



EMPLOYMENT TRIBUNALS

Claimant:
Miss E Meade

Respondent:
**The Heyford
School Trust**

Heard at: **Reading CVP** **On: 13th, 14th and 15th September
2021**

Before: **Employment Judge A Frazer**

Representation:

Claimant:
Miss Meade (in
person)

Respondent:
Mr A Williams
(Solicitor)

JUDGMENT

The Claimant's claim for unfair dismissal under s.103A Employment Rights Act 1996 is dismissed.

REASONS

1. The claim before me is for automatically unfair dismissal under s.103A Employment Rights Act. The Claimant brought her claim by ET1 on 24th January 2018. By way of a response dated 16th March 2018 the Respondent resisted the claim but requested further and better particulars of the protected disclosures. By a case management order of EJ Vowles dated 26th October

2018 the claim was identified as one under s.103A ERA and the Claimant was directed to provide further and better particulars of her protected disclosures specifically as *'details of the disclosure of information relied upon as protected disclosures including the date and contents of each disclosure, to whom it was made and by what means'*. The Claimant was to state if any other person was present when the disclosure was made. The Claimant provided a response to this request which appears at page 42 of the bundle and which I shall come to in due course. This listed points 1 to 9 and a table relating to children missing education that the Claimant said that she had brought to the attention of Mrs Healey, Principal. At 8.2 the Claimant outlined that her claims were being brought under 43(B)(1)(b) and (d) and the reasons why. Under 8.3 she set out what she believed was underlying the Respondent's reason for her dismissal.

2. I had witness statements from Miss Meade, Mrs Law and Mrs Healey and a bundle running to 490 pages. There was some discussion at the outset about documents missing from the bundle. Mr Williams sent through 7 additional attachments by pdf, the majority of which were financial accounts save that the one document that was referred to in cross-examination was the Respondent's OFSTED report from 2019. I heard evidence from all witnesses under cross-examination and submissions from both parties' representatives. The facts as found which are relevant to the Claimant's claim are set out below.
3. The Claimant is a qualified teacher and has almost twenty years' experience as a SENCO. She commenced employment with Heyford Park Free School on 24th April 2017 as a SENCO and Inclusion Lead.
4. The offer letter is dated 4th May 2017 and is at page 118. It was a fixed-term contract for one year. The Claimant was to be subject to a probationary period of 6 months and was to be sent an employee handbook and contract. The Claimant requested through her employment agency, Capita, that she commence on 30th March in order to have an induction and hand over with the current SENCO for a week with days off in lieu in the summer term. This was agreed by the Respondent.
5. Her job description is at page 99 of the bundle and describes the purpose as *'strategic development of the school's SEN provision and oversight of the day to day operation of the policy with the aim of raising SEN pupil achievement. Strategic development of inclusion across the school'*. The vision and purpose at p.100 was to; *'put provision in place to ensure that progression for pupils with SEN improves relative to those without SEN; ensure that the school carries out its statutory responsibilities regarding all students with an Education Health and Care Plan (EHC); promote and develop a coherent inclusion strategy; support all staff in understanding the needs of SEN pupils; support departmental developments of SEN provision; monitor progress towards targets for pupils with SEN; analyse and interpret relevant school, local and national data, liaise with staff, parents, external agencies and other schools to co-ordinate their contribution, provide maximum support and ensure continuity of provision.'*

6. The Claimant's line manager was Karen Healey, the then Principal of the school. She had commenced employment with the school in January 2017. The school runs provision from nursery to post 16 and has about 550 children on the role and approximately 60 staff. The targets were driven at a top level by the governing body. There was a School Strategic Plan through which the targets were delivered which was arrived at by the governing body. When the Claimant commenced her employment it was acknowledged that there was a lot for her to do and so Mrs Healey and her sat down and looked at what her priorities would be in the short term with the Claimant providing her expertise on what needed to be done. Mrs Healey had informal conversations with the Claimant but also had line management meetings during which she took notes. I did not find whether or not the notes were written at the time were pertinent to the issues that I had to determine, their contemporaneity having been raised an issue.
7. Between the 9th July and 16th July there were a number of complaints raised about the Claimant: two from parents and two from members of staff. These are in the bundle between pages 122 and 138. I have read through these complaints and there was no indication to me that these were anything other than genuine concerns that were raised separately by individuals. I did not find that there was any evidence that they were orchestrated, concocted or designed by Mrs Healey in an attempt to get rid of the Claimant. Indeed this was not something that was put to Mrs Healey and as it is a serious allegation, I would have expected that it would be put to a witness. The complaint from Mrs Dallas refers to the concerns about the Claimant's attitude and behaviour towards her and her colleagues and is finalised with a paragraph which refers to her being optimistic that she can work positively with the Claimant in the future (p.138) which I find was in keeping with the genuine desire to smooth the working relationship with the Claimant.
8. Accordingly and having received these written complaints, on 17th July Mrs Healey wrote to the Claimant to invite her to a probationary review meeting on 19th July to discuss '*unsatisfactory output of work, further particulars being that complaints have been received by parents and other members of staff regarding you failing to work to the school expectations and procedures.*' The Claimant was given the right of accompaniment and warned that one of the range of outcomes could be the termination of her employment. This was the first such review that the school had carried out and after this happened it became part of the school's standard practice. The Claimant was only given two days' notice of the meeting and on 18th July wrote requesting a postponement. She also requested documentation referred to in the letter, induction paperwork, the school handbook, any programme that was followed for her and the school expectations and procedures around her role (as referred to). The meeting was convened on advice from the Respondent's HR advisors, Peninsula. The Respondent does not have a centralised HR department so outsources this function. I do not consider that there was any attempt to hijack the Claimant by organising the meeting at short notice and it was in any event postponed to allow her more time to 25th July 2017. I find that Mrs Healey did send her the documentation that she requested in the

form of the complaints and the handbook as she says in her email of 18th July *'please find enclosed the employee handbook and documentation requested'*. In the final probationary meeting in November the minutes refer to the Claimant having been copied into the complaints in July. Further throughout the intervening correspondence the Claimant refers to the employee handbook.

9. On 19th July the Claimant raised a formal grievance to Mrs Healey. The contents of the letter refer to the Claimant feeling that she had been subject to a 'witch hunt' and mentioned that it had come to her awareness that on joining the school she had been googled. This had followed an incident where she had been informed of such by another member of staff, Vicky Wallington. She complained that this had been the case despite her having provided references. After that she stated that she felt that she was being ignored and belittled. She also made a number of points where she felt that the school had not followed the appropriate procedure in inviting her to a probationary review including that the school had not dealt with the complaints raised informally with her pursuant to paragraph 19G of the handbook. She referred to the school not having handled Vicky's behaviour appropriately and affording her dignity at work.
10. The Claimant was invited to a grievance hearing by Sarah McCready, governor, whose letter is at page 148. Her summary of the Claimant's concerns is outlined on that page. She was given the right of accompaniment. The hearing took place on 11th September 2017. The thrust of the grievance was regarding Vicky Wallington's and Karen Healey's behaviour towards her. She complained that the organisation had not provided her with equal opportunities, that she was not afforded the same opportunity as others to complete the induction programme and that the organisation had breached a number of procedures in the manner in which the probationary review had been arranged, which had been a breach of process. The findings of the grievance are at p.185. A consultant from Peninsula's Face2face consultancy was engaged to hear the grievance. There was the upholding of a finding regarding Mrs Healey and Mrs Wallington relating to googling the claimant and a previous employment tribunal, which was found to be inappropriate. There was also a finding that Mrs Wallington had shouted at the Claimant in a meeting. In my finding the thrust of the grievance letter dealt with the Claimant's dissatisfaction with relationship issues in the main and not with any whistleblowing concerns.
11. Significantly however the point that was referred to in relation to the whistleblowing procedure was point 6 in the letter, namely the point that the Claimant had raised relating to whether the school had carried out recruitment processes in relation to equal opportunities. In the grievance letter Mrs McCready stated *'point 6 related to concerns that you have asked to be addressed under the whistleblowing procedure and hence that matter will be responded to under that process by the governing body'*.
12. The Claimant appealed the grievance. Notably and additionally, at that juncture, it had been observed by the consultant that *'there was damage to*

the employer/employee relationship and this is causing disturbance to the workplace and therefore he would recommend that they consider workplace mediation in order to build a professional working relationship between both parties.' The points regarding the management of the probationary review process were dismissed.

13. On 11th October 2017 the Claimant's point 6 in relation to whistleblowing was referred to Gale Law, Governor, under the Respondent's whistleblowing policy. She met with the Claimant on 14th November 2017. The complaint from the Claimant was that she was prevented from applying for certain roles internally advertised within the school. This was not upheld. Secondly it was noted that the Claimant had complained that key staff were insufficiently trained to undertake their roles as designated safeguarding lead. Mrs Law found that this was groundless as the postholder had completed her course prior to leaving the school and was certified. The Claimant had raised points regarding SEN students. It was acknowledged that the SEN area had suffered from a lack of in depth knowledge and resources for a significant period prior to the Claimant's appointment but Mrs Law's view was that this had not endangered any students. She went on to say in this letter *'progress had been erratic during the tenure of the previous SENCO and since her departure in April it has taken a considerable period of time to bring the department up to an acceptable standard, there is evidence that you had made some contribution to this improvement. However there are also indications of a lack of timely, appropriate and useful action that have not assisted the degree of progress that might have been hoped for'*. Mrs Law also found that the Claimant at no point in time raised her concerns with the SEN governor, Mrs Robinson. She found no documented evidence that the Claimant had raised her concerns with Mrs Healey or with Mrs Robinson.
14. The Claimant was off sick from 5th September initially with headaches and then with work-related stress. Her sick note ran out on 1st October. She was then signed off until the end of October. She came back into work on 1st November 2017 and a return-to-work meeting was conducted between her and Mrs Healey. Because the Claimant had not informed of her return to work there had been no plan in place for a handover. The Respondent had had to organise a transfer of responsibilities while she was absent. In the notes on p.194 Ms Meade had said that she had assumed that because her sick note had expired on 21st the Respondent would be aware. There was supposed to be a welfare meeting but this did not happen. There was some discussion about a handover. I note that in the minutes of this meeting on page 194 Mrs Healey had asked the Claimant to be very clear about what the problems were that she had identified as part of SEN. There was also some discussion about the possible training for her on return. The Claimant was asked to go home as there needed to be measures put in place for a handover. The Claimant did not leave the premises immediately and upon request and contacted her union, making it clear that she believed that this was to do with her grievance/ whistleblowing complaint. The request to go on leave was put in writing on 1st November by Mrs Healey (p.196) who wrote again on 6th November to assure the Claimant that the action was in no way related to her raising grievance or whistleblowing concerns. On 3rd November the Claimant

was put on absence until 13th November pending the receipt of her appeal against grievance and that handover could not happen until the outcome of the grievance and until the Claimant was up to speed again with her areas of responsibility. In that email it was anticipated that following the grievance appeal there would be a meeting to discuss the return to work and all outstanding issues. In my finding at that point Mrs Healey had reached no determination to dismiss her as shown by the subjects of discussion in that correspondence.

15. On 10th November Mrs Healey telephoned the Claimant to advise her that upon her return she would be invited to a probationary meeting. The Claimant wrote that day saying that she had not received any documentation from her grievance appeal and that she would be happy to attend a meeting with a reasonable amount of notice. She felt that Mrs Healey was on a mission to victimise her as a result of her grievance and whistleblowing complaint.
16. On 10th November Rebecca Hughes Head of Primary collated notes regarding the Claimant. This was something which appears to have been requested by Mrs Healey but in my finding these were the complaints that were in existence before the point when the Claimant put in her grievance as they were raised by Mrs Hughes in July and were going to be the subject of the first review which was postponed upon the grievance investigation. The complaints raised by members of staff were in respect of their experience of interacting with the Claimant.
17. On 13th November a probationary meeting was held between Mrs Healey and Mrs Hughes, who had since become the Claimant's new line manager. The Claimant had phoned up to say that she was not attending the meeting as she was unwell. The meeting continued in her absence.
18. The meeting discussed two parental complaints. Alongside some allegations regarding the Claimant's particular interactions with these parents, there were complaints that the Claimant was hostile and unapproachable. There were complaints from occupational therapy that the Claimant had not replied to their communications. There was a complaint from a Ms Marin regarding failure to communicate with her regard to planning in response to tests from SEN students. There were allegations of how the Claimant had spoken to staff, been dismissive or ignored them. There was an allegation of failure to respond to emails from staff, parents and external organisations and one of failing to refer to other agencies in a timely manner.
19. The summary was that *'in summary your role requires you to work effectively with staff, parents and external agencies. During your probationary period this has not occurred and has led to parents and staff raising complaints and concerns formally and in July onwards. A number of agencies are now raising concerns regarding communications with you.'*

The Law

20. The Claimant brings her claim for automatically unfair dismissal under s.103A. She does not require the usual two years' qualifying service. Under s.43B a disclosure is protected if it is a qualifying disclosure. This is defined as '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 –
- b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he was subject and
 - d) that the health or safety of any individual has been, is being or is likely to be endangered.
21. Under s.43C a disclosure is protected if it is made to an employer or other qualified person.
22. In **Kilraine v London Borough of Wandsworth [2018] EWCA Civ 1436** at paragraph 35 Sales LJ held: 'in order for a statement or disclosure to be a qualifying disclosure according to this language it has to have sufficient factual content and specificity such as is capable of tending to show one of the matters listed in subsection (1).'
23. Under s.103A an employee who is dismissed 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.
24. In **Abernethy v Mott, Hay and Anderson [1974] ICR 323** Cairns LJ said:
- 'a reason for the dismissal of an employee is a set of facts known to the employer it may be beliefs held by him, which cause him to dismiss the employee'*.
25. The 'reverse burden of proof' operates in such circumstances. This was set out in **Kuzel v Roche Products Ltd [2008] EWCA Civ 380 CA**. The burden lies on the employee claiming unfair dismissal under the section to produce some evidence that she had made a protected disclosure. Once that evidential burden is discharged the legal burden is on the employer to establish that the reason was not of the proscribed kind.

Conclusions

26. The Claimant has the burden to establish that she made protected disclosures. There was initially a request for further and better particulars and then a response which is provided at page 43. Notwithstanding the complaints that were presented to Mrs Law the Claimant did not present her case as one where her disclosure was that she had provided information that tended to show that the school was not complying with equal opportunities legislation in its recruitment policy. There was an allusion that the Claimant had made to staff not being trained adequately to fulfil their roles but this was put in general terms.

27. Having regard to the further and better particulars at page 43 these were not a setting out of dates, information, what the information specified and to whom as required but bullet points. It was in closing that the Claimant identified her protected disclosures as the tables of concerns that she had raised in relation to specific children and the inadequacy of provision of education by the school to them. This was something that she raised with Mrs Law. I allowed the Claimant time in submissions to specifically address me on this point and outline her protected disclosures specifically.
28. For the avoidance of doubt 'I raised my concerns in relation to the training of staff' is not a protected disclosure owing to the lack of specificity. The handover document referred to which is at page 121, is also not a protected disclosure as this is simply a series of operational targets and the resultants impact and action required. Again, c, d and e are not disclosures of information which in themselves tend to show that there is a breach of a legal obligation or the endangering of health and safety. I did not consider that any of points 1 to 9 had the requisite specificity required to make them a protected disclosure.
29. The Claimant drew my attention to a document at page 470 of the bundle which was a table documenting concerns that she had raised in relation to a child who it was said was under prosecution for offences committed while away from school and was under a CIN plan but for whom there was no education provision. This contained information. There was also a document produced in relation to KJ at p.472 which said that in respect of this child, who was also in trouble with the police, there had been no alternative provision of education set up. In my finding there were disclosures of information. The Claimant set out explicit information which tended to show that the school had failed to comply with a legal obligation to which it was subject as concerned the statutory provision of education. The Claimant reasonably believed that there was a failure in this regard and to that end, there was some concession as to the inadequacy of provision in Mrs Law's letter. I consider that it would have been in the public interest for an employee to raise a point about this even in the context of a SENCO role as it concerned statutory duties relating to vulnerable children.
30. The Claimant's case was that she felt that Mrs Healey, having been presented with this information or this information having been presented to others, felt vulnerable and set about to dismiss her as it would be her 'head on the block' so to speak if this came to the attention of external agencies and particularly OFSTED.
31. Having considered all of the evidence and the Claimant's assertion, I am satisfied with the explanation and reason for the dismissal provided by Mrs Healey. I find that the Respondent dismissed the Claimant because of her lack of suitability for the post as outlined by the complaints raised by staff and parents alike.

32. The complaints that were presented in July – prior to the whistleblowing complaint as presented to Mrs Law - detail areas of dissatisfaction with the Claimant's communications with staff and parents, her manner and her not providing information. The reason is sufficient as it related to the Claimant's ability to build relationships with staff and parents and their trust in her from the outset. The Claimant was on probation. I accepted Mrs Healey's evidence that an option from the outcome of the probationary review meeting may have been a management plan but this did not happen in the event. It was however within her contemplation, which I find demonstrated that she was keeping an open mind as to the outcome of the review meeting.
33. There was an acceptance and concession by Mrs Healey that the school needed to do a lot of work on the SENCO provision which was why they had created the Claimant's post. I found this evidence to be inconsistent with the assertion that the school would want to get rid of the Claimant for raising concerns about shortcomings as the school had wanted to get the Claimant as postholder/appointee to address them.
34. The Claimant did not attend the probationary meeting and the Respondent proceeded to continue in her absence, having received advice on this. The Claimant was given opportunities to attend and put her case, both in the July and in the November. I do not consider that the Respondent's had acted unfairly towards her as she was given the opportunity to attend in July but this was postponed pending the resolution of her grievance. Dismissal was highlighted as a possibility to her then. It was incumbent on the Respondent to explore those complaints with her. It was reasonable for them to do so at a meeting in that way as there was more than one complaint and the tenor of the complaints were not trivial but carried some degree of concern from both the staff and the parents. I did query whether the decision of the Respondent not to adjourn the meeting in November was something I should weigh in the balance. However by that time the Respondent needed to get on with the determination of the review and the Claimant had previously been given opportunities to attend.
35. I do not doubt that the Claimant is passionate about her commitment to her role and particularly to the children in her care but unfortunately her working relationships did not get off to a good start at the school and in my finding this was the principal reason for her dismissal.

Employment Judge A Frazer
Dated: 18th October 2021

JUDGMENT AND REASONS
SENT TO THE PARTIES ON

21 October 2021

S. Bhudia

FOR THE SECRETARY OF EMPLOYMENT
TRIBUNALS