

Witness statement by the Claimant

IN THE CARDIFF EMPLOYMENT TRIBUNAL

Claim No.
1234987/2017

BETWEEN:

ANDREW SMITH

Claimant

and

BIGTOWN MANUFACTURING LIMITED

Respondent

WITNESS STATEMENT OF THE CLAIMANT

I, Andrew Smith, of 123 Hillside Road, Bigtown, make this statement in support of my claim for damages for making a protected disclosure and for unfair dismissal.

1. I have been employed by the Respondent since 15th November 2011 on the Production Line at the Respondent's factory in High Road, Bigtown. In December 2012 I was promoted to team leader.
2. On 15th October 2017 I was working on the production line when the conveyor belt got stuck because some of the larger items got jammed in it. Mr Brown, the Production Line Manager, told me to clear the jam without switching the conveyor belt off. I told him this would be dangerous and I might get my hand caught. He told me it would waste far too much time to shut the machine off and then have to start it up again.
3. I refused to clear the jam unless the conveyor belt was turned off and said that it was in breach of the health and safety policy to put my hand into the machinery whilst it was still turned on. Mr Brown then got another member of the team, John White, to clear the jam. In order to do this John White had to put his hand into machinery and he almost got his hand trapped when the conveyor belt

started moving.

4. I have seen a copy of the manufacturer's instructions for this type of conveyor belt and at page 20 of this document it recommends that the conveyor belt should be turned off if it becomes jammed.

5. In the afternoon of 15th October 2017 Mr Brown came up to after the lunch break. He said that I had refused to obey an order that he had given and that he no longer wanted me as team leader if I was not prepared to do what he told me. Although this demotion has not affected the amount of pay I get each week it has meant that I no longer get the team leader bonus.

6. On 18th October 2017 I raised a grievance about my demotion and explained how it had occurred. I sent a copy of this grievance to Mr Jones, the Managing Director. There was a grievance meeting held on 25th October 2017 with Mr Ford, Head of Production, when I explained that it was unfair that I should have been demoted from team leader just because I was not prepared to risk an injury. I do not consider that Mr Ford was really interested in my complaints and my grievance was not upheld.

7. In October 2017 there was an announcement by Mr Jones that because of a drop in orders the company would be making a number of employees on the production line redundant. He said that this would be done fairly by using a selection procedure that had been agreed with the employee's representatives.

8. On 30th October 2017 I had a meeting with Mr Brown at which I was informed that I was being made redundant. I was given a copy of my scores. I had been marked down on all areas, which I considered very unfair because all my appraisals had been excellent. I pointed out that two other members of the production line team, John White and Alan Gray, were both junior to me. Mr Brown said that the decision had been made on the basis of work performance and it was considered that my performance was not as good as that of the other team members. I consider that Mr Brown was biased against me because of the incident on 15th October 2017 and had given me low marks because I raised a grievance about the matter.

9. I consider that my complaint about the events of 15th October 2017 constituted a qualifying disclosure under section 43B(d) of the Employment Rights Act 1996 that the health and safety of an individual had been endangered. The fact that another employee, John White, was told to put his hand into the machinery of the conveyor belt, whilst it was still on, meant that the health and safety of that individual was endangered.

10. I made this disclosure in good faith to Mr Brown, my Line Manager. As a result of making this protected disclosure I was subjected to a detriment, that is

Appendix B: Model letters and precedents

my demotion as team leader and the loss of my team leader bonus. I also made this disclosure in my grievance to Mr Jones, the Managing Director, and to Mr Ford in the grievance meeting and as a result of this I believe the decision was made to dismiss me and the redundancy procedure was used as a way of achieving this.

11. I do not believe that the true reason for my dismissal was because of redundancy. No proper redundancy selection procedure was carried out. There were other team members who had not been employed for as long as me and whose work performance was not as good as mine. I believe I was deliberately marked down on the selection matrix so that I could be dismissed.

12. In any event my dismissal was unfair. The Respondent did not carry a proper redundancy selection procedure, it was based on solely on Mr Brown's judgment as to my performance. I believe my performance had been better than other team members who were not selected for redundancy and I had been employed by the Respondent for longer than these team members. I was given no examples of ways in which my performance was below standard and the fact that I had received good appraisals was ignored.

13. At no time during the redundancy procedure was I told about or offered any alternative positions. About three weeks after my dismissal I later found out that there had been suitable vacancies in other departments. There was a job in the post room I could have done and there was a vacancy in the Quality Control section.

14. I claim damages in respect of the detriment I suffered as a result of making a protected disclosure under section 49 of the Employment Rights Act 1996. These damages include the loss of the team leader bonus which I would have received if I had not been demoted. I also claim damages for injury to feelings to include the humiliation of being demoted as team leader, a post which I had held for almost two years.

15. I claim that I was automatically unfairly dismissed for making a protected disclosure under section 103A of the Employment Rights Act 1996.

16. Further and alternatively I claim I was unfairly dismissed under section 98(2) of the Employment Rights Act 1996 because no proper redundancy selection procedure was carried out, not was I offered any alternative position.

17. I have been unable to find another job since being dismissed. I have signed on at the Job Centre and with various on-line job agencies. I will provide the tribunal with copies of the all the job applications that I have made and the interviews I have attended.

"This statement is true to the best of my knowledge and belief"

Birmingham Peoples Centre

27/05/2018