EMPLOYMENT TRIBUNALS

Claimant **Respondent**

Mrs J Asselman **V** **Aldermore Bank Plc & others**

Heard at: Birmingham **On**: 5 September & 3 October 2024

Before: Employment Judge Robin Broughton

Appearances:
For Claimant: in person
Respondent: Mr T Cordrey, counsel

Judgment on Interim Relief Application

The claimant's application for interim relief in relation to her claim for automatic unfair dismissal for making protected disclosures fails.

Reasons

Background

1. The hearing on 3 October 2024 was arranged to continue with the claimant's part-heard application for interim relief relating to her claim under section 103A Employment Rights Act 1996 (ERA) that she was automatically unfairly dismissed by the respondent because she had made one or more protected disclosures (section 43B ERA).

2. I refer to my case management orders and reasons made in the private preliminary hearings on the above dates. Whilst those remain private, they informed my decision in relevant parts of this outcome which may, otherwise, appear cursory.

3. They also detail some of the adjustments made to assist the claimant in this process and the challenges faced in understanding and responding to her claims, which will not be repeated here.

4. Given the nature of the application, I have not heard any evidence and so, to the extent that I record my understanding of the claims and key events, they are not findings of fact and may be disputed even where not

expressly identified as such. Nothing in this judgment is intended to bind the hands of any future tribunal in making such findings, nor does it.

5. By a claim form presented on 23 July 2024, the claimant claimed, amongst many other things, that

    a. she was dismissed by the first respondent on 22 July 2024 and that such dismissal was automatically unfair
    b. the dismissal was stated to be either constructive (s95(1)(c) ERA) or via the principles in Hogg v Dover College [1990 ICR 39 EAT] because, it was said, the respondent had "purposely changed" her employment contract in defiance of the Human Rights Act and from one which she was able to do (from Landmark offices using the respondent's equipment and communication methods) to one that she wasn't
    c. she was discriminated against, including in relation to her dismissal, because of the protected characteristics of sex, race, disability and religion / belief and victimised for raising discrimination concerns regarding the same
    d. equal pay
    e. She had blown the whistle in previous employment, including in relation to ongoing claims against R and A

6. She set out some of the background alleged facts as follows, albeit these have been selectively gleaned from the seemingly relevant parts of the whole claim and put into a comprehensible summary, with occasional observations from me based on the claimant's oral responses

    a. she had commenced employment with the respondent on 21 June 2023 as a Solution Architect
    b. there were issues at the outset about the level of her appointment
    c. Whilst there was reference to some early alleged protected disclosures / health and safety issues there did not appear to be any suggestion that these resulted in detriments
    d. The role involved IT, compliance and governance issues
    e. On closure of the respondent's Banbury office, the claimant gave the respondent limited disclosure of her alleged disability and need for adjustments (albeit that is not how the claimant puts her case)
    f. The first, written alleged protected disclosure relied on was on 8 February 2024, following raising the matter more informally
    g. That related to "intellectual property concerns" regarding possible breaches of software / IT licences. Before me the claimant was unable to clearly explain whether the alleged breaches that she reported were actual or potential and, if so, what they were
    h. she says she then suffered detrimental treatment resulting from her "whistleblowing"
    i. the first alleged detriment appeared to be being removed from the Q project as a result, although elsewhere the claimant referred to this as HR allowing her to move to another team, back to her original line manager with whom she had a good relationship

j. She also alleges delays in addressing her whistleblowing complaint and subsequent grievance and largely unspecified bullying by Craig Reeves
k. On 12 March 2024 the claimant complained, threatening legal proceedings and requiring retention of documents
l. On 24 April 2024, the claimant submitted a grievance, principally alleging discrimination, details of which she says she completed on 24 May 2024 albeit I note that the respondent found it hard to understand
m. She believes that her previous tribunal claims that are available on the internet, including one for whistleblowing, also influenced the respondent's alleged detrimental treatment
n. Further alleged detriments include
    i. being removed from audit work shortly before the respondent brought A in. The claimant believes A may have tipped the respondent off about her previous claims but acknowledged she had no evidence for this assumption
    ii. being required to summarise her grievances when A and R allegedly knew she had difficulty with the same and had passed that information to the respondent to use against her
    iii. being relieved from work duties by Lizzie Hayward, on 18 June 2024, to focus on her grievance
    iv. being pressured to do unnecessary work by Craig Reeves on 18 June 2024 – she said this made her unwell requiring a hospital visit, albeit no diagnosis has, as yet, resulted
o. the claimant says she raised, or repeated, allegations of whistleblowing / detriment to the respondent's whistleblowing champion on 27 June 2024
p. on or around the same date she says she was required to do something she believed was likely to be unlawful around data protection and password security and raised it, whilst also acknowledging that she did not have enough information to be sure
q. the next clear, alleged detriment (also on occasion referred to as dismissal) occurred on 3 July 2024 when, by email, Lizzie Hayward, HR Director, without warning temporarily removed the claimant's ability to work from the Landmark offices and to communicate via company systems and did so "purposefully and knowingly" to harm the claimant and end the employment, misusing the claimant's confidential information
r. thereafter, the respondent refused to use the claimant's proposed methods of communication
s. on, or by, 22 July 2024, Nick Ulycz, failed to investigate and / or reverse the decision of 3 July 2024 and /or communicate with the claimant as she had required

7. The claimant says that Craig Reeves and Lizzie Hayward deliberately put her in hospital and continued to harm her, a refrain the claimant repeats often about the respondent, their representatives and even this tribunal.

8. To the extent that any of the above may be wrong, or I may have misunderstood the claim, it was not for want of trying, having spent 2 days with the parties and 3 further days in chambers (including relating to other case management matters). The onus in this case is on the claimant to prove the likelihood of her succeeding in her whistleblowing dismissal claim.

9. In short, however, she was saying that she

    a. Had formally blown the whistle on software compliance issues on 8 February 2024
    b. Was removed from her role as a result
    c. Was moved again due to A informing the respondent of her previous whistleblowing claims
    d. Was struggling with work and colleagues and summarising her grievance
    e. Raised further concerns about the handling of her whistleblowing complaint, grievance and a data protection issue
    f. Was deliberately suspended as a result, with the respondent knowing that would make it impossible for her to continue in employment
    g. Gave the respondent an opportunity to rectify this and they failed to do so

    As a result, she considered herself dismissed, whether actually or constructively.

10. I have considered the various bundles of documents, witness statements and authorities produced by the parties. I also reference my previous and contemporaneous case management orders and the Annex thereto.

11. In relation to the documents, I observe the following:

    a. There was extensive documentation around the first alleged protected disclosure in February 2024 which could point to the genuineness of the claimant's belief or, on the respondent's case, to a concerted attempt to be seen to be a whistleblower
    b. The respondent contends that is the only alleged protected disclosure that can reasonably be discerned from the proceedings
    c. The claimant did utilise the respondent's whistleblowing procedure, albeit that does not, of itself, mean that she made a protected disclosure
    d. The documents appear to show that the claimant's line management was subsequently changed at her request, rather than her being removed from project Q as a detriment.
    e. There was no evidence to support the claimant's belief in a conspiracy involving A
    f. On 24 April 2024, the claimant submitted an incomplete, initial draft of her grievance, running to 34 pages, saying she hoped to

complete it in the next couple of weeks and understood if the respondent wanted to wait for the final version

g. On 2 May 2024, Lizzie Hayward
    i. Thanked the claimant for the draft
    ii. Suggested waiting for the final version
    iii. Proposed mediation
    iv. Suggested the claimant produce a summary of her specific allegations, rather than a lengthy narrative
    v. Offered support / a catch up
h. The claimant replied 13 minutes later saying the ideas were constructive but, seemingly, rejecting them, also alleging she believed evidence was disappearing
i. Lizzie Hayward responded on 7 May 2024, saying she would wait for the final version, that evidence was backed up and offering the claimant wellbeing support
j. On 9 May 2024, the claimant said that she was still working on her grievance and would do a summary afterwards, hoping to avoid a grievance meeting, albeit enclosing the latest, 60 page, draft
k. On 14 May 2024, LH responded proposing next steps and moving ahead with the existing draft
l. On 15 May 2024, in an email the claimant said she would not be able to provide all the evidence by the following week but would endeavour to provide the summary. She later sent an email about what she called a “demeaning” demotion but which appeared to relate to the claimant comparing herself to a lead architect and being offended about being told she was a solution architect (even though she was according to her contract)
m. On 24 May 2024, the claimant produced a 100 page grievance that was still “not complete”
n. On 17 June 2024, the claimant was invited to a grievance meeting. She refused to attend unless it would be recorded, contrary to the respondent’s express procedure
o. The claimant was also asked again to summarise her grievance into distinct themes with examples and provided a template to assist
p. The claimant responded with disappointment, providing a few themes, referencing employment tribunals and suggesting she did not consider the process to be fair, arguably predetermining this
q. She sent some more themes 10 minutes later
r. Some were very vague such as “recruitment” or “victimisation”
s. Later that evening the claimant was instructed to spend the following day completing the grievance table rather than her normal tasks
t. The following day, the claimant was again encouraged to attend a grievance meeting and told she could have a companion taking verbatim notes but also raising concerns that the claimant did not appear to trust her employer
u. The toing and froing continued but the claimant continued with her normal work, saying she felt pressured to do so, and did not complete the summary requested.

v. At the end of the day, she said she had “chest pains” and would not be in the next day unless that changed
w. The following morning, she went to her doctor and the hospital, but, in the subsequent follow up, produced in the case management hearing, no medical reason has been diagnosed, as yet
x. That said, the discharge letter was heavily redacted
y. The claimant, however, blamed whatever may have transpired on the pressure she felt she was being put under at work
z. The respondent tried to help with the grievance by starting to populate the summary sheet but to no avail
aa. The grievance process reached an impasse, albeit with the respondent encouraging the claimant to pursue and progress it
bb. The claimant was back at work and various issues appeared to arise including her raising complaints to the whistleblowing champion from 21 June 2024
cc. The grievance was passed to the grievance officer to progress despite the lack of a clear summary, or the prospect of the claimant attending an unrecorded meeting. The claimant was told, if there was to be no meeting there may be further questions
dd. A number of further operational clashes (between the claimant and colleagues and managers) appeared to arise, including something to do with a data transfer and passwords that the claimant believed may have been non-compliant, albeit the details were far from clear.
ee. On 2 July 2024, the claimant complained about a manager allegedly raising his voice and, separately alleging certain tasks and responsibilities being removed from her, saying it had made her ill again and that she believed the company was making it impossible for her so that she would leave and claim constructive dismissal
ff. The arrangements for paid leave letter followed the next day by email at 3.44pm

12. It is worth considering the contents of that letter in some detail:
    a. It started by referencing the deterioration in the claimant’s working relationships with colleagues over the previous week which the claimant had said was impacting her health
    b. Colleagues had also reported difficulty working with the claimant, describing her as combative
    c. No view was expressed on culpability due to the ongoing grievance process
    d. However, due to the impact on the claimant’s health, and that of colleagues and operational efficiency, the decision was taken to place the claimant on paid leave to take her out of a situation she was finding difficult
    e. The time out would also facilitate the claimant focussing on her grievance and progressing this with a new manager
    f. The claimant was to receive her full pay and benefits but was told not to attend the office and that access to work systems was temporarily suspended
    g. There was discussion about the best means of maintaining communication

13. The claimant promptly sent emails of complaint to Nick Ulcyz, Chief Operating Officer, who continued to liase with her about appropriate methods of communication and her ongoing grievance, as did the grievance manager, albeit the claimant claimed not to read the emails.

14. The claimant seemingly insisted that, whilst she could communicate with the respondent however she chose, the respondent should only communicate with her by post to her office address by 22 July 2024.

15. Mr Ulcyz, thought that unworkable and responded to the claimant on the email address she had used, albeit by means of an attachment in an apparent effort to accommodate her. He saw no grounds for the suggestion that Lizzie Hayward had "purposefully" caused the claimant harm.

16. Further emails followed from both sides about the impasse and also the ongoing grievance. The respondent did also send copies of some of the same in letters to the claimant at her at the office address, as she had requested.

17. The claimant attended the office on 22 July 2024, seemingly before the letters had arrived in the post that day.

18. Having not received responses to her satisfaction and, on her case, having not opened the emails, the claimant emailed Mr Ulcyz later on 22 July 2024.

19. She said that she believed that she had been automatically unfairly dismissed for whistleblowing and other matters including sex, disability and religious belief discrimination, victimisation, harassment and health and safety detriment. She repeated many of her previous allegations.

20. However, she gave 3 months' notice provided that she was allowed to work at a level between Lead and Enterprise Architect.

21. Mr Ulcyz responded on 25 July 2024, accepting the claimant's resignation, putting her on garden leave and replying to some of her allegations, also referencing that the claimant had informed the respondent of previous tribunal claims, although it was unclear which.

22. The claimant responded on 30 July 2024, acknowledging that she had now received the letters that had been sent to her at the office (postmarked 19 July 2024) but affirming that her last day of employment was 22 July 2024 whilst also raising certain points about her alleged disability.

23. The claimant had already issued these proceedings, seeking interim relief, on 23 July 2024.

24. Further correspondence followed but was unlikely to inform my decision, save that the claimant sought disclosure of certain documents that she said would illustrate protected disclosures in late June / early July 2024.

The Issues and Law

25. The complaint in respect of which an interim application is brought, is that under the procedure of Section 129 of the Employment Rights Act 1996 which provides: -

> "129 Procedure on hearing of application and making of order.
> (1)This section applies where, on hearing an employee's application for interim relief, it appears to the tribunal that it is likely that on determining the complaint to which the application relates the tribunal will find—
> (a)that the reason (or if more than one the principal reason) for the dismissal is one of those specified in— (i)section 100(1)(a) and (b), 101A(1)(d), 102(1), 103 or 103A, or (ii)paragraph 161(2) of Schedule A1 to the Trade Union and Labour Relations (Consolidation) Act 1992, or
> (b)that the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was the one specified in the opening words of section 104F(1) and the condition in paragraph (a) or (b) of that subsection was met.

26. The Claimant asserts that she has brought a claim pursuant to Section 103A ERA 1996 and she makes an application for interim relief pursuant to Section 128(1)(A)(i) ERA 1996:

> "128 Interim relief pending determination of complaint.
> (1)An employee who presents a complaint to an employment tribunal that he has been unfairly dismissed and
> (a)that the reason (or if more than one the principal reason) for the dismissal is one of those specified in
> (i)section 100(1)(a) and (b), 101A(1)(d), 102(1), 103 or 103A, or (ii)paragraph 161(2) of Schedule A1 to the Trade Union and Labour Relations (Consolidation) Act 1992, or
> (b)that the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was the one specified in the opening words of section 104F(1) and the condition in paragraph (a) or (b) of that subsection was met, may apply to the tribunal for interim relief.
> (2)The tribunal shall not entertain an application for interim relief unless it is presented to the tribunal before the end of the period of seven days immediately following the effective date of termination (whether before, on or after that date).
> (3)The tribunal shall determine the application for interim relief as soon as practicable after receiving the application.
> (4)The tribunal shall give to the employer not later than seven days before the date of the hearing a copy of the application together with notice of the date, time and place of the hearing.

(5)The tribunal shall not exercise any power it has of postponing the hearing of an application for interim relief except where it is satisfied that special circumstances exist which justify it in doing so."

27. In short, the issues to be considered are whether it appears that it is likely that on determination of the complaint to which the application relates the Tribunal will find: -
    i. that the Claimant has been dismissed
    ii. the reason for the dismissal, (or if more than one, the principal reason for the dismissal) was that the employer made a protected disclosure as described at Section 43B of ERA 1996? In particular that it is likely the Tribunal at the final hearing would find:
    a) That the Claimant had made a disclosure to her employer;
    b) That she believes that the disclosure tended to show one or more of the things itemised at (a)-(f) under Section 43B
    c) That that belief was reasonable;
    (iv) That the disclosure was made in the public interest;
    (v) That the disclosure was the principal reason for her dismissal.

28. In considering an application or interim relief, I am required to undertake a predictive exercise as to the likely outcome of the full-Hearing. In undertaking that exercise, I seek to avoid making determinations of factual issues as if mine is a final determination of the matter. In the circumstances, the application stands on the pleadings, documentary evidence and the submissions and arguments of the parties. In this decision, I have recorded what I have been told or shown, but that is not intended to be anything more than a preliminary observation on the case, the documents and the merits.

29. Having regard to the provisions of Rule 95 of the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013 in considering an Interim Relief application "the Tribunal shall not hear oral evidence unless it directs otherwise". This was not a case in which I considered it appropriate to hear oral evidence for either party, albeit I was provided with statements from both sides that were not subject to cross-examination or questioning.

30. I took the case of the claimant in respect of Interim Relief as set out in her claim form, but allowed considerable latitude to her in relation to what she would call further particularisation of the same, extensive written and oral submissions and several bundles of documents in no particular order.

31. The leading cases on the test to be applied by an Employment Tribunal hearing an application for interim relief were, under the old law, those of Taplin -v- C. Shippam Limited [1978] ICR1068 and the Ministry of Justice -v- Sarfraz [2011] IRLR 562.

32. An application for interim relief is for a brief urgent hearing which is to make a broad assessment of the application and in particular the question whether the Claimant is likely to succeed under Section 103A.

33. In the case of Sarfraz, we received the following guidance at paragraph 14:-

> "in order to make an Order under Sections 128-129 the Judge had to have decided that it was likely that the Tribunal at the final hearing would find five things:
> (i) That the Claimant had made a disclosure to her employer;
> (ii) That she believes that the disclosure tended to show one or more of the things itemised at (a)-(f) under Section 43B (1);
> (iii) That that belief was reasonable;
> (iv) [That the disclosure was made in good faith (no longer required)];
> (v) That the disclosure was the principle reason for his dismissal."

34. Further guidance was given by the EAT in London City Airport Limited v Chacko [2013] IRLR610 and in particular the correct approach to be applied to the meaning of "it is likely". He confirmed that following the authority of Taplin it must "be established that the employee can demonstrate a pretty good chance of success".

35. The correct starting point for that appeal was to

> "fully appreciate the task which faces an employment judge on an application for interim relief. The application falls to be considered on a summary basis. The employment judge must do the best he can with such material as the parties are able to deploy by way of documents and argument in support of their respective cases. The Employment Judge is then required to make as good an assessment as he is promptly able of whether the claimant is likely to succeed in a claim for unfair dismissal based on one of the relevant grounds. The relevant statutory test is not whether the claimant is ultimately likely to succeed in his or her complaint to the Employment Tribunal but whether "it appears to the tribunal" in this case the employment judge "that it is likely". To put it in my own words, what this requires is an expeditious summary assessment by the first instance employment judge as to how the matter looks to him on the material that he has. The statutory regime thus places emphasis on how the matter appears in the swiftly convened summary hearing at first instance which must of necessity involve a far less detailed scrutiny of the respective cases of each of the parties and their evidence than will be ultimately undertaken at the full hearing of the claim."

36. The Claimant who is a litigant in person, though not unfamiliar with the process of Employment Tribunal Hearings and indeed of the Appeal courts, has in her various representations to me, expressed concern that she had not been afforded sufficient time to develop her arguments, but she has, in at least one previous case, been informed of the summary nature of an interim relief application and hearing.

37. Nonetheless, I have gone considerably further than would ordinarily be required in an effort to assist the claimant as a litigant in person who may have a disability.

38. I observe that the claimant's previously reported application for interim relief contained startling similarities to this one, including in relation to the various heads of claim, the nature of some of the alleged disclosures, complaints about her level of seniority and treating herself as dismissed, whilst offering to work her notice etc.

39. I am reminded that in any case in which an automatically unfair dismissal is alleged under Section 103A ERA 1996 where the employee does not have the requisite qualifying service, the onus is on them to establish the inadmissible reason or principal reason for his dismissal.

40. In considering whether or not it is likely that at a Final Hearing a Tribunal will find that the principal reason for the dismissal was on the grounds of whistle-blowing, without making binding Findings of Fact, an initial assessment must be made of whether, if a breach of a legal obligation is asserted by the Claimant, it is likely to found the Section 103A application.

41. The source of the obligation which the Claimant believes applies, should be identified and capable of verification by reference to statute or regulation. In Blackvey Ventures Limited (t/a Chemistree) -v- Gahir [2014] IRLR416 the EAT commended the approach to be taken by Employment Tribunals

    a. "Each disclosure should be identified by reference to date and content.
    b. The alleged failure or likely failure to comply with a legal obligation, or matter giving rise to the Health & Safety of an individual having been or likely to be endangered or, as the case may be, should be identified.
    c. The basis upon which the disclosure is said to be protected and qualifying should be addressed.
    d. Each failure or likely failure should be separately identified.
    e. Save in obvious cases if a breach of a legal obligation is asserted, the source of the obligation should be identified and capable of verification by reference for example to Statute or Regulation."

42. Eiger Securities LLP -v- Korshunova [2017] IRLR 115 at paragraph 46 confirmed that the identification of the source of the legal obligation "does not have to be detailed or precise but it must be more than a belief that certain actions are wrong." Actions may be considered to be wrong because they are immoral, undesirable or in breach of guidance without being in breach of a legal obligation.

43. The claim giving rise to this interim relief application was presented to the Tribunal on 23 July 2024. The Claimant had already presented an earlier complaint to the Tribunal

44. In bringing a complaint of automatic unfair dismissal under the auspices of Section 103A, the Claimant, who has less than 2 years continuous employment with the Respondent, must first establish that she has been dismissed by the Respondent.

45. The Claimant asserts that her dismissal by the Respondent occurred on 22 July 2024.

46. It was the Claimant's case in basic terms that although she was employed by the Respondent as a Solution Architect she had been operating at a higher level and she required this to be rectified if she was to work her notice.

47. In considering the first limb necessary to qualify for a successful Section 103A complaint, I consider whether it is likely that the Respondents decision to put the claimant on paid leave, remove her systems access and not accede to her communication requirements was a repudiatory breach of the Claimant's contract of employment, whether of itself, or in combination with earlier alleged breaches.

48. In the absence of an actual termination of contract by the Respondent, the resignation on notice that she gave on the 22 July 2024 may be considered in certain circumstances to be a constructive dismissal which may nonetheless be an automatically unfair dismissal.

49. A constructive dismissal is one being described in Section 95(1)(c) of the Employment Rights Act 1996:

    "the employer terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct."

50. The Court of Appeal in Kaur -v- Leeds Teaching Hospitals NHS Trust [2018] IRLR 841 paragraph 55 restate the elements of constructive dismissal which are well established
    a. What was the most recent act (or omission) on the part of the employer which the employee says caused, or triggered, his or her resignation?
    b. Has he or she affirmed the contract since that act?
    c. If not, was that act (or omission) by itself a repudiatory breach of contract?
    d. If not, was it nevertheless a part (applying the approach explained in Omilaju) of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a (repudiatory) breach of the term? (If it was, there is no need for any separate consideration of a possible previous affirmation).

e. Did the employee resign in response (or partly in response) to that breach?
None of those questions is conceptually problematic, though of course answering them in the circumstances of a particular case may not be easy.

Decision

51. I repeat that nothing in this judgment amounts to a finding of fact, merely observations on the prospects of success of the case as presented to me thus far.

52. In relation to the claimant's alleged protected disclosures, it seems to me at least arguable that her alleged whistleblowing on 8 February 2024, amounted to a protected disclosure.

53. It seemingly related to an alleged breach or potential breach of copyright, or a licence agreement, or similar.

54. However, it was far from clear at this stage what the precise legal obligation was that the claimant alleged had been breached, nor how it was said to have been breached, save regarding possible unauthorised access of a third party to certain software.

55. The respondent also says that the alleged information disclosed lacked sufficient particularity and / or was no more than suspicion or allegation and / or not reasonably believed and / or not made in the public interest most of which appear arguable.

56. The respondent also contends that the claimant is a vexatious litigant, effectively saying, in part, that the claim is manufactured and / or pre-determined, but that would be a significant hurdle for them to overcome.

57. In my view, there may be a reasonable prospect that the claimant will be able to establish this as a protected disclosure, but it is less than likely.

58. The suggestion that it played much, if any, part in her alleged treatment 5 months later is less likely than that.

59. The claimant says that it set in place a chain of events, including being removed from roles and bullying but her characterisation of the first such removal appeared inaccurate.

60. Even if her perceived treatment shortly after the alleged disclosure was the reason for her request to transfer, the lack of information and consistency of argument makes it, on the evidence currently before me, less than likely that she will be able to establish this.

61. That is notwithstanding the significant delays on the part of the respondent in addressing her whistleblowing complaint, which may be grounds for

adverse inference if not reasonably explained, whether by reference to the overlapping grievance challenges, or otherwise.

62. There was little, or no, evidence to support

    a. the claimant's assumptions of some sort of conspiracy involving A or
    b. any alleged protected disclosures to previous employers, nor specifics regarding them
    c. the respondent's knowledge of the same, nor
    d. any such knowledge playing a part in any alleged detriments suffered.

63. As a result, on the evidence before me, the claimant is unlikely to be able to establish those aspects of her claim.

64. It may be that there were further protected disclosures towards the end of June / early July 2024, notwithstanding the respondent's suggestion that these are not, as yet, pleaded. They appear, at least, alluded to but that will be a matter for another hearing.

65. The claimant says that the respondent should have provided disclosure of these alleged disclosures prior to this hearing but that would not, ordinarily, be required and she appeared to have retained a significant number of the other documents she deemed relevant.

66. The claimant did raise concerns with the whistleblowing champion in that latter timeframe and it did also appear that there was a disagreement with colleagues about data transfers and data protection compliance at around the same time.

67. Again, however, even more so than in February, the alleged disclosures lacked sufficient particularity and would face the same challenges from the respondent. Indeed, in relation to the data transfer issue, the claimant acknowledged that she did not have sufficient information to know if there had been, or was going to be, a breach, so it may have been little more than a suspicion.

68. In all those circumstances, I cannot say it is likely that the claimant will be able to establish that there were any pleaded and protected disclosures shortly before she was put on paid leave, which is not to say that has no prospect of doing so.

69. In any event, looking at the chain of events, leading up to the claimant being put on leave and denied access to the respondent's systems on 3 July 2024, it seems to me that the most plausible explanation, currently, is that which the respondent gave. Specifically, that it was intended to

    a. assist the claimant who was saying that she was struggling with her health and wellbeing

b. create time and space for her to progress her grievance
c. resolve what was becoming an unworkable situation with colleagues (wherever the responsibility for that may have lain)

70. It also seems to me, at this stage, less plausible that this step was taken to deliberately harm the claimant. This would require evidence that such harm was both likely to occur and did occur, evidence that the claimant currently intimates that she is unwilling or unable to provide.

71. It would also require knowledge of that on the part of the respondent which, on the evidence before me, they were unlikely to have. The fact that there was a conversation the previous October about the claimant's stated need to work from the office would, without more, fall significantly short of the necessary knowledge, not least because, on her own case, the claimant refused to provide further information at the time, a position that she maintains.

72. In the absence of medical evidence, the claimant's requirement that her employer should not communicate with her via the email address she used to communicate with them also appeared more likely to be unreasonable as was the requirement that she would only respond to post sent to the Landmark office address.

73. It appeared on the documents that, nonetheless, the respondent sought, in part at least, to accommodate her, which points away from conduct that was calculated to destroy trust and confidence. In the absence of medical evidence, it is difficult to say this was likely to have that effect either. It is currently no more than an assertion that it did, in any event, have such an effect.

74. Moreover, the claimant's own claim suggested several alleged reasons for her alleged dismissal, including various forms of alleged discrimination and victimisation and health and safety. As a result, she was clearly not alleging that the sole cause of her dismissal was her alleged whistleblowing and, with so many alleged potential causes, it will be harder for her to show that her alleged protected disclosures were the principal reason.

75. In addition, the claimant had been threatening legal proceedings for months and intimating constructive dismissal before the alleged final straw(s).

76. That is not to say that the claimant has no prospect of showing that she

a. had made protected disclosures, overcoming all of the evidential hurdles for the same and that
b. the respondent had sufficient knowledge of her disability and
c. deliberately, or otherwise, used that knowledge in their proposals of 3 July 2024, and subsequently, hiding behind an appearance of genuine concern and other reasons, or that

d. the combined effect of various alleged whistleblowing detriments in 2024 were sufficient to amount to a breach of trust and confidence

merely that there are many barriers for her to overcome to be able to prove the same and the chains of causation, such that it currently appears less than likely that she will be able to do so, particularly if she maintains her refusal to provide any supporting evidence, even that seemingly provided in previous litigation

77. All of this is before any consideration of the respondent's contentions that the claimant, on their case, contrived these proceedings and / or may be a vexatious litigant, on which I express no view, other than that such findings are rare, but it may be another hurdle for the claimant to overcome at some stage.

78. The claimant's practice of producing various drafts and versions of documents and engaging in extensive correspondence continues in these proceedings and, in the absence of an evidenced disability related or other good reason, should not continue. It creates confusion, rather than understanding and enormous amounts of additional work for others.

79. This appears to mirror some of the challenges the respondent faced in dealing with the claimant's complaints. That is not to attribute blame, merely that some of what the claimant may have perceived as detrimental treatment, may have been no more than concerted efforts to try to understand her perception, thinking and presentation, which were often disordered and difficult to comprehend.

80. I make these closing comments as a reflection on how the issues in managing the case thus far reflect some of those seemingly faced by the respondent but also to assist the claimant going forward. Further relevant observations are also made in my case management decisions.

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Employment Judge Broughton
Date: 24 October 2024