THE EMPLOYMENT TRIBUNAL

SITTING AT: **LONDON SOUTH**

BEFORE: **EMPLOYMENT JUDGE BALOGUN**

MEMBERS: **Ms R Bailey**
Ms N O'Hare

BETWEEN:

MR C STOREY

Claimant

And

TENTERDEN SCHOOLS TRUST

Respondent

ON: **9-13 March 2020 and 16 June 2020 (In Chambers)**

Appearances:

For the Claimant: In Person
For the Respondent: Ms G Cullen, Counsel

RESERVED JUDGMENT

All claims fail and are dismissed.

REASONS

1. By a claim form presented on 15 September 2018, the claimant brought complaints of automatic unfair dismissal (protected disclosures); protected disclosure detriments; and wrongful dismissal. All claims were resisted by the respondent.

2. We heard evidence from the claimant. The respondent gave evidence through Gillian Guthrie (GG); Vicky English (VE); Kate Smith (KS); Susan Anderson (SA) and Nicola Callingham (NC) and Nicola Patterson (NP). The parties presented a joint bundle of documents. The claimant also produced a separate supplementary bundle. References in the judgment in square brackets are to page numbers within the joint bundle unless otherwise stated.

3. The issues in the case are agreed and are more specifically referred to in our conclusions.

The Law

4. Section 103A of the Employment Rights Act 1996 ("ERA") provides that an employee shall be regarded as unfairly dismissed if the reason, or if more than one, the principal reason for the dismissal is that the employee made a protected disclosure.

5. Section 43A ERA, define a "protected disclosure" as: "[…] a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H."

6. Section 43B provides that 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 matters listed in sub-sections (a)-(f).

7. Section 47B ERA provides that a worker has a right not to be subjected to any detriment by his employer on the ground that the worker has made a protected disclosure.

Findings of Fact

8. The respondent is a multi-Academy Trust consisting of Homewood School & Sixth Form Centre; St Michael's Primary School; Tenterden Primary Federation and Home Farm Nursery. The claimant commenced employment with the respondent on 8.1.18 as an NQT (Newly qualified teacher) of Computer Science at Homewood School & Sixth Form Centre (the "School").

9. On 23.1.18, at 16:03, the claimant sent an email to the respondent reporting that he had heard a year 11 student (the "Student") say that he would "*sneak a pipe bomb into the computer*". The Student had Aspergers syndrome and ADHD and was on the SEN list. The claimant was aware of this. The claimant asked that someone have a conversation with the Student [171].

10. On 23 .1.18, 16:09, Anna Price (AP) Family Liaison Officer replied to the claimant informing him that regarding the inappropriate comments, the Student's mother was aware of this behaviour and is supportive. AP advised the claimant to telephone the mother so that she

could talk it through with the Student once he got home [172]. When subsequently asked by the respondent whether he had called the parents, the claimant said he had not as he got side-tracked [262]. Although he did not say this to the respondent at the time, he told the tribunal that he felt the form teacher should have contacted the student as the person responsible for pastoral care. We believe that this was the real reason for the claimant not contacting the student as directed.

11. The claimant repeated his concerns in an email to the Assistant Vice Principal, Hannah Jones (HJ) on 29.1.18. He expressed concern that the Student was a potential danger to the school and asked for advice on how to handle the matter [174]. On 30.1.18, AP contacted the claimant informing him that HJ was seeking advice on the matter [175]. Advice was also sought from CAMHS (Child and Adolescent Mental Health Services) who were already involved in supporting the Student.

12. On 5.3.18, the claimant emailed Vicky English (VE) Designated Safeguarding Lead, with his concerns. He told her that the Student had threatened twice to put a PIPE bomb under the school computer, had searched for explosives on the school computer and had brought into school a dangerous book ("The Anarchist's Cookbook") which explained how to make bombs. He sought advice on what to do [222].

13. That same day, VE made a PREVENT referral to the Kent Police Prevent Team and the student was removed from school whilst the investigation was ongoing [206-208]. An investigation was carried out by Kent Police, who concluded that they did not consider the student to be a risk and would not be adopting the student as a PREVENT case.

14. Between 6.3.18 - 23.3.18, the claimant was absent from work with stress reaction [220].

15. On 12.3.18, the claimant emailed his line manager, Susan Anderson (SA) Head of Department – Computing and ICT, and Sally Lees (SL) HR, setting out in 12 bullet points matters which he claimed the Student had done since he (the claimant) started at the school. The list included the "pipe bomb" and "Anarchist Cook book" matters previously disclosed. The claimant proposed a solution to keeping the school staff and children safe, which was a termination package for him (his sickness to be treated as fully paid garden leave, full pay to the Easter holidays, a good reference and completion of his NQT term in another school in the UK or abroad) [217-219].

16. On 12.3.18, the claimant's 2nd term NQT assessment was completed by the respondent. SA awarded the claimant an overall D grade, with the comment: "*This NQT is making limited progress towards meeting the induction standards*" [210-215]. Before awarding this grade, SA took advice from the NQT team and the principal and it was agreed that because of the claimant's high level of absence, he had not been in school enough to evidence his progress. During the relevant period (4.1.18 - 29.3.18) the claimant had 16 days absence.

17. The claimant took great umbrage at his NQT assessment grade, which he did not accept as valid. He relies on his NQT assessment as a PID (protected interest disclosure) detriment. He subsequently complained about SA and the assessment. [271]. Those concerns were investigated independently by Elizabeth Dean, NQT Induction Advisor, but the assessment stood and the claimant was advised that he would need to sign off the assessment in order for his induction to proceed [271].

18. On the 23.2.18, the claimant attended a skype return to work meeting with HJ and Nicki Callingham (NC) HR Director. They discussed the Student, the PREVENT referral outcome

and the claimant was told that the student was now back at school. This was a matter of concern to the claimant, who was worried that his return to school would provoke the student into doing something though the respondent did not share his concerns. [231-232] After the meeting, the claimant was sent a revised timetable. The A' level classes he had taught prior to his absence had been removed. [233-234] The claimant relies on this as one of his PID detriments.

19. The claimant returned to work the following Monday, 26.3.18, though he did not stay for long and had gone home by 9.30am. He sent 2 emails to the respondent on that day stating that he was too stressed to teach and was returning home. The matters said to be causing him stress were the D grade he received in his second term NQT assessment, the change to his timetable and the fact that the Student was back at school [239-240]. Before he left, he had a conversation with NC who explained that the A'level classes had been removed due to his absence, to ensure that the classes were covered [238]. He was told the same thing by the Headteacher in a letter dated 10.4.18 [297].

20. On 27.3.18, the claimant sent an email to the respondent with the heading "*Mr Storey – legal action v school"*. In it, he expressed concern about the Student's return to school, complained about his NQT assessment, which he described as slanderous, and complained about the removal of the A'level classes from his timetable. He alleged that all of these matters and a lack of support from the school had caused his stress. The upshot of this was that the claimant wanted a termination package comprising money and a good reference and hinted at issuing proceedings against the school if such offer was not forthcoming.

21. There are 2 paragraphs of this email that the claimant relies on as his first protected disclosure - (A). The 4th paragraph where he says: "***My own observation is that the student has made threats of placing bombs in school twice, has claimed he is on medication that does not work, has said that he does not care about anyone, has told me blows trees up at the weekend, I have seen him research guns on school computers, I have seen him search explosives on school computers, I caught him researching the Anarchist Cookbook on school computers, I caught him reading a new copy of the Anarchist Cookbook in class…….this puts the school, students and staff at risk and a random spot search is clearly not a 100% clear prevent strategy"***. The other paragraph of the email relied upon is the 12th paragraph which says: "***I believe it I in the interest of parents to know that there is another student in the school that has made serious threats against the school and I believe at this point the school has not informed them and has made that decision for them, claiming he is not a risk – even though the police are going to do spot checks on him which is clearly implication he is a risk***". [243-244].

22. On 29.3.18, the claimant returned to school for a day before going off sick again. That afternoon he met with Bethan Woostear (BW) Head of College and NC and they discussed his NQT report and the changes to his timetable. The claimant relies on two aspects of that meeting as protected disclosures. The first was a discussion about the Student. The claimant asked why the Student had been allowed to return to school and when told that neither the agency or the police perceived him to be a risk, the claimant disagreed, asking if that if that were the case, why spot checks were being done. The second disclosure revolved around a discussion about the Anarchists' cookbook. The claimant told the meeting that the Student was an expect in electronics, blew things up at the weekend and used the book to research bomb making. He also suggested that parents with children in the school would want to know about this [261-263].

23. Minutes of the meeting were subsequently sent to the claimant but he did not agree with them and sent an email to NC and SL highlighting the areas of disagreement. One of the points he raised in his email was that there was no mention of when NC (allegedly) swore at him. [304]. NC replied denying that she had sworn at the claimant [305]. When asked by the panel what swear words were used, after much hesitation, he said NC had said to him "*Piss off*". NC denied swearing at the claimant in those terms or at all. Having considered this conflict of evidence, we prefer the account of NC. The claimant's hesitation in revealing the swear word to the tribunal was, in our view, not because he felt uncomfortable saying the word but because he was trying to think up a word on the spot. This word does not appear in the claimant's witness statement or in any contemporaneous correspondence. Also there is no context for such abuse. There is no evidence that NC was angry or upset with the claimant or that she was reacting to hostilities from him. Further, we consider it highly unlikely that an HR professional such as NC would use such language in a formal meeting and certainly not in the presence of a professional colleague. NC told the claimant at the time that she did not swear and her colleague, SL confirmed this. Rather than accept the possibility that he was mistaken, the claimant instead unreasonably persisted with his accusation. We find that NC did not swear at the claimant.

24. Later on the 29 March, the claimant sent an email to the respondent stating that he had just learned that neither the parents or staff had been informed of the student's bomb threats or the police spot checks. He requested an explanation and sought re-assurance that all teachers would be told. He relies on this communication as a protected disclosure [255].

25. Following on from the legal letter of 27.3.18, on 9.4.18, the claimant sent an email, marked "Without prejudice" to SL setting out a chronology of events since he joined the school, including the issues with the Student and his NQT assessment. He blamed the school for damaging his NQT year and for his health issues and threatened legal action. He goes on to suggest an out of court settlement of a year's salary, an excellent reference and an amended NQT grade of "C". The claimant relies on this correspondence as a protected disclosure [288-292].

26. Although we understand that there were some without prejudice negotiations between the parties, we were not privy to these although we did have sight of a draft reference prepared by the respondent as part of those negotiations [246]. The negotiations eventually broke down, one of the key sticking points being the claimant's request for an amended NQT grade. The respondent was not prepared to accede to that request. [296-297].

27. The claimant nevertheless persisted with his attempts to negotiate. [299, 304, 308]. In the course of this correspondence, the claimant repeated the allegation that NC swore at him during their meeting on 29.3.18. Those attempts to secure a settlement were considered threatening by the respondent and are said to have contributed to the eventual breakdown of the working relationship.

28. On 10.5.18, the claimant was invited to attend a disciplinary hearing to answer 5 allegations:

    "Undertaking other work namely as a Chess Coach and a Hacker whist being signed off work with stress
    Bringing the school into disrepute by being linked to the school and carrying out hacking activities
    Threatening legal action against a member of staff;

Openly calling Mrs Anderson and Mrs Callingham liars; and
Persistent attempts to extort funds from the school in settlement" [326-327]

29. The claimant requested that the meeting take place by Skype. However, the respondent declined, stating that he was required to attend in person as skype was not an appropriate forum for a disciplinary hearing.

30. On 21.5.18, the claimant raised a grievance about his NQT grade, the Student issues, the changes to his timetable and the disciplinary allegations [463]. The claimant relies on this correspondence as one of his protected disclosures. The specific paragraphs relied on are:

2. "*The second grievance is how the school dealt with my receiving of bomb threats before I had a period of sickness relating to it – no consideration was given to me and how the threat had impacted upon me – my Line Manager support was "phone his Mother"*.

4. "*My 4th grievance is how the information about the student who made bomb threats then demonstarted (sic) he was capable of carring (sic) them out by researching and bringing into school, specifically for me "The Anarchist Cookbook".*

5. "*My 5th Grievance – why a student who has made such a serious threat and further, brought such a book into school to antagonise me, is allowed back into school with the reasoning being "The Police are doing Spot Checks" "He is not perceived to be a threat"" – This meant in my professional opinion both me and my students were not safe and as Sims was wrong about his medication and he claimed his medication was not working, why the school was not 100% supportive of me*".

31. The grievance was heard on 11.6.18 by Gillian Guthrie (GG) Vice chair of Local Governing Board of the college. The claimant did not attend the hearing as his request to attend by skype rather than in person was refused [485] The grievance was not upheld and the claimant did not appeal [509-517].

32. The disciplinary hearing took place on 15.6.18, conducted by a panel of 3, chaired by Kate Smith (KS) Chair of Governors. The claimant did not attend, again because his request to attend by skype was refused and he was unwilling to attend in person [518-527]. The unanimous decision of the disciplinary panel was that all of the allegations were made out and that the claimant be dismissed for gross misconduct. The claimant was informed of the decision by letter dated 15.6.18 [528-529]

33. The claimant appealed against his dismissal on grounds that the disciplinary (and grievance) process was unlawful and the charges fabricated [543] The appeal was heard on 23.7.18 but as before, the claimant chose not to attend [559-567]. On 26.7.18, the respondent wrote to the claimant informing him that his appeal had been unsuccessful [568-570].

Submissions

34. The respondent provided written submissions which were spoken to. The claimant prepared written submissions, which were not handed to the panel but which were read from. A copy was provided to the respondent. After the hearing, and without invitation, the claimant sent the tribunal a different and updated version of his submissions. The claimant was advised that this was inappropriate and that the submissions would not be considered

by the tribunal. The parties' submissions are summarised, very briefly, below.

35. It was submitted by the respondent that whilst it accepts that the claimant made allegations, non of the alleged disclosures, A-E, met the requirements of a qualifying disclosure pursuant to section 43B(1) ERA. To the extent that there were detriments, there is no evidence that they were caused by the claimant's disclosures. There were clear grounds for the respondent to instigate disciplinary proceedings and the decisions to dismiss and to uphold the dismissal on appeal were taken by governors who were separate from the school. Based on its investigation, the respondent had a reasonable belief in the claimant's guilt and there was sufficient evidence to support a dismissal for gross misconduct. There was no evidence to link the dismissal to the claimant's disclosures. The claimant's conduct cumulatively amounted to gross misconduct entitling the respondent to dismiss without notice.

36. The claimant submitted that none of his concerns were taken seriously. The respondent said that it would support him but did not offer any real support of substance. Instead they attacked him by accusing him of criminal behaviour. SA was highly untruthful in her statement. She lied by saying that he first time she heard about the pipe bomb was in the tribunal. His timetable was changed by 50% which he claimed was a well known constructive dismissal technique for teachers. The head teacher used her influence throughout the processes. GG who was in charge of the grievance process was a friend of the head teacher. It is reasonable to assume that SL amended the NQT report, had a hand in the other detriments and used her influence throughout the disciplinary process. The disclosures were made to SL and SA in an email of 12.3.18 and it is clear that the disclosures were in the public interest. Multiple disclosures took place and they can all be categorised as qualifying disclosures. Other disclosures were made to SL and nothing was being done or was being done too slowly. SL then adopted a strategy to remove him from the process. SL had made it clear from her mannerisms that she did not consider him good for the school. That was probably a factor in his NQT report being changed and the breakdown of the relationship with his mentor.

Conclusions

37. Having considered our findings of fact, the parties' submissions and the relevant law, we have reached the following conclusions on the agreed list of issues:

Protected Disclosures

Disclosure (A) *email of 27.3.18 raising concerns about the health and safety of the claimant, students, staff members and the wider public*

38. These are the matters referred to at paragraphs 20 and 21 of our findings. The claimant relies on section 43B(1)(b), (d) and (f) ERA.

39. We are satisfied that the claimant reasonably believed that the disclosures were in the public interest. However, he has not identified the legal obligation relied upon. When asked about this in cross examination, he was not able to give an answer. It is for the claimant to prove that all the elements of section 43B(1) relied upon have been met and in the absence of an identifiable legal obligation, he cannot show that the disclosures fall within 43B(1)(b).

40. In relation to sub-paragraph d), we have considered whether the claimant reasonably

believed that the information tended to show "*that the health or safety of any individual has been, is being or is likely to be endangered*". There was nothing in the claimant's communication that suggested any individual had been or was at that time in danger. What the claimant relies on is the risk posed by the student, in other words, the likelihood of danger. "Likely" in this context suggests more than probable. In his email of 12.3.18, although the claimant expresses the view that the student is capable of doing something tragic in future if removed from school, he also refers to the chances of that as probably extremely slim [218]. When asked in cross examination what the claimant meant by extremely slim, he said 10:100 chance. He then confusingly added that it was extremely likely to happen in the context of there being a slim chance. That explanation and the content of the email do not in our view provide sufficient evidence that the claimant reasonably believed there was a likely risk that health and safety was endangered. 43B(1)(d) is not in our view made out.

41. Turning then to 43B(1)(f) – that the claimant reasonably believed that his disclosure tended to show deliberate concealment by the respondent of a breach. The claimant has presented no evidence at all of concealment. On the contrary, when the claimant made his disclosure about the student, the respondent informed the police by making a PREVENT referral and involved other agencies.

42. In light of the above, we find that disclosure (A) is not a qualifying disclosure as it does not satisfy the requirements of 43B(1) ERA.

Disclosure (B) *– the claimant's grievance of 21.5.18*

43. This is referred to at paragraphs 30-31 of our findings. The matters referred to contain a mix of previously disclosed information and allegations. To the extent that information was disclosed, we find that the claimant could not have reasonably believed this to be in the public interest. That is because these matters are about how he perceives he was treated by the respondent which is not a matter that affects the wider public. There is no identifiable breach of a legal obligation and, as already stated, the claimant considered the likelihood of harm slim. The police concluded that the student did not present a risk and nothing occurred post PREVENT referral that would have caused the claimant to reasonably believe that the level of risk had increased beyond slim. We consider that 43B(1)(f) is not made out, for the reasons already stated at paragraph 41 above.

44. We conclude that Disclosure (B) is not a qualifying disclosure.

Disclosure (C) *– Meeting of 29.3.18*

45. This is referred to at paragraph 22 above. We are not convinced that there has been any disclosure of information. What the extracts seem to be are a question and answer dialogue about the disclosures previously made. If however we are wrong and information has been disclosed, the requirements of paragraphs (b), (d) and (f) of 43B(1) are not satisfied, for the reasons already stated.

Disclosure (D) *– claimant's email of 29.3.18*

46. This is referred to at paragraph 22 above. There is disclosure of information here i.e. that parents and staff were not informed of the student's pipe bomb threats. We also accept that the claimant reasonably believed the disclosure was made in the public interest. However, we find that paragraphs (b) (d) and (f) of 43B(1) have not been satisfied, for the

reasons already stated.

Disclosure (E) *– email to SL of 9.4.18 and email to Sl and SA of 12.3.18*

47. These are referred to at paragraphs 25 and 15 above. These represent a consolidation of all the information the claimant disclosed to the respondent about the student. We do not consider the claimant reasonably believed that disclosing the information at this point was in the public interest. It is clear that the claimant was making the disclosures for his own advantage - to negotiate an exit package from the school. Again we find that paragraphs (b) (d) and (f) of 43B(1) are not satisfied.

48. Our conclusion on the above is that they are not protected disclosures pursuant to section 43B(1) ERA. The section 47 detriment claims and the automatic unfair dismissal claim are predicated on there being qualifying disclosures and as there were none, those claims fail also. However, in case we are wrong about the disclosures, we have gone on to consider the issues of detriment and dismissal.

Detriments

Detriment A – *SA was allowed to continue as the claimant's mentor after he accused her of a serious data breach and she lied on his NQT assessment*

49. On the first matter, the claimant did not at any time assert or suggest that he had requested a new mentor, even though he could have done so as part of his grievance against SA. In the absence of such a request, it is difficult to see what unfavourable act or omission was committed by the respondent. Allowing SA to continue as the claimant's mentor was simply maintaining the status quo. That is not in these circumstances a detriment. On the second issue, the alleged lie was SA assessing the claimant as an overall D grade in his 2nd term NQT assessment. Our impression of the claimant was that he had an over-inflated sense of himself. This came across when he was cross examining the respondent's witnesses. He asked SA whether at his interview, she was impressed that he was a national chess coach. He asked NP whether she felt that the School's reputation was enhanced by having someone (him) from one of the top universities in the world. In an email to NC, he said "*I believe that Mrs Anderson has lied on the NQT assessment as I am the only qualified A Level teacher and she may see me as a threat to overtaking her as Head of department this is the only reason I can think of why she has lied ……"* [252]. Because of his ego, the claimant could not conceive of the idea that others did not share his view of his performance and abilities, so they had to be lying. However, we are satisfied that that the assessment was based on SA's honest professional opinion, one which was supported by the Principal, the NQT team and the claimant's absence record. This alleged detriment is not made out.

Detriment B – *NC swore at the claimant at a meeting on 29.3.18 and BW covered it up by claiming that she had not heard it*

50. In light of our findings at paragraph 23 above, this detriment is not made out.

Detriment C – *The respondent changed 50% of the claimant's timetable on 23.3.18*

51. This is dealt with at paragraphs 18 and 19 above. We accept the respondent's reasons for changing the claimant's timetable. The claimant's absence came at time when the A' level

students' were preparing for final exams. It was therefore important that they had consistent tuition and support during this period. The respondent did not know when the claimant would be fit to resume work and we are satisfied that in assigning his A'level classes, the respondent was acting with the best interests of the students in mind. It had nothing to do with the claimant's disclosures.

Detriment D – *The respondent did not offer the claimant any support or training on how to deal with criminal threats to endanger life from 23.1.18 onwards*

52. The first point to make is that the commencement date of this alleged detriment predates the first disclosure. The first alleged disclosure was on 12.3.18 therefore any omissions before that date could not, by definition, be related to the disclosures. In any event, the detriment, which relates to the Student issue, is general and unparticularised. The claimant does not say what support and training he should have received. What is clear from his evidence is that he received training on the school's safeguarding policy and Prevent policy during his induction. He sought guidance when the Student issue arose and guidance was given though he decided not to follow it – he did not speak to the student's parents as directed. The school referred the student to PREVENT and the police dealt with the matter, in conjunction with other agencies. The police determined that the Student did not present a risk and could return to school with spot checks taking place. This detriment is not made out on the facts.

Detriment E – *The claimant was deliberately not given any details about the student who had made bomb threats and was not provided with any updates on the situation by the respondent from 23.1.18 onwards*

53. Again, the commencement date of the alleged detriment pre-dates the first disclosure. In our view the allegation is not borne out by the facts. The claimant was notified when the PREVENT referral was made and was informed of the outcome verbally at his return to work meeting on 29.3.18 [261] and in writing on 10.4.18 [296]. When the claimant requested information about the reports from the parties involved in the referral, NC said this was not possible as they were confidential and the respondent owed a duty of care to the student and staff [307]. That explanation is entirely plausible and is unrelated to the claimant's disclosures.

Detriment F – *The claimant was forced to defend unsubstantiated claims made against him by the respondent….on 10.5.18.*

54. The allegations against the claimant are those referred to at paragraph 28 above. The allegations were not spurious, they had their basis in fact. In relation to allegation 1 & 2, the claimant did undertake other work as a Chess Coach and he did describe himself on his linked-In page as an Ethical hacker while at the same time identifying himself as a teacher at the school [335-336]. In relation to allegation 3, he did threaten legal action against staff of the respondent in a number of emails and in relation to allegation 4, he admits to calling SA and NC liars. The respondent's case is that the claimant's linked in page, the sick pay policy and various emails and other documents, gave rise to the allegations. We are satisfied that the respondent had a genuine suspicion that warranted investigating.

Detriments G & H – *KS failed to follow the correct disciplinary procedure*

55. The claimant made a number of complaints about the disciplinary process. It is worth

mentioning at this juncture that the claimant had insufficient service to bring an ordinary unfair dismissal claim and we are therefore not determining whether his dismissal was fair. We are only concerned with whether there was a causal link between the dismissal process and the claimant's disclosures. Whilst procedural flaws may indicate that a dismissal is unfair, they do not necessarily point to treatment connected to protected disclosures.

56. There are 2 procedural issues referred to: i) the decision to conduct the disciplinary meeting in the claimant's absence rather than by skype and; ii) the decision to proceed with the hearing before receipt of the OH report.

57. In relation to the first issues, we have checked the disciplinary policy and there is no provision for meetings to be held by skype. It is therefore unclear what breach the claimant relies upon. The claimant contends that a skype interview was appropriate given his ill health and relies on the fact that his original interview for the role was by skype. KS told the tribunal that because the allegations were serious and the disciplinary hearing comprised of 7 people, it was felt important that the claimant was in the room. KS lectures in language and communication and her view was that much of language is missed if people are not present and that it was important to be able to look people in the eye. Whilst we don't necessarily agree with that view (the current pandemic has shown how effective virtual meetings can be) we accept that it is one that was genuinely held by KS.

58. In relation to the second issue, the final sign off on the OH report is dated 15.6.18 [537]. Although this was the same date as the disciplinary hearing, the report was not available to the respondent immediately as the claimant had made a specific request to see the report prior to its disclosure to the respondent. We accept the respondent's evidence that they did not see the report until 25.6.18 (see Detriment I below) though the claimant would have seen it beforehand. He made no request for the hearing to be delayed until after the report was received nor did he seek to provide the report to the disciplinary panel. We are not convinced that there was a deliberate decision by the respondent to disregard the OH report or indeed that proceeding with the hearing without waiting for it amounted to a detriment at all.

Detriment I – *NC looked at the OH report without the Claimant's official permission*

59. During our hearing, the claimant alleged that there was a possibility that the OH report had been tampered with. This was directed at NC. When asked what he based this on, he said intuition. This was a completely baseless allegation and the claimant's decision not to cross examine on it makes the point.

Detriments J, K & L

60. Detriments J and K are not allegations of unfavourable treatment directed at the claimant. Detriment L is a repetition of detriments d and e and has been covered above.

Detriment M – *The school excluded the claimant from meetings*

61. This is a reference to the disciplinary and grievance meetings. As we have found, the claimant chose not to attend the meetings, he was not excluded.

Detriment N – *The school concealed information from staff members about bomb threats and risks to students*

62. This was not treatment directed at the claimant.

63. Based on the above secondary findings, even if the tribunal had found there to be qualifying disclosures, it would have gone on to find that the claimant was no subjected to detriments by the respondent on grounds of those disclosures.

The Dismissal

64. The respondent's stated reasons for dismissal are set out in the claimant's dismissal letter dated 15.6.18. As already found at paragraph 54 above, the allegations had their basis in fact and the respondent had a genuine suspicion in the claimant's guilt. The logical next step was for there to be a disciplinary hearing.

65. At our hearing, the claimant sought to argue the disciplinary case. However, he had an opportunity to attend the disciplinary hearing, have a union representative attend on his behalf and to adduce evidence to counter the allegations. He had a further opportunity to do so at the appeal. He chose not to. The decision to dismiss could only have been based on matters known to the disciplinary panel at the time and the matters the claimant raised at the tribunal hearing were not before the panel.

66. The disciplinary panel was chaired by KS, who we heard from. We accept KS' evidence that she had no knowledge of the claimant or his disclosures prior to her involvement in the disciplinary process. There is also no evidence that the other 2 governors on the panel had any prior knowledge of the claimant. The claimant submitted that the Head Teacher used her influence throughout the process. However, this was another allegation unsupported by any evidence.

67. We have reviewed the notes of the disciplinary hearing and are satisfied from these that there was a thorough consideration of the allegations and reasoned findings for the conclusions reached [518-527].

68. In those circumstances, had we found that there had been qualifying disclosures, we would have gone on to find that they were not the reason for dismissal.

Wrongful Dismissal

69. Having heard evidence from the respondent as to the reason for the dismissal and the evidence relied upon, and having heard the claimant's explanation, we are satisfied on balance of probability that the claimant was guilty of conduct which, cumulatively, amounted to gross misconduct.

70. On that basis, the respondent was contractually entitled to dismiss the claimant without notice or notice pay. The wrongful dismissal claim is not made out.

Judgment

71. The unanimous decision of the tribunal is that all claims fail and are dismissed.

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Employment Judge Balogun
Date: 7 September 2020