Trainee solicitor left unsupervised and given the workload of two qualified lawyers was unfairly dismissed for blowing the whistle

A Tribunal has ruled that a trainee solicitor left unsupervised in a chaotic working environment was unfairly dismissed for blowing the whistle on the way the firm was run. Although she only had ten months' service, she was able to claim automatic unfair dismissal and was awarded over £36,000 compensation.

What happened in this case?

Ms Kaur was employed as a trainee solicitor by Gillen De Alwis Solicitors (**the firm**). Before she even started work, the firm began to hand case files over to her to work on. Upon starting employment, she received no meaningful induction. The day after she started, Ms De Alwis, one of the founding partners of the firm, handed over to her the caseload of two qualified lawyers. During her first few weeks of employment, Ms De Alwis put pressure on Ms Kaur to complete tasks, despite the fact that she had sustained a back injury and was in pain. Ms Kaur was told that her training contract would be in jeopardy if she did not get things done.

Ms Kaur's back injury caused her to take sick leave between 19 July and 24 September 2021. During her sickness absence the firm required her to carry out work in order to be paid Statutory Sick Pay. She was not paid her normal salary for the time that she worked. When she returned to work, the department was still operating in a chaotic manner. There was no appropriate management or supervision and Ms Kaur and an intern were frequently left unsupervised to deal with matters and approve contracts without them being checked by a qualified lawyer.

After her return to work, Ms Kaur was also subjected to bullying and harassing treatment. She was criticised for not completing work which she had, in fact, completed. She was unreasonably blamed for delays on client matters. She was screamed at on the telephone and spoken to in a belittling, rude and insulting way. She was also moved between departments with no notice.

Ms Kaur raised her concerns about the way the practice was being run to senior colleagues and partners within the firm on numerous occasions between October 2021 and February 2022. She also contacted the Solicitor's Regulatory Authority (**SRA**) by telephone on three occasions and eventually made a written report to them. In early March, Ms Kaur told the firm's newly appointed HR manager that she wished to raise a formal grievance and that she was considering raising the matter with the SRA (when, in fact, she already had). Around the same time, Ms Kaur saw a doctor in relation to work-related stress and anxiety and went on to take two weeks' sick leave.

She submitted a grievance on 11 March 2022 but received no response. She submitted a data subject access request on 5

April 2022. Three days later, she was summarily dismissed without any investigation or disciplinary procedure having been followed. Various reasons were given including that she had failed to follow reasonable instructions and was incapable of being trained or meeting the practice skill standards. Ms Kaur claimed that she had been automatically unfairly dismissed for blowing the whistle. The firm went into voluntary liquidation at the end of 2023.

What was decided?

The Employment Tribunal found Ms Kaur to be committed to her profession and an intelligent and diligent person. She had not been given proper training or supervision and had been held to an unreasonably high standard. It found that any failures in the service provided to clients were primarily down to the firm's failure to manage its practice appropriately or to train and supervise its staff. The Tribunal concluded that Ms Kaur had not been guilty of gross misconduct entitling the firm to summarily dismiss her.

The Tribunal went on to find that the disclosures that Ms Kaur had made amounted to protected disclosures. They contained information and Ms Kaur reasonably believed that they tended to show that the firm was in breach of its duties (in particular, certain sections of the SRA's Code of Conduct for Solicitors). She also reasonably believed that it was in the public interest to raise these matters. In particular, she was concerned about the negative impact on clients of the firm who were receiving a poor service.

Having found that she had made protected disclosures, the question was whether they were the principal reason for her

dismissal. In light of the fact that the firm did not carry out an investigation or disciplinary process, and the finding that Ms Kaur was not guilty of misconduct, the Tribunal drew an inference that the firm did not genuinely consider this to be a misconduct case. Coupled with the timing of the dismissal, the Tribunal was satisfied that it was more likely than not that the real reason for the dismissal was the protected disclosures.

The Tribunal awarded compensation of £36,062, which included an uplift to compensation of 25% to reflect the firm's "complete failure" to comply with the Acas Code of Practice on disciplinary and grievance procedures. The compensation award was relatively low as a result of the fact that the firm went into voluntary liquidation, meaning Ms Kaur's employment would have come to an end around that time in any event.

What are the learning points?

Whilst the facts of this case are at the more extreme end of the scale, it does demonstrate the need for employers to have effective practices for managing and supervising junior staff in place, including inductions, workload management and day to day supervision. A failure to do is likely to generate a stressful working environment, leading to disengagement, sickness absence and employment claims. Here, the claimant was able to rely on breaches of a regulatory code in order to qualify as a whistleblower. However, non-regulated employees could argue that an unmanageable and chaotic working environment and/or bullying endangers the health and safety of staff, and this may well be enough to get them over the hurdle of qualifying as whistleblower.

The decision also underlines the need for employers to follow proper dismissal procedures for new staff in appropriate cases. Here, the claimant had under two years' service and so could not bring an ordinary unfair dismissal claim. As a result, it appears that the firm dispensed with any form of investigation or disciplinary procedure prior to dismissal and ignored the minimum requirements in the Acas Code. However, the firm failed to spot that the claimant had unlocked the door to bring an "automatic" unfair dismissal claim as a whistleblower – a claim which may be brought from Day 1 of employment. Employers wishing to dismiss employees with under two years' service should always check that there are no aggravating factors present which may mean the employee could still bring claims about the dismissal. It should also be remembered that the new Labour Government has indicated that it plans to remove the two-year service requirement for unfair dismissal claims. If this happens, proper dismissal procedures will need to be followed in every case.

Although it is unlikely that the claimant will ever recover her compensation, the outcome of this case is still extremely valuable to her. She gave evidence to the Tribunal that the stigma of having been dismissed directly contributed to her being turned down for employment. This decision means she may now say that she was unfairly dismissed, and, indeed, that she was commended by the Tribunal for her professionalism and ability.

Kaur v Gillen De Alwis Solicitors Ltd (in Creditor's Voluntary Liquidation)

BDBF is a law firm based at Bank in the City of London specialising in employment law. If you would like to discuss any issues relating to the content of this article, please

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