her medication…. Also the overall behaviour of [the claimant] to other professionals, including our carers, GP and the Dementia team is worrying. She is very controlling and rude to April on a number of occasions to the point that April does now not want to go back…. As discussed you and your family are allowed to visit as long as the proper guidelines are followed, which I believe Zoe did when visiting yesterday. [The claimant] should not be stopping family coming to visit or threatening to call the police, this is a worrying fact as we encourage family to visit as much as you can and it is for the benefit of [the parents] as well as a good chance for you to see what is going on. As agreed we will be removing April for the foreseeable future due to the level of abuse that she feels she is receiving from [the claimant]…" (page 201).

53. On 3 August 2020 the claimant sent a video to the respondent of his father crying. The respondent describes, in his witness statement, that in the video the claimant can be heard saying " no, no, stop crying" rather than showing him kindness or warmth. The video was played in tribunal and I accept the respondent's evidence in this respect.

54. On the same day the claimant sent a WhatsApp message to the respondent talking about his mother, stating that pretending to be a victim was her "specialisation" and that she could put fake tears in her eyes in the toilet and pretend that she was crying. The respondent says, and I accept, that that message caused him a great deal of apprehension. That apprehension was reasonable given the age of his parents and the fact that they had dementia.

55. In July 2020 a new carer was found to assist the claimant, Pearline Wakeman, who is described as having 20 years' experience in working with people with dementia. On 11 August 2020 Ms Wakeman sent a WhatsApp message to the respondent expressing concern about matters and stating that the claimant would take things too far, not to protect his parents but out of spite for Zoe. On 14 August 2020 she sent a message stating "last night [the respondent's father] came out of the shower and dear man couldn't reach his back to dry it, so he asked me to finish drying his back so [the claimant] is saying no you don't do that for him, I still went ahead and dried his back so this morning like a naughty school child she was telling me off for it.". She also explained that she had been stopped from sitting with the respondent's parents and described how the claimant would not allow them to have strawberries, as a dessert, because she wanted to eat them. She also described a difference of opinion as to whether the respondent's mother should be given Lorazepam.

56. The claimant took a break to go to Poland from 22nd August to the end of September 2020. The respondent's parents were then cared for by Pearline. The respondent states that in the claimant's absence it became quickly apparent that his parents were much happier under Pearline's care and that she was able to reduce the dosage of Lorazepam because they were no longer agitated. I have no reason to doubt that evidence and note that it is consistent with the evidence of Ms Wakeman. I accept the evidence.

57. The respondent describes re-reading through the correspondence and having spoken to his wife and son realising that his trust in the claimant had been narrow and naïve.

58. The respondent's case is that he therefore decided to terminate the services of the claimant and did so by email on 29 August 2020.

59. I accept the respondent's evidence in this respect. There is no evidence that he was angry when the claimant told him that she had made a report to social services about Zoe, indeed the evidence is that he gave her a pay rise shortly thereafter. However, there was clear independent evidence which suggested that the care which the claimant was giving to his parents was less than ideal for him. The respondent was aware of that evidence and it is likely that it would cause him to re-evaluate his view of the claimant. I find, having read the respondent's statement and heard him give evidence that he had a genuine concern for his parents and was keen to ensure that they received care of the highest standard. He was willing to pay for that care and to support his parent's carers.

60. The respondent has satisfied me that it was a combination of

(1) the concern to see that his parents obtain a high standard of care,

(2) the objective evidence which showed that the claimant was not providing that standard of care and

(3) the evidence that Pearline was doing so

that caused him to terminate the claimant's contract of employment. I am satisfied that he was not influenced at all by the disclosures which the claimant made. The disclosures were not the sole or principal reason for the dismissal.

Conclusions

61. I give my conclusions by reference to the list of issues.

62. Given the concession by the respondent, I accept that the claimant is entitled to be paid 3 weeks' notice pay. The claimant's evidence was that she was paid £200 per day but either she nor the respondent have given details of how many days per week she worked. The claimant raised monthly invoices. The invoice dated 31 July 2020 is in the amount of £4200, which would equate to 21 days. The invoice dated 30 June 2020 is an amount of £5100 when the daily rate was £170 per day. That would equate to 30 days. The invoice dated 30 May 2020 is for £5270 at daily rate of £170 per day, being 31 days. The invoice dated 31st April 2020 was in the amount of £2720 at the rate of £170 per day, being 16 days.

63. Thus in the 4 months up to the month of her dismissal the claimant was paid for an average of 24.5 days per month. That is the same as 5.72 days in any 7 day period (24.5/30 x 7). Thus in a 3 week period, on average, the claimant could expect to be paid for 17.16 days (5.72 x 3) which at £200 per day = £3432.00. It was not argued that the claimant should be entitled to any different sum by virtue of the fact that she was on holiday and that is the amount I award in respect of the claim of breach of contract. That deals with issue 1.

64. In respect of issue 2.1.1, I accept that the claimant made the disclosures set out therein to Julie Cochrane.

65. It is conceded, in respect of issue 2.1.2, that the disclosures were of information.

66. In respect of issue 2.1.3, I am not satisfied that the claimant believed the disclosure of information was made in the public interest. The claimant does no more than make the bald assertion that she was of the honest opinion that the disclosure was made in the public interest. However, the claimant does not say why she was of that view. Given the concerns raised by Helping Hands in June 2020 and also by Ms Wakeman, I am not willing to accept at face value the assertion made in the claimant's witness statement. In those circumstances I do not find that the claimant believed the disclosure of information was made in the public interest.

67. In those circumstances it is not necessary (or possible) for me to consider whether the claimant's belief was reasonable. I do not need, therefore, to go on to consider issues 2.1.4, 2.1.5, 2.1.6 or 2.2.

68. However, in case I am wrong in that respect I go on to consider issue 3.1 and issue 3.2. I have concluded that the sole reason for the claimant's dismissal was that respondent had become concerned about the level of care which she was providing to his parents and he had found, in Ms Wakeman, somebody who he considered provided a higher standard of care than the claimant did. Thus the sole or principal reason for the dismissal was not the disclosures made to social services.

69. In those circumstances the claim based on the making of a protected disclosures fails.

Employment Judge Dawson
Date 13 September 2022

Judgment sent to the parties: 16 September 2022

FOR THE TRIBUNAL OFFICE

Notes

Recoupment

The recoupment provisions do not apply to this judgment.