

is no real dispute between the parties what was said by the claimant as appears in the list of alleged protected disclosures at pages 46 to 50 of the bundle. The respondent conceded that in relation to the statement "as this flight plan takes me over twelve and a half hours that is illegal", the first part is a disclosure of information. The respondent also conceded that the statement "I am too tired to fly" is a disclosure of information. The claimant puts the alleged disclosures in many different ways but those are the core assertions. The information disclosed must, in the reasonable belief of the employee, tend to show a number of things. In *Babula – v- Waltham Forest College 2007 IRLR 346*, it was held that an employee does not have to be right about their belief; what is necessary is a reasonable belief in the relevant failure. An employee must actually have the belief. If they do believe it, the Tribunal must ask whether it was a reasonable belief.

111. In relation to the causation issue, in accordance with section 48(2) Employment Rights Act 1996, the burden is on the respondent to show the grounds for the action. Mr Crossfill suggested that the preferable formulation appears at paragraph 45 of the case of *NHS Manchester –v- Fecitt and Others 2012 IRLR 64*: in order to escape liability, it is necessary for the respondent to show the fact that disclosures were made had no material influence on its decisions.

112. The respondent's case is that it did not act and impose a final written warning because the claimant had made protected disclosures. It may be that "but for" the fact that the claimant made disclosures, the detriment would not have happened but that is not the test. The test is the reason why. The Tribunal has to try to ascertain the facts which motivated the relevant people or the beliefs they held which caused them to act as they did. The reasons did not have to be good reasons or fair reasons and could even be improper reasons; the reason does not even have to be correct. If the reason is founded on beliefs, it does not cease to be the reason just because it is wrong. The reason remains the reason even when it is later shown to be wrong. Mr Crossfill referred to the case of *Bolton School –v- Evans 2007 IRLR 140*, for the basic principle that there can be a distinction between acting because someone makes a protected disclosure and because of the manner in which that is done and/or the subsequent events. Mr Crossfill referred to *Panayiotou –v- Chief Constable of Hampshire Police 2014 IRLR 500* for an expansion of the argument. A careful analysis of the reasons is required.

113. Mr Crossfill submitted that this case requires a thorough examination of whether the beliefs of the claimant were honestly held and reasonable in deciding whether they were protected disclosures. If the Tribunal considers they were protected disclosures, the key question was why the claimant was given a final written warning. Did Mr Scadeng honestly believe that the claimant was acting in protest at a series of duties he had been given and was dishonest when he refused to work on 7th May? Mr Crossfill said it was never put to Mr Scadeng that he was not motivated by the things he said motivated him. Mr Scadeng and Mr Hutchings were adamant that they did not believe the claimant to be honest.

114. Mr Crossfill submitted that someone could form the view that the claimant was obstinate and bloody minded in his actions 5th to 7th May 2014. On 5th May, the claimant said he would not be exercising his discretion. Mr Crossfill questioned how you could tell, purely from a roster, that the circumstances would mean you would