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EMPLOYMENT TRIBUNALS

Claimant		*Respondents*
Mrs F Rizvi	**v**	**Capital Care Services (UK) Ltd**

Heard at: London Central **On**: 6 February 2019

Before: Employment Judge Brown

Representation
For the Claimant: In person
For the Respondent: Did not attend and was not represented

JUDGMENT

The judgment of the Employment Tribunal is that:-

1 The Respondent automatically unfairly dismissed the Claimant because she had made protected disclosures under *s.103A Employment Rights Act 1996*.

2 The Respondent subjected the Claimant to protected disclosure detriments when it threatened to report her to newspapers, accused her of fraud, blocked access to her company email account, disconnected her mobile telephone and threatened to dismiss her.

3 The Respondent shall pay the Claimant a grand total of £ 48,512.59 in compensation for unfair dismissal comprised as follows:

- **(1) A basic award of £8,068.50;**
- **(2) A compensatory award of £40,444.09 calculated thus:**
  - **a. Loss of earnings: 45.5 weeks x £689.54 net weekly pay = £31,374.07**
  - **b. Loss of statutory rights: 2 weeks x £489 = £978**
  - **c. Total £31,374.07 + £978 = £32,352.07**
  - **d. ACAS uplift 25% applied to £32,352.07 = £40,444.09**

4 The Respondent shall pay the Claimant a total of £8,761 in compensation for injury to feelings for protected disclosure detriment, comprising £8,000 for injury to feelings and £761 interest.

REASONS

Preliminary

1. The Claimant brings complaints of ordinary and automatically unfair dismissal, under *s.103A Employment Rights Act 1996,* and protected disclosure detriment, against the Respondent, her former employer. The Claimant had also brought a claim against Positive Healthcare Plc, the Respondent's holding company, but this was struck out on 5 September 2018. She had brought a claim against Gary Ashworth, but the Claimant withdrew this on 10 December 2018.

2. The issues to be decided in the claim were agreed between the parties and were attached to a Preliminary Hearing Case Management Outcome before Employment Judge Okafor-Jones, dated 9 July 2018. They were:

List of Issues

(1) Do the matters set out in the Claimant's Particulars of Claim disclose causes of action against the Second and/or Third Respondent falling within the Jurisdiction of the Employment Tribunals? [This being the subject matter of the Respondents' Application to discharge the Second and/or Third Respondent, to be heard on 9th July 2018. The Respondents' submit that the Claims against these two Respondents are misconceived in fact and in law, the Claimant being the employee of the First Respondent, and not an employee or worker of either the Second or Third Respondent, or misconceived and out of time, as against the Third Respondent];

(2) Is the Claimant's Solicitor's Letter of 22nd November 2018 a qualifying and protected disclosure for the purposes of Section 43 of the ERA 1996? [The Respondents seek a determination of this point as a preliminary issue. The Respondents submit the letter does not meet the general requirements of Section 43 of the ERA 1996, nor the specific public interest requirement. In particular the letter does not refer to the Claimant's later pleaded assertions that the Second Respondent had engaged in or was engaging in criminal conduct, and/or conduct that had mislead and deceived, and/or had the potential to mislead and deceive, HMRC and/or other public bodies and/or clients (presumably of the First Respondent). The letter made no public interest assertion and only alleged conduct by the Respondents concerning the Claimant and her husband's private rights as, respectively, shareholders in the First Respondent and Fine Locums Limited (a subsidiary of the Second Respondent) ("FL") and as parties to a share purchase between the Claimant and her husband, FL and the First and Second Respondent.];

(3) On 15th December 2017 the Claimant was summarily dismissed on grounds of falsifying/instructing employees of the First Respondent to falsify documents in relation to the recruitment and placing of candidates by the First Respondent for medical roles in the NHS. Did the First Respondent (and insofar as it may be necessary to establish, the Second and Third Respondents) hold a genuine belief that the Claimant had falsified/instructed others to falsify the said documents? [The alleged falsification was in relation to documents falsified by the Claimant and/or falsified at or under her instruction or supervision, during the course of her employment by the First Respondent, in particular in respect of documents for the October 2017 audit. The Respondents submit that this amounted to gross misconduct by the Claimant in relation to the First Respondent, breach of her fiduciary duties owed to the Respondents, breach of her contract of employment, breach of the share sale agreement by which she had sold her majority shareholding in the First Respondent to the Second Respondent and, by its nature, conduct that destroyed the relationship of trust and confidence between the Claimant and the Respondents, warranting the sanction of summary dismissal];

(4) If the First Respondent (and insofar as it may be necessary to establish, the Second & Third Respondents) genuinely held this belief then was this in all the circumstances a reasonable belief? Did the First Respondent make sufficient inquiry into the alleged misconduct?

(3) Did the Claimant have an adequate and sufficient opportunity to respond to the allegations of misconduct? Did she avail herself of this opportunity?

(4) Was the Claimant given an opportunity to appeal the decision to summarily dismiss. Did she avail herself of this opportunity?

(5) Was the Respondents' stated reason (the aforesaid belief) the real reason for the dismissal. If not, then what was the real reason?

(6) If it be held that the dismissal was unfair, then did the Claimant in fact falsify/instruct employees of the First Respondent to falsify documents? If so then is she entitled to any award from the Tribunal? [Going to both Polkey and Contributory Fault. The Respondents submit that the Claimant would have been dismissed in any event and that she was 100% at contributory fault. The Employment Tribunal will be required to make findings of fact in respect of the Claimant's actual conduct on the civil standard, the burden of proof being on the Respondents].

(7) Was the Claimant subjected to a detriment as alleged at paragraph 20 of the Claimant's Particulars of Claim?

3. The Claimant presented her claim on 6 April 2018. She relied on an email of 22 November 2017 as amounting to a qualifying protected disclosure. She contended that, in her reasonable belief, the Claimant had disclosed information tending to show that a criminal offence had been or was being committed by superficially putting business through group companies, misleading HMRC and NHS Trusts, and/or that the Respondent was breaching a legal obligation by infringing the terms of the Claimant's shareholders agreement.

4. The Claimant relied on the following detriments in her protected disclosure detriment claim: accusing the Claimant of fraud, threatening her with dismissal and/or damage to her reputation if she did not resign, telling her to remain away from the work place, blocking her access to emails and deciding to dismiss the Claimant for fraud.

5. The Respondent company, Capital Care Services Limited, went in to liquidation on 29 October 2018. The liquidators did not object to the confirmed that they did not intend to attend the Hearing today. The Claimant did attend. She made a witness statement and brought some documents. I read the Claimant's witness statement and heard evidence from her.

6. The Claimant produced a Schedule of loss. I accepted the figures, for the basis of calculation, as accurate.

Findings of Fact

7. The Claimant was employed by the Respondent as Chief Executive Officer (CEO) from 1 April 2006 until 15 December 2017, when she was summarily dismissed. The Respondent, Capital Care Services UK Ltd, is a medical recruitment company which supplies temporary and permanent clinical staff to the NHS and other health care providers. The Claimant set up the Respondent company in 2003. The Claimant sold 75% of her shares in the company to Positive Health Care Plc, the former Second Respondent in this case, in 2015. She remained employed as CEO thereafter.

8. The Respondent company had an NHS Collaborative Procurement Partnership National Clinical Staffing Framework Agreement Agency Workers File Audit on 19 October 2017. It failed the Audit. On 8 November 2017, the Respondent was suspended from supplying staff to the NHS. On 22 November 2017, the Claimant's solicitor, Gary Smith, wrote to Mr Ashworth and Mr Ledbury, Senior Managers at the Respondent. He said that he was acting for the Claimant and Dr Siad Rizvi and had previously acted for them on their sale of shares in Capital Care Services UK Ltd ("CL") and Fine Locums ("FL") to Positive Health Care Plc on 30 June 2016. He said that the Claimant was very concerned that decisions were being taken in Capital Care Services (UK) Ltd in breach of the terms of the shareholders agreement for Capital Care Services Ltd and may also amount to unfairly prejudicial conduct under the Companies Act 2006. He said that the Claimant had informed him of the following-

> "(1) That circa £620,000 has been taken by Positive Healthcare out of CCS and FL since the completion of the transaction to enable Positive

> Healthcare to repay sums that it owed to shareholders. These sums have not been approved by my clients and my clients feel their withdrawal has left CCS and FL in a precarious financial position;
>
> (2) That CCS and FL are being charged circa £200,000 per year in management fees including being used to fund all of the interest costs of the bonds issued by Positive to help fund the acquisition of CCS and FL;
>
> (3) That business is being put through other group companies when it should be going though CCS and FL;
>
> (4) That FL is being starved of business and cash in a deliberate effort to run that business down and thereby reduce the fair value attributable to my clients shares in this business…
>
> You will be aware of the provisions of the shareholders agreement relating to CCS and FL in particular the need to get the consent of all the shareholders before taking certain acts…"

9. The Claimant told me, in evidence today, that she believed that Positive Healthcare and the Respondent company were deliberately taking large sums of money out of the Respondent company. She told me that she believed that this was being done in breach of the shareholders agreement and to avoid tax being paid to HMRC.

10. On 27 November 2017, the Respondent's solicitor replied to the Claimant's solicitor, purporting to answer the solicitor's assertions. He also said, "However, my clients do feel that the businesses are in serious jeopardy due to the actions of your clients and in particular Mrs Faiza Rizvi ("FR") and furthermore that certain warranties were themselves given with willful concealment such that the liability for inter alia the following shall not be limited or excluded …. The below examples are a reflection of the practices that would have been adopted prior to the completion of the Share Purchase Agreement – … FR knowingly breached applicable laws by authorising the falsifying documents (sic) and not keeping the personal information secure or otherwise abusing such information. I am reliably informed by my client that they themselves witnessed the falsification of documents in order to pass an audit – … the company, given the falsification of documents, did not hold the required licenses etc – .. the consents it held were likely to be suspended … that given the above, the companies were clearly in default of the terms of material contracts … From the above you will no doubt understand my client's position in that in order to ensure that the companies are compliant with laws, regulations and contracts there is no alternative but to implement robust systems and practices and remove FR from any position of control and responsibility as soon as possible. For the avoidance of doubt the following will be implemented at the earliest possible convenience… FR's service contract shall be terminated for cause as she has clearly failed in her duties as set out in the schedule of her employment agreement …".

11. On 28 November 2017 the Respondent held its monthly Board Meeting. The Claimant told me in evidence today that, at that Board Meeting, she was told

that she had committed fraud and should resign and be paid one month's salary. The Claimant told the Tribunal that she informed the Meeting that she had not done anything wrong and would not resign.

12. The Claimant also told me today that she requested a meeting with the Chairperson of the Respondent, Mr Ashworth, which took place on 30 November 2017. At that meeting, the Claimant again said that she had done nothing wrong, but the Chairperson said he would contact the Daily Mail, who would come to the Claimant's home and question her. He again said that the Claimant should resign.

13. The Claimant told me that, after the Board meeting on 28 November 2017, the Respondent blocked the Claimant's access to her company email and disconnected her company telephone.

14. On 15 December 2017 Gary Ashworth, the Company Chairperson, wrote to the Claimant. He said that, on 28 November 2017, the Company's Board of Directors met to discuss the events leading up to the audit carried out on 20 October 2017. He said that the Claimant had been informed in the meeting that the Board considered that the Claimant had fraudulently amended or instructed others to fraudulently amend compliance documentation on 19 October 2017 in preparation for the audit visit on 20 October 2017. Mr Ashworth said that the Respondent had delayed issuing a formal notice termination of the Claimant's employment, to give her the opportunity to consider her position and to resign. Mr Ashworth said that the Respondent had evidence that on 19 October 2017, inter alia, the Claimant had instructed staff to falsify compliance documents relating to nurses, including, amongst other things, falsifying drug tests, training records and references. He concluded, "In the circumstances, please accept this letter as confirmation of the immediate termination of your employment with the company on the grounds of gross misconduct. The company considers you to be, amongst other things, guilty of fraudulent behaviour, dishonesty and to have brought the company into disrepute. Your employment will terminate with immediate effect, without notice or payment in lieu of notice and with no liability to make any further payment to you…".

15. The Respondent had not invited the Claimant to a disciplinary meeting before sending the letter of dismissal. It had not provided, and did not provide, the Claimant with any written evidence or written statements. It did not investigate the allegations with the Claimant before dismissing her. It did not hold a disciplinary meeting. It did not provide the Claimant with any right of appeal against her dismissal.

16. The Claimant told the Tribunal that the Respondent's NHS contract was reinstated in March 2018, but that a number of the Respondents employees left to join a rival company. She told me that, after the Respondent went into liquidation on 29 October 2018, no employees were employed thereafter.

17. The Claimant told the Tribunal that she believed that the Respondent had deliberately gone in to liquidation to avoid paying compensation in the present claim. On the evidence, however, it was clear that there were serious problems

with the Respondent company in 2017 and 2018, including the temporary loss of an important NHS contract, the company having failed an audit in November 2017, and the departure of many of the Respondent's employees to a rival company. I had no financial documents relating to the Respondent company; no evidence of its liabilities and indebtedness, or any audited accounts. On the balance of evidence, I was not able to find that the Respondent had deliberately entered into liquidation to avoid this claim.

18. The Claimant also told the Tribunal, and I accepted, that her threatened dismissal, the disconnection of her company email and telephone, the accusations of fraud against her and the threats of Daily Mail journalists being sent to the Claimant's home have had a serious affect in the Claimant's emotional state. She has been worried about journalists attending her home, although, in fact, none have done. She told me she has been prescribed sleeping tablets by her GP. I accepted her evidence.

Relevant Law

Protected Disclosures

19. An employee who makes a "protected disclosure" is given protection against his employer subjecting him to a detriment, or dismissing him, because he has made such a protected disclosure.

20. "Protected disclosure" is defined in *s43A Employment Rights Act 1996:*

"In this Act a "protected disclosure" means a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H."

21. "Qualifying disclosures" are defined by *s43B ERA 1996,*

"43B Disclosures qualifying for protection

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

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

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

22. The disclosure must be a disclosure of information, of facts rather than opinion or allegation (although it may disclose both information and opinions/allegations), *Cavendish Munro Professional Risk Management v Geldud* [2010] ICR [24] – [25]; *Kilraine v LB Wandsworth* [2016] IRLR 422. The disclosure must, considered in context, be sufficient to indicate the legal obligation in relation to which the Claimant believes that there has been or is likely to be non-compliance, *Fincham v HM Prison Service* EAT 19 December 2002, unrep; *Western Union Payment Services UK Limited v Anastasiou* EAT 21 February 2014, unrep.

23. Protection from being subjected to a detriment is afforded by s47B ERA 1996, which provides:

"47B Protected disclosures
A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure."

24. A "whistleblower" who has been subjected to a detriment by reason of having made protected disclosures may apply for compensation to an Employment Tribunal under *s48 ERA 1996*. On such a complaint, it is for the employer to show the ground upon which any act was done, *s48(2) ERA 1996*.

25. The term 'detriment has been explained by Lord Hope in *Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] ICR 337 at 34:“ .. [the] tribunal must find that by reason of the act or acts complained of a reasonable worker would or might take the view that he had thereby been disadvantaged in the circumstances in which he had thereafter to work. …….. This is a test of materiality. Is the treatment of such a kind that a reasonable worker would or might take the view that in all the circumstances it was to his detriment? An unjustified sense of grievance cannot amount to "detriment."

Protected Disclosure Detriment – Causation

26. In *Fecitt v NHS Manchester* [2012] ICR 372, the Court of Appeal held that the test of whether an employee has been subjected to a detriment on the ground that he had made a protected disclosure is satisfied if, “the protected disclosure materially influences (in the sense of being more than a trivial influence) the employer's treatment of the whistleblower." Per Elias J at para [45].

27. The making of a protected disclosure cannot shield an employee from disciplinary action, including dismissal, which is taken for reasons other than the fact that the employee has made a protected disclosure, *Bolton School v Evans* [2007] ICR 641.

Unfair Dismissal

28. By *s94 Employment Rights Act 1996*, an employee has the right not to be unfairly dismissed by his employer.

29. *s98 Employment Rights Act 1996* provides it is for the employer to show the reason for a dismissal and that such a reason is a potentially fair reason under *s 98(2) ERA 1996.*

Automatically Unfair Dismissal

30. A whistleblower who has been dismissed by reason of making a protected disclosure is regarded as having been automatically unfairly dismissed, *s103A ERA 1996*, "An employee who is dismissed shall be regarded for the purposes of

this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure."

Ordinary Unfair Dismissal

31. Conduct is a potentially fair reason for dismissal, *s98(2) ERA 1996*.

32. If the employer satisfies the Employment Tribunal that the reason for dismissal was a potentially fair reason, then the Employment Tribunal goes on to consider whether the dismissal was in fact fair under *s98(4) Employment Rights Act 1996*. In doing so, the Employment Tribunal applies a neutral burden of proof.

33. In considering whether a conduct dismissal is fair, the Employment Tribunal is guided by the principles set out in *British Home Stores Ltd v Burchell* [1978] IRLR 379, affirmed by the Court of Appeal in *Post Office v Foley* [2000] ICR 1283.

34. Under *Burchell* the Employment Tribunal must consider whether or not the employer had an honest belief in the guilt of the employee of misconduct at the time of dismissal. Second, the Employment Tribunal considers whether the employer, had in its mind, reasonable grounds upon which to sustain that belief. Third, the Employment Tribunal considers whether the employer, at the stage at which he formed the belief on those grounds, had carried out as much investigation into the matter as was reasonable in all the circumstances of the case.

35. The Employment Tribunal also considers whether the employer's decision to dismiss was within a range of reasonable responses to the misconduct.

36. In applying each of these tests the Employment Tribunal allows a broad band of reasonable responses to the employer, *Iceland Frozen Foods v Jones* [1982] IRLR 439.

Injury to Feelings

37. Where an Employment Tribunal finds a detriment complaint under *s48 ERA 1996* well-founded, it must make a declaration to that effect, *s49(1)(a) ERA 1996* and may make an award of compensation, *s49(1)(b) ERA 1996.* The amount of compensation is such as the Tribunal considers just and equitable in all the circumstances having regard to the infringement and loss attributable to the act, including expenses reasonably incurred by the complainant in consequence and any loss of benefit suffered, *ss49(2) & (3) ERA*.

38. The EAT held, in *Virgo Fidelis Senior School v Boyle* [2004] ICR 1210, EAT, that it was appropriate to adopt the same approach to compensation in whistleblowing detriment claims as has been taken in discrimination claims.

39. The Tribunal is guided by principles set out in *Prison Service v Johnson* [1997] IRLR 162 in relation to assessing injury to feeling awards. Awards for

injury to feelings are compensatory. They should be just to both parties, fully compensating the Claimant, (without punishing the Respondent) only for proven, unlawful discrimination for which the Respondent is liable. Awards that are too low would diminish respect for the policy underlying anti-discrimination legislation. However, excessive awards could also have the same effect. Awards need to command public respect. Society has condemned discrimination because of a protected characteristic and awards must ensure that it is seen to be wrong.

40. Awards should bear some broad general similarity to the range of awards in personal injury cases. It is helpful to consider the band into which the injury falls, see *Vento v Chief Constable of West Yorkshire Police* [2003] IRLR 102 In *Vento* the Court of Appeal said that the top band should be awarded in the most serious cases, such as where there has been a lengthy campaign of discriminatory harassment on the grounds of race or sex. The middle band should be use for serious cases which do not merit an award in the highest band the lower band is appropriate for less serious cases such as where the act of discrimination is an isolated or one-off occurrence.

41. *Joint Presidential Guidance on Employment Tribunal Awards for Injury to Feelings and Psychiatric Injury following Da Vinci Construction (UK) Limited* [2017] EWCA Civ 879 was issued on 4 September 2017. It reviewed the effect of recent case law and inflation on the *Vento* Bands and said that, when awards are made by Tribunals, the *Vento* bands should have the appropriate inflation index applied to them, followed by a 10% uplift on account of *Simmons v Castle* [2012] EWCA Civ 1039 *Simmons v Castle* [2012] EWCA Civ 1288.

42. The *Joint Presidential Guidance* concluded as follows,"…as at 4 September 2017, that produces a lower band of £800 to £8,400 (less serious cases); a middle band of £8,400 to £25,000 (cases that did not merit an award in the upper band); and an upper band of £25,200 to £42,000 (the most serious cases), with the most exceptional cases capable of exceeding £42,000. … the Employment Tribunal retains its discretion as to which band applies and where in the band the appropriate award should fall."

43. In *Kemeh v Ministry of Defence* [2014] EWCA Civ 91, [2014] IRLR 377, the Court of Appeal approved the EAT's reduction of an Employment Tribunal's award for injury to feelings of £12,000 in respect of a one-off racial slur. The Tribunal had seen the case as one falling within the middle band of *Vento*, but the EAT reduced the award to £6,000. The Court of Appeal considered that a one-off slur such as this, with no lasting employment consequences, would normally only qualify for the lower *Vento* band.

Discussion and Decision

44. When I considered the facts and evidence in this case, I was mindful that I had heard only evidence from the Claimant and that the Claimant had produced a limited number of documents, about 20 pages in total. While, for example, I had seen the Agenda from the Respondent's Board Meeting in November 2017, I did not have the Minutes of the Board Meeting.

45. Nevertheless, it was clear that the Claimant's solicitor had sent a letter to the Respondent on 22 November 2017 which said, in terms, that the Respondent had taken decisions which were in breach of the terms of the shareholders agreement and might amount to unfairly prejudicial conduct under the Companies Act 2006. It set out information about business being put through other group companies, when this business should have been going through the Respondent company, the Respondent company being charged hundreds of thousands of pounds a year in management fees and about funds being removed from the Respondent company without the Claimant's approval.

46. I considered that the letter did amount to a disclosure of information which, in the Claimant's reasonable belief, did tend to show that a criminal offence was being committed - that is, by putting business through group companies rather than the Respondent, which therefore misstated the true revenue and was likely to mislead HMRC and others. I also considered that it disclosed information which, in her reasonable belief, tended to show that there had been a breach of legal obligations, by infringing the terms of the Claimant's shareholder agreement.

47. I also considered that, in the Claimant's reasonable belief, those disclosures were made in the public interest. There is public interest in companies being correctly run according to their contractual legal obligations. The public interest in companies being run according to the terms of shareholders agreements is reflected in the statutory provisions of *s994 Companies Act 2006.*

48. I therefore considered that the 22 November 2017 letter set out protected disclosures by the Claimant. The Respondent's direct response to that letter alleged that the Claimant had herself breached her duties and had falsified documents and said that the Claimant's service contract would be terminated.

49. I accepted the Claimant's evidence that, at the 28 November 2017 Board Meeting, after the Claimant's solicitor's letter, the Respondent's chairperson told the Claimant that she had committed fraud and that she should resign. I accepted her evidence that, immediately following that Meeting, the Respondent blocked the Claimant's access to emails and disconnected her telephone; I also accepted her evidence that on 30 November 2017 the Respondent's chairperson told the Claimant that he would inform the Daily Mail about the Claimant and her actions and that the Daily Mail would send journalists to the Claimant's house to question her, if she did not resign.

50. Chronologically, these matters followed the Claimant's protected disclosures. Furthermore, on the facts, the Respondent failed to follow any fair procedure before dismissing the Claimant. It did not invite the Claimant to a disciplinary hearing, it did not provide her with evidence in advance of any hearing, it did not provide her with any witness statements relating to her alleged wrong doing, or any other documents which supported any alleged wrong doing. It did not provide the Claimant with a right of appeal.

51. It seemed to me that I could fairly draw the inference, from the Respondent's failure to follow any fair procedure, that the Respondent was not interested in establishing the truth of any allegations against the Claimant, but simply wished to dismiss her, come what may.

52. Furthermore, it seemed to me that the Respondent's chairman had acted in an unreasonable and oppressive way on 30 November 2017, in threatening to alert the Daily Mail to the Claimant's alleged actions, so that it would send journalists to her house. That threat appeared to be intended to put pressure on the Claimant not pursue her own allegations against the Respondent, but to encourage her to resign from her employment.

53. The Respondent has not provided me with any evidence of any fair reason for dismissal.

54. I have decided, on the balance of probabilities, given the Respondent's complete lack of fairness in relation to the dismissal and its apparent lack of interest in establishing the truth of the allegations it was making against the Claimant, that the reason for the dismissal, which followed the Claimant's protected disclosures, was the fact that the Claimant had made those protected disclosures. I decided that the Claimant's dismissal was for the automatically unfair reasons that she had made protected disclosures on 22 November 2017.

55. Even if I was wrong in that, and there was a potentially fair reason for the Claimant's dismissal, I found that the Respondent acted wholly unfairly pursuant to *s98(4) ERA 1996* in dismissing her. As I have set out, it failed to investigate the matters against the Claimant, failed to invite her to an investigatory hearing, failed to provide her with any evidence including documents or statements, failed to invite her to a disciplinary hearing and dismissed her without offering the right of appeal. The Respondent was in serious breach of the ACAS Code of Practice 1 on Disciplinary and Grievance Procedures. Its procedure had no semblance of fairness.

56. Furthermore, I found that the Respondent subjected the Claimant to detriments following her protected disclosures. She was accused of fraud, her telephone was disconnected, her access to emails was blocked, threats to her reputation were made, in that the Chairman threatened to contact the Daily Mail and contact the press, to send them to her house to question her. The Respondent threatened to dismiss her. Those were all detriments, in that a reasonable person would consider themselves disadvantaged in the work place as a result of them.

57. The Respondent has provided no evidence of any alternative reason for the detriments, other than the Claimant's protected disclosures. They followed the protected disclosures and, while the Respondent made allegations against the Claimant, it showed no interest in fairly investigating those. The burden of proof was on the Respondent to show the reasons for detriments and it failed to do so. I also decided that the Respondent subjected the Claimant to detriments because she had made protected disclosures.

Remedy

Unfair Dismissal

58. The Claimant told me, and I accepted, that she had been employed for 11 complete years at the time of her dismissal. Her gross weekly pay was £923.08 and her net weekly pay £689.54. The maximum weekly pay under the Employment Rights Act 1996 at the relevant time was £489. The Claimant is aged 60. The basic award was calculated as follows: 1.5 x 11 x £489 = £8,068.50.

59. I decided that the Respondent went into liquidation on 29 October 2019. No employees remained thereafter - all were made redundant. While the Claimant contended that the Respondent went into liquidation deliberately to avoid this claim, I considered that there were also facts which indicated that the Respondent company was in genuine difficulties. I have not seen any financial documentation which supports the contention that the Respondent deliberately went into liquidation, rather than that the liquidation was genuinely the result of insolvency. I therefore did not find, on the balance of probabilities that the Respondent deliberately put the company in to insolvency. I found that the Claimant would had been made redundant, along with all other employees, on 29 October 2018.

60. The Claimant's loss, resulting from her dismissal, stopped at that point. I therefore awarded a compensatory award to cover the 45 ½ weeks from the date of her dismissal until 29 October 2018. 45.5 x £689.54 = £31,374.07. I awarded the Claimant the loss of statutory rights, 2 weeks x £489 = £978. The total compensatory award was £32,352.07.

61. I decided that an ACAS uplift should be applied. The Respondent was in wholesale breach of the ACAS Code of Practice. The company had considerable revenue - as indicated by the sums set out in the Claimant's solicitors letter of 22 November 2017 - and it ought to have had the resources to obtain proper HR advice and follow fair procedures. I decided that the maximum uplift of 25% was appropriate. 1.25 x £32,352.07 = £40,440.09.

Protected Disclosure Detriment – Injury to Feelings

62. I also awarded the Claimant an injury to feelings award for protected disclosure detriment. While much of the Claimant's injury to feelings must have followed from the fact of the dismissal itself, there were additional matters which were detrimental to her, including threats to report her to the press, accusations of fraud against her, the immediate suspension of her email and disconnection of her telephone, even before her dismissal. These constituted a number of acts over a short period of time. I accepted that the Claimant was very distressed and continues to be so, and has been prescribed sleeping tablets by her GP, albeit that I had no detailed medical evidence in this regard. I found that those acts, particularly the threat to report the Claimant to the Daily Mail and to encourage journalists to come to her house, were oppressive in nature.

63. While many of the acts were associated with the dismissal and took place over a short period of time, I considered that the appropriate award was at the very top of the bottom band of Vento. I therefore awarded the Claimant £8,000 for injury to feelings. I also awarded the Claimant 8% interest from November 2017 to the date of the Final Hearing, for 434 days. The calculation was 434/365 x 0.08 x £8,000 = £761. The total injury to feelings award therefore was £8,761.

64. I ordered the Respondent to pay the Claimant a grand total of £48,512.59 in compensation for unfair dismissal and £8,761 in compensation for injury to feelings for protected disclosure detriment.

_____

Employment Judge Brown

Dated: 12 February 2019

Judgment and Reasons sent to the parties on:

12 February 2019

For the Tribunal Office