EMPLOYMENT TRIBUNALS

Claimant: **Ms Q Slater**

Respondent: **Allen Ford (UK) Ltd**

Heard at: **East London Hearing Centre** **On: 15 July 2021**

Before: **Employment Judge Housego**

Representation

Claimant: Yvonne Slater, Claimant's mother

Respondent: Chris Baylis, of Counsel, Mils Legal Ltd.

JUDGMENT

The claims are struck out.

REASONS

1. The Claimant was employed by the Respondent for less than 2 years. In December 2019 the police contacted them about a fuel card of theirs which had been used to fill one of their vehicles. It was the Claimant's company car. After initially denying all knowledge, she accepted that she had used that card to do so, but said that it was loaned to her by a friend who said she could use it, it being his own company's card. The Claimant was brought to a disciplinary hearing and dismissed, the use of this card being given as the reason.

2. The Claimant brought a claim in this Tribunal. It makes many and varied claims, in the form of an extended narrative. Some of the claims that can be brought in an Employment Tribunal can be discerned within it, but not in a form that an employer could respond to. The one claim that was clear was unfair dismissal, but the Claimant was not able to bring such a claim for want of 2 years' service.

3. EJ Crosfill conducted a telephone case management hearing on 19 March 2021. It is apparent from the order that he took enormous care to explore the claim, and gave very clear directions as to what the Claimant had to do to set out what her claim was.

4. On 11 June 2021 the Claimant wrote a long email to the Tribunal which again set out a series of allegations about the way the Respondent conducted its business. She attached a document headed "Final Amended Employment Tribunal Claim. It runs to 26 pages, and again is narrative. At paragraph 5:

   "I intend to show there existed a systematic, inherently abusive and deliberately dishonest working environment; which allowed financial profiting and other benefits for the Respondent. Where they knowingly breached employee and customer rights."

   The first difficulty with the claim is that it is phrased such that the Claimant would like a full investigation into the way the Respondent conducts business at her former place of work: which is not the way an Employment Tribunal works: it adjudicates on claims made by employees and workers that their statutory rights have been breached by their employers (as well as some other jurisdictions).

5. The Claimant has not ignored EJ Crosfill's order but has failed to comply with it, for none of the claims made have been particularised sufficiently to be able to be responded to by the Respondent or adjudicated upon by the Tribunal.

6. The Claimant feels that this hearing was a trial before the trial, and that she had to prove her claim now, when she needed disclosure before she could do that. That is not the case: all that was required was for her to set out exactly what she was alleging (by reference to the heads of claim clearly set out by EJ Crosfill) and to specify how much she wanted the Tribunal to order the Respondent to pay to her.

7. Turning to the individual claims, the first, unfair dismissal, cannot succeed as there was not the required 2 years' service.

8. The claim form ticked a box for disability discrimination. The Claimant's mother explained that this related to her, as she is registered disabled, and the Claimant should, she says, have been given time to help her. Not all aspects of the Equality Act 2010 apply to claims for associative discrimination. They are limited to direct discrimination[1] and harassment[2] [3]. The Claimant accepted that there was no claim for disability discrimination being brought.

9. Similarly, it was accepted that there was no claim for personal injury (paragraph 20 of a document sent to the Tribunal on 20 May 2021, page 54). The same applies to alleged human rights breaches.

[1] S13 Equality Act 2010
[2] S26 Equality Act 2010
[3] Coleman (Social policy) [2008] EUECJ C-303/06_O

10. In the same document the claim for notice pay was stated as no longer being pursued (page 53). The claim is repeated in paragraph 6 of the final document (page 61) but it having been withdrawn I dismiss it.

11. There was a claim for commission payments said to be due. EJ Crosfill clearly set out what the Claimant needed to do (paragraph 32 of his order, page 41). None of the documents provided by the Claimant deal with them, and nor was this done orally today. The order required her to say what the payment was for – such as commission – how it was due (such as what commission scheme was in place), how much she claimed and when it should have been paid. I strike out this claim for failure to comply with that order.

12. There is a claim for *"forced overtime"* which appears to be a S13 deduction from wages claim, and EJ Crosfill gave detailed orders about what detail was to be provided, but it has not been provided. I dismiss this claim both for failure to comply with that order, and as having no reasonable prospect of success: the Claimant had a contract of employment at a fixed salary and does not say that there was any hourly rate for extra hours. The basis for the claim, the extra hours claimed to have been worked and the amount of the claim are not made clear.

13. There is a repeated claim that there was a breach of mutual trust and confidence by the Respondent, but that could only found a constructive dismissal claim, which the Claimant cannot bring. In so far as it is a claim it is dismissed as having no reasonable prospect of success.

14. There is a claim that the Claimant was not allowed time off to care for a dependent, but no details were provided of this claim other than the statement that the Claimant has children. It is dismissed for failure to comply with the Order of EJ Crosfill and as having no reasonable prospect of success.

15. There is a public interest disclosure claim. The disclosures are not made clear, but were said to have been made in June 2018 and December 2018. They related to the way a motability customer's matters were handled, fraudulently and not to the customer's advantage is the allegation. I do not need to form a view as to whether or not there were such public interest disclosures, as even if there were the claims cannot succeed for the following reasons.

16. There is a claim for pre-dismissal detriment, but in the 26 pages of claim there is no discernible detriment. Accordingly, I strike out that claim as having no reasonable prospect of success.

17. There is a claim of automatically unfair dismissal under S 103A for having made public interest disclosures. The difficulty with this claim is that dismissal was a year after the last claimed dismissal, and that there was an admitted use of the police fuel card. There is no reasonable prospect of the Claimant succeeding in showing that her dismissal fell within the relevant test: that is it will be for the Respondent to show that the reason for dismissal was a potentially fair one. If it does that, the evidential burden will shift to the Claimant to show that there is a real issue as to whether that was the

true reason. That reason may be challenged by the Claimant at a final hearing by adducing relevant evidence. It is not enough for the Claimant simply to assert in argument that it was not the true reason. She must produce some evidence that casts doubt on the employer's stated reason and so raises an issue: see Kuzel v Roche Products [2008] ICR 799 at [52] –[60].[4] There was a year's gap between asserted public interest disclosure and dismissal, and the Claimant accepted that she had used the police fuel card (albeit, she says, unknowing that it was such). The Claimant gives no reason why the person who dismissed her did not genuinely do so by reason of that use.

18. The claim could be structured along the lines of Royal Mail Group Ltd v Jhuti [2019] UKSC 55 – from the summary:

"So the answer to the appeal's key question is, 'yes, if a person in the hierarchy of responsibility above the employee determines that she should be dismissed for one reason but hides it behind an invented reason which the decision-maker adopts, the reason for the dismissal is the hidden reason rather than the invented reason' ***[62]****.*

The Claimant says that her manager lied about what she had said to him in his report to the decision maker. However, the problem with that is what the Claimant said in the disciplinary hearing, and the decision maker's reaction to it. It is at page 101: the Claimant said that her manager had asked her if she had used the card and that she had said that she had not. Later, that she did not admit it straight away. The response was *"All you had to do was say that you had used a friend's card, but you did not, you said you had not."* It is clear from this that the decision maker concluded that the fact that the Claimant had not initially been transparent meant that her claim was not true, and that she was dishonest, and so dismissed her, for that reason. There is no plausible causative connection between any public interest disclosure and his dismissal of the Claimant, and no reasonable prospect of succeeding in showing that her manager manipulated the decision maker into making the decision he made.

19. The Claimant does not accept the minutes are entirely correct, and says that they record only about half of the meeting. She does not say anywhere in her 26 page final statement of case that she did not say in the meeting what is set out above, and she puts something very similar at paragraph 67 of her final submission (page 78), and that she told her manager later (if quite soon after). This claim has no reasonable prospect of success.

20. There is a claim under the heading of indirect discrimination. The Claimant says only (page 61) that she worked *"Unsociable hours when being a full time carer and mother to a young child and [having] a disabled parent."* There is no identified provision criterion or practice affecting the Claimant. The claim has no reasonable prospect of success. The Order of EJ Crosfil was not complied with by the Claimant. I dismiss this claim for both reasons.

21. There is a claim of direct sex discrimination, which while not pleaded well is at least comprehensible. It is that she was dismissed for suspected

[4] Parekh v LB Brent [2012] EWCA Civ 1630

dishonesty, but her male manager was not. The real difficulty with that claim is that there was nothing pleaded to indicate that the manager was suspected of dishonesty by his own management. The Claimant admitted that she had used the card, and there is no suggestion that the manager admitted anything, nor could he if not accused. In addition, the Claimant had been employed less than 2 years, so could not claim unfair dismissal, which means managers have a less inhibited approach to dismissal than if the employee has that right. This claim also has no reasonable prospect of success.

22. It may be that I have not dealt with all the Claimant's claims in this decision, but if so that is because they are so hard to disentangle from the narrative account of events given in the 26 pages, and so are dismissed for failure to follow the order of EJ Crosfill (which identified all the likely claims) or as having no reasonable prospect of success as being unintelligible in terms of the legislative framework.

Employment Judge Housego
Date: 15 July 2021