



EMPLOYMENT TRIBUNALS

Claimant: Mr T Grygoryk
First Respondent: Devonshire Club Ltd
Second Respondent Philip Security Ltd

Heard at: London Central **On:** 11-14 February 2019

Before: Employment Judge Davidson
Mr J Ballard
Ms T Breslin

Representation

Claimant: In person
First Respondent: Mrs I Bishop, Solicitor
Second Respondent: Mr K Philip, Director

RESERVED DECISION - JUDGMENT

It is the unanimous decision of the tribunal that the Claimant's claim for detriment following a protected disclosure fails and is hereby dismissed.

REASONS

Issues

1. Following the preliminary hearings on 21 May 2018 before EJ Tayler and 18 June 2018 before EJ Snelson and subsequent amendments to the claim, it was agreed at the outset of the hearing that the issues were as follows:
 - 1.1. Was the claimant's email to the first respondent dated 22 December 2017 a protected disclosure?
 - 1.2. If so, was the claimant subjected to a detriment by reason of having made the protected disclosure by the following:

- i) Keith Philip threatening to remove the claimant from site in a telephone conversation on 5 January 2018
 - ii) Ghazala David not upholding the claimant's grievance against Adam Gray and Rahul Naidu
 - iii) the claimant's permanent removal from the first respondent's site.
2. No other alleged protected disclosures and no other alleged detriments are in issue. We took the opportunity to remind the claimant that these were the issues for this hearing as it became apparent that his general grievances against the respondents relate to issues far wider than these.
 3. At the end of the hearing, both respondents made an application for costs against the claimant. This issue was also considered by the tribunal in its deliberations.

Evidence

4. The tribunal heard live evidence from the claimant and Paul Nichols (formerly Night Manager at the first respondent and author) on behalf of the claimant and from Ghazala David (Director of HR), Franswa Ceustermans (Security Manager) on behalf of the first respondent and Keith Philip (owner and Managing Director) on behalf of the second respondent.
5. The tribunal had before it witness statements from Adam Gray (Executive Chef) and Rahul Naidu (Night Manager) but they did not attend. Their statements were taken into account but little weight was given to them.
6. The tribunal had before it an agreed bundle running to some 240 pages. In addition, the claimant submitted various items of correspondence and his own bundle, much of which replicated the contents of the agreed bundle. We agreed to consider all the documents before us.
7. We heard audio recordings of three conversations, transcripts of which were in the bundle. We were satisfied that the transcripts were accurate records of the conversations we had heard. We declined to listen to an audio recording reportedly covertly made by the claimant of a conversation between him and undercover police. We decided that not only was this not relevant to the issues before us, it was not appropriate for such a recording to be aired in open court without the knowledge of the police.
8. We also declined to order the first respondent to provide the CCTV dated 29 and 30 May 2018 of the premises in which the claimant alleged that it would show him giving his mobile phone to Paul Nichols who then listened to a recording of the conversation between the claimant and Franswa Ceustermans which the claimant had made covertly. We accepted that the CCTV would only show visual images without sound. The first respondent did not dispute the content that the visual images would have shown. We also had the benefit of oral evidence from the claimant and Paul Nichols of the incident and decided that the CCTV would not add anything.
9. We declined to order disclosure of Franswa Ceustermans' own company's accounts as we were not satisfied that these had any relevance to the issues before us.

Exchange of witness statements issue

10. During the course of the hearing, the tribunal learned that, on exchange of witness statements between the parties, the statement of Franswa Ceustermans which had been disclosed by the first respondent had pages missing. This had not been noticed by the first respondent at the time and was brought to their attention by the claimant. By this time, the statements had been read by the other parties. The claimant raised the concern that the first respondent could have amended the missing pages of Franswa Ceustermans' statement in response to the content of the claimant's statement. In particular, his point was that the first respondent would be aware after reading the claimant's statement that he was not relying on the audio recording of the conversation between him and Franswa Ceustermans on 29 or 30 May 2018 and could therefore include evidence which the claimant could not refute in the absence of that recording.
11. We asked the first respondent's representative, who had conduct of the litigation, to prepare a witness statement to explain the circumstances of the missing pages. She explained that it appeared to have been an error when scanning the original document that nobody had noticed until it was pointed out by the claimant but she denied that the final witness statement had been changed in any way from the version she had thought she was sending out on exchange.
12. On reviewing the witness statement of the first respondent's representative and the supporting evidence, we took the view, on the balance of probabilities, that the mistake had been a genuine one and we allowed the statement to stand.

Facts

13. We found the following facts on the balance of probabilities:
 - 13.1. The first respondent is a private members club in the City of London with a boutique hotel attached as well as bars, restaurant and entertainment.
 - 13.2. The second respondent provides security personnel and consultancy services to its clients, which included the first respondent.
 - 13.3. The claimant is a security officer who provided his services via a personal services company to the second respondent who, in turn, provides his services to the first respondent. The first respondent's contractual relationship was with the second respondent.
 - 13.4. The claimant began working at the first respondent on 16 November 2016 working 45-50 hours per week. There were other security officers provided by the second respondent to the first respondent, but the claimant did the bulk of the hours.
 - 13.5. During the course of his work at the first respondent, the claimant considered that he had evidence of drug dealing on the premises, which he believed was being carried out with the knowledge of the first respondent's management.
 - 13.6. In April 2017, he reported to the police that he suspected criminal activity was going on at the first respondent's premises.

- 13.7. The claimant told the tribunal of an incident on 8 July 2017 when the security team were introduced to an honorary member and friend of the CEO and were instructed to let him to do what he wanted. The claimant interpreted this as instruction to turn a blind eye to him selling drugs. Franswa Ceustermans confirmed that this meeting took place but emphasised that the word 'drug' was not used. We find that the meeting took place and any reference to drug dealing was implicit, not explicit.
- 13.8. The claimant continued to be in contact with the police, giving them the CCTV footage which he had taken from the first respondent's the CCTV system. At one point, he covertly recorded a conversation between himself and what he termed undercover police.
- 13.9. During the late Summer of 2017, a number of the senior management team at the first respondent were dismissed or resigned and the club member who was alleged to have been selling drugs at the club was expelled from the club.
- 13.10. Franswa Ceustermans, who had been working at the first respondent on an agency basis through the second respondent was appointed as the first respondent's Security Manager with effect from 4 September 2017. In November 2017, new management was installed, including Ghazala David as Director of HR and Samantha Kandou Fulton as General Manager.
- 13.11. Samantha Kandou Fulton was tasked with improving the first respondent's financial performance. As part of this, she reviewed the use of agency staff throughout the business. She decided to make some cuts to costs which included reducing the requirement for agency security staff, particularly over the Christmas period. This affected the claimant as well as other staff.

Alleged Protected Disclosure

- 13.12. On 22 December 2017, the claimant raised a grievance about the cut in hours, terming it a 'Whistleblowing Complaint'. He regarded his disclosure of drug dealing to the police as a protected disclosure and assumed that the first respondent was aware that he was the person who had made the police report and that his hours were being cut as a result. In his grievance, he gives details of his suspicions regarding drug dealing in the club and the collaboration of management. He also alleged that Samantha Kandou Fulton had destroyed the CCTV evidence. This document was identified at the preliminary hearing as the potential protected disclosure.
- 13.13. The grievance was addressed to Angela Entwistle, Board Member, who was out of the office until 3 January 2018 when she passed it to Ghazala David. Ghazala David then passed it the second respondent, since the claimant was an agency worker supplied by the second respondent.

First alleged detriment

- 13.14. Keith Philip contacted the claimant by telephone about dealing with the grievance he had raised. The claimant recorded the conversation although Keith Philip was not aware of this at the time. We heard the recording of the

conversation. Keith Philip told the claimant that he to look into the grievance since he was the person supplying the claimant's services to the first respondent under his contract with the first respondent. During the conversation, the claimant refused to discuss the content of the grievance with Keith Philip, insisting it was a matter for the first respondent. Keith Philip said to the claimant that if he did not 'listen to his instruction', he would have to 'stand him down'.

- 13.15. It is apparent from this exchange that Keith Philip is attempting to follow the first respondent's instruction and the claimant's is insistent that the first respondent should deal with it, not the second respondent. Keith Philip informed the claimant that it was a matter that the second respondent had to deal with as the second respondent was the provider of security services and the provider of the claimant's services. He said that if the claimant refused to accept this, he would have to take him off the site as he was unable to let him back on the first respondent's site if was not prepared to accept that he was under the second respondent's control.
- 13.16. In the event, the first respondent did agree to investigate and they were best placed to deal with the matters raised by the claimant. Ghazala David carried out the investigation and gave an outcome letter dated 26 January 2018 to the claimant. She stated that this had not been investigated under the formal grievance procedure because the claimant was not an employee and that there was no right of appeal. The outcome of the grievance was that the allegations regarding drug dealing were no supported by any evidence and that Ghazala David was satisfied that no CCTV had been destroyed. She concluded that the reduction in the claimant's hours was not a deliberate decision to penalise him.
- 13.17. On 28 February 2018, the claimant submitted his employment tribunal application alleging the detriment of a reduction in hours due to his protected disclosures to the police and by way of the grievance dated 22 December 2017.
- 13.18. On 30 March 2018, the claimant made a formal complaint to the first respondent (addressed to Ghazala David, copied to Franswa Ceustermans) about Adam Gray refusing him access to the kitchen when he tried to get himself a hot drink without asking permission and Rahul Naidu shouting at him in front of other staff. The claimant alleged in relation to both incidents that he had been treated differently from others.
- 13.19. In response to this, on 10 April 2018, Franswa Ceustermans wrote a note to Ghazala David expressing his concerns about the claimant remaining on site in view of his admitted covert recordings of conversations with the police, felling that he must 'tiptoe' around him and stating that he no longer trusted the claimant.

Second alleged detriment

- 13.20. Ghazala David investigated the complaints by speaking to Rahul Naidu and Adam Gray and taking statements from them. On 23 April 2018, Ghazala David wrote to the claimant informing him of the outcome of the complaint in which she gave the explanations provided by Adam Gray and Rahul Naidu, which she

accepted and therefore did not uphold his complaint. She confirmed that she was copying the second respondent into the correspondence.

- 13.21. On 24 April 2018, the claimant challenged the outcome of the grievance to which Ghazala David replied on 2 May 2018 rejecting his challenge. She denied that he was being singled out and she confirmed that she wanted him to continue as part of the team but working with them, not against them.
- 13.22. On 8 May 2018, the claimant sent Ghazala David a screenshot of an email to him from a BBC journalist confirming that any information given to the journalist by the claimant would be off the record. He also sent her a photograph of his Visitors Pass at BBC's offices. The claimant had deleted the date of the email and the date of the visitors pass so it is not known when the encounter with the BBC journalist took place. The claimant's covering message to Ghazala David was that he would go to the media if he was subjected to any threats from the first respondent.
- 13.23. The first respondent's solicitors replied on that day denying that any threats had been or would be made to the claimant and remarking that his conduct was wholly inappropriate and unacceptable.
- 13.24. On 29 May, the claimant and Franswa Ceustermans had been in touch regarding the claimant's phone charger which he had left behind when he left work. As part of this conversation, the claimant had asked Franswa Ceustermans how his investigation into cigarettes was going, referring to an allegation that the claimant was selling cheap cigarettes at the club. According to Franswa Ceustermans, the claimant laughed and said 'Good Luck with that'. Franswa Ceustermans regarded this as a sign that the claimant saw himself as untouchable.
- 13.25. Later, during the evening shift, Franswa Ceustermans commented to the claimant that he was suffering from hay fever, to which the claimant replied 'Are you sure it's not Colombian hay fever?', implying that Franswa Ceustermans was taking drugs. Franswa Ceustermans objected to this comment and an argument developed between them. During the course of the argument, the claimant said that he had taken video footage in the club and placed a camera in the Disabled Toilets which he claimed was permissible because the police had told him it was. He warned Franswa Ceustermans about what he says in court, threatening him that he might go to jail, alleging that Franswa Ceustermans was misleading the court about the security meeting which had taken place on 8 July 2017. The claimant's account of the argument is that Franswa Ceustermans was threatening to discriminate against him and he called him 'Ho', which the claimant found disrespectful and offensive. He then told Franswa Ceustermans that he was recording the conversation.
- 13.26. Paul Nichols overheard some of the conversation and then listened to the recording made by the claimant. His account of the conversation is that Franswa Ceustermans said threatened the claimant and stated that he did not care about drug taking which was common throughout London. The claimant told Franswa Ceustermans that he would go to prison for perjury which made Franswa Ceustermans even more angry.

- 13.27. As Ghazala David was leaving the office quite late on 29 May, she saw that Franswa Ceustermans was upset and called him out of the office to find out what was wrong. She said it was too late to deal with anything then but asked him to write a statement setting out what had happened and to give it to her in the morning.

Third alleged detriment

- 13.28. Franswa Ceustermans wrote a statement on 30 May and Ghazala David saw this as evidence that the situation with the claimant had gone too far and he could not function as a security officer any longer. She raised the issue with the General Manager and the Board on 31 May. They considered the matter and instructed Ghazala David to inform the second respondent that they wanted the claimant removed from site. Ghazala David phoned Keith Philip to tell him that the claimant was to be removed from site and she followed this up with a letter dated 31 May 2018. The letter set out the reasons the first respondent had taken this decision, namely the loss of trust in the claimant as a result of references to allegations being given to the media, fear that the claimant was recording conversations, even trivial ones, and the feeling that the claimant was generally working to gather information to use against the first respondent, rather than protecting the first respondent. Ghazala David commented that the claimant appeared to have a vendetta based on the police's failure to act on information he had passed to them. She concluded that they were unable to function properly in their dealings with him.
- 13.29. Keith Philip informed the claimant that he was removing him from the first respondent's contract but offered him work on another client's site. The claimant rejected this.
- 13.30. Keith Philip confirmed the position by email dated 1 June 2018 and restated the offer of work at other sites if he was interested.

Law

14. The relevant law relating to Public Interest Disclosure is as follows:

- 14.1. A qualifying disclosure is a disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the designated types of wrongdoing set out in section 43B(1) ERA. These include commission of a criminal offence.
- 14.2. A worker must not be subjected to a detriment on the grounds he has made a protected disclosure (section 47B ERA). A detriment must be more than an unjustified grievance.

Determination of the Issues

15. We unanimously determine the issues as follows:

- 15.1. We find that the grievance raised by the claimant on 22 December 2017 amounted to a qualifying disclosure. It was a disclosure of information regarding the drug use in the club made by the claimant in the public interest and it tended to show that criminal activity was going on.
- 15.2. We also find that it was a protected disclosure as it was made to the appropriate person, being the 'employer' (although it is accepted by all parties that the claimant was a worker, not an employee).
- 15.3. In relation to the first alleged detriment that, on 5 January 2018, Keith Philip threatened to remove the claimant from site, we find that there was a conversation between the claimant and Keith Philip on 5 January 2018. We have heard a recording of this and read the transcript. During the course of the conversation Keith Philip does state that if the claimant does not accept his instruction, he would 'stand him down' from the first respondent's site. The background to the phone call is the grievance raised by the claimant on 22 December 2017, which had been passed to Keith Philip to deal with by the first respondent, as the claimant was the second respondent's responsibility. Keith Philip explained to the claimant that the claimant was the second respondent's subcontractor and came under his umbrella. We find that references to removing the claimant from site were in response to the claimant's refusal to accept that he had any accountability to the second respondent, or to accept the second respondent's instructions.
- 15.4. We find Keith Philip's comments regarding removal from site were not in response to the claimant making a protected disclosure but due to Keith Philip's view that he could not allow the claimant back to the first respondent's site if he had no control over him, such control being his contractual obligation to the second respondent and the purpose of his contract with the first respondent. We therefore do not uphold this element of the claim.
- 15.5. In respect of the second alleged detriment, we find that Ghazala David investigated the complaints about Adam Gray and Rahul Naidu by interviewing them and looking into the circumstances of the matters complained of by the claimant. We find that this investigation was proportionate and Ghazala David reached a reasonable outcome. We find that she would have reached the same outcome if the claimant had not made a protected disclosure. We find that there is no link between the protected disclosure and the outcome of the grievance and we therefore dismiss this element of the claim.
- 15.6. In relation to the third alleged detriment, it is accepted by the first respondent and the second respondent that the claimant was removed from site at the behest of the first respondent. We find that the decision to remove was taken at a high level based on the lack of trust in the claimant, reported principally by Franswa Ceustermans and Ghazala David.
- 15.7. The decision was based on evidence of the following points:
 - i) Continuous allegations by the claimant of cover-ups starting from an allegation that Samantha Kandou Fulton had destroyed the CCTV

- footage, that Ghazala David was covering up for managers by not upholding his grievance and by constant threats of action for perjury;
- ii) the first respondent's nervousness around the claimant due to his admission that he had been covertly recording his conversations with police making them fear he was recording conversations with them (as it turned out he was)
 - iii) Loss of confidence in the claimant as a team member, as described by Franswa Ceustermans in his note of 10 April;
 - iv) Ghazala David's fear of the claimant's potential actions arising from her feeling of being bullied and mentally tortured by him which led to her changing her office key arrangements to ensure he did not have access to her office and feeling nervous of him physically;
 - v) the claimant regarding himself as untouchable and therefore he became unmanageable;
 - vi) the claimant prioritising his own agenda and vendetta while on duty and working to gain evidence for his own purposes rather than protecting the first respondent's premises;
 - vii) breaching data protection rules by downloading and retaining the CCTV footage and placing a covert camera in the Disabled Toilet.
 - viii) the fact that the claimant was taking up a disproportionate amount of management time, notwithstanding he was not an employee of the first respondent;
 - ix) the first respondent had a suspicion that the claimant was trying to catch them out or that he would plant evidence to further his own ends and his sharing information with Paul Nichols leading to the fear that it would be used by others including by Paul Nichols in a book about the club.

15.8. We therefore find that the first respondent's decision was a response to the claimant's behaviour towards them starting in January but coming to a head in April and May 2018 and that this was not due to the claimant's protected disclosure. We find that the working relationship had become untenable. We therefore dismiss this aspect of the claim.

15.9. In conclusion, we find that the claimant has not been subjected to a detriment on the grounds that he made a protected disclosure. His claim therefore fails and is dismissed.

Costs

16. The first respondent has applied for costs against the claimant on the basis of his unreasonable conduct of the proceedings, in particular his correspondence relating to documents and his attempts to include irrelevant documents, his allegations surrounding the missing pages in Franswa Ceustermans' witness statement and the personal accusation of wrongdoing against the first respondent's employees and representatives.

17. Dealing with these in turn, we have taken into account that the claimant is unrepresented and his likely to have a less developed understanding of what documents are relevant to the narrow issues before the tribunal. the first respondent's criticism is that he wanted to include documents which were not relevant, not (for example) that he wanted to include documents which were prejudicial. We find that the first respondent could have given more leeway in view of the fact he was unrepresented and left it to the tribunal to determine whether the documents were relevant. The bundle in this case was not particularly large.

In the event, the claimant produced his own bundle, as recommended by the tribunal in correspondence. We do not find that the claimant conducted this aspect of the proceedings unreasonably.

18. The first respondent complains that the claimant acted unreasonably in relation to the exchange of witness statements, initially by refusing to accept the password protected documents sent to him and subsequently, by alleging that part of Franswa Ceustermans' statement had been deliberately withheld so that it could be drafted in the knowledge of what the claimant had said in his statement. We found, on a balance of probabilities, that this was an honest mistake but the claimant was entitled to take a different view bearing in mind that, by this time, there was no trust between the parties (including the representatives).
19. The first respondent's representative alleges that it was unreasonable conduct for the claimant to make repeated personal accusations against her and employees and officers of the first respondent. In the context of the background to this case, the breakdown in the relationship between the parties, the claimant's lack of familiarity with the English legal system and bearing in mind that English is not the claimant's first language, we find that these matters are issues which litigation professionals have to deal with when dealing with litigants in person. We do not find that the claimant conducted this aspect of the proceedings such as to warrant a costs order against him.
20. The first respondent's cost application fails and is dismissed.
21. The second respondent has applied for a Preparation Time Order on the basis that the claimant should not have brought the claim against the second respondent at all and due to his conduct of the proceedings.
22. We find that the claimant was entitled to bring his claim and, given the second respondent's role in his arrangement with the first respondent, it was reasonable for the claimant to include the second respondent. We are not aware that the second respondent has applied for the claim against it to be struck out at any stage of the proceedings and it was not an issue before this tribunal whether the second respondent was an appropriate respondent.
23. Keith Philip, on behalf of the second respondent, has itemised the time he has spent on preparation for this hearing, which he wishes to claim from the claimant due to his unreasonable conduct during the proceedings. Having reviewed each of these items, we find that the amount of time spent by Keith Philip in preparation appears to be the amount of time that would be expected to be spent in preparing for a tribunal hearing and there is no evidence of any additional expense that the second respondent has incurred which would warrant a Preparation Time Order.
24. The second respondent's costs application fails and is dismissed.

Employment Judge Davidson
20 February 2019

JUDGMENT & REASONS SENT TO THE PARTIES ON

21 February 2019
FOR THE TRIBUNAL OFFICE