

# Shacklocks

Solicitors & Investment Advisors

**TRIBUNAL RULES WARD RECYCLING WAS WRONG  
TO DISMISS EMPLOYEE,  
AFTER 'BURYING PAPER' ALLEGATIONS**

Shacklocks Solicitors has today announced that the claims brought by Stephen Wharton of Chesterfield in the East Midlands against his employer, Ward Recycling Limited, for unfair dismissal, wrongful dismissal, breach of contract for failure to pay sick pay, and detriment suffered as a result of having made a protected disclosure, have been successful.

Stephen Wharton (50) of North Wingfield, was employed as Supervisor for the Chesterfield Borough Council contract, at Ward Recycling Ltd's Clay Cross depot. Stephen, who is married with three children and two grandchildren, had worked at Wards since June last year after being transferred over to Wards from the company who had previously been responsible for the Chesterfield contract. Mr Wharton had worked in the recycling industry since April 2002. As part of his daily job requirements, Mr Wharton supervised the kerb side collection of multi materials such as glass, paper, textiles and cans, being collected for recycling.

Mr Wharton says: "I am passionate about recycling and believe that every household should recycle as much waste as it can. I felt proud to be working in the recycling industry and thoroughly enjoyed my job, until the problems with Wards began."

Almost immediately after the transfer to Wards, Mr Wharton felt that he was victimised and unfairly treated by the management.

[More/...](#)

Although he had no previous history of stress or depression in all his working life, the problems he suffered were so bad that Mr Wharton was eventually signed off sick with work related stress and was off work for several months, until he was forced to return due to financial worries, in December last year.

Mr Wharton explains: "Those financial worries were caused by the fact that Wards failed to pay me the contractual sick pay which the Tribunal has now decided that I was entitled to. On some occasions, they failed to pay me sick pay at all."

Then, in February this year, the problems worsened, and Mr Wharton was suspended from work, facing allegations of gross misconduct. This followed allegations which were made by Mr Wharton to local Councils that his employer had been burying pulp paper.

Mr Wharton explains: "Earlier this year I was informed by another Wards employee that he had been told to bury pulp paper that had been returned from the mill because it was unfit for recycling, on a site previously used as a scrap yard. He also informed me that several tons of paper had been buried around Wards Clay Cross site."

Mr Wharton did some investigations of his own in to this, which led him to believe that his employer was burying pulp paper.

Clare McShane from Nottinghamshire-based Shacklocks Solicitors, who advised Mr Wharton, said: "Mr Wharton believed this to be both morally and legally wrong."

"Mr Wharton decided that, in the circumstances, it was not appropriate for him to report this malpractice to his employers, who he believed were responsible for it, so he reported the matter to the local Council. This was held to be a Protected Disclosure within the meaning of the Public Interest Disclosure Act 1998. The local Council subsequently informed Mr Wharton's employers that a report had been made and only a couple of days afterwards he was suspended, pending investigation in to allegations of misconduct."

More/...

After a lengthy disciplinary process, during which Mr Wharton was provided with very little information regarding the allegations against him, he was eventually dismissed on 1 April 2008.

Mr Wharton said: "Although I had prepared myself for the worst, when Wards eventually dismissed me I was devastated as I knew that I had done nothing wrong."

Mr Wharton's case was heard in the Sheffield Employment Tribunal in a five day hearing from 7th to 11th July and Mr Wharton, represented by Shacklocks Solicitors, and Mr Jason Searle of St Johns Buildings Chambers, was successful in all five of his claims. The Tribunal held a further hearing to determine the compensation payable to Mr Wharton, and this was heard on 30 September. The Tribunal made an award of compensation which included an amount for loss of earnings, and injury to feelings.

In its findings, the Tribunal held that Mr Wharton's dismissal had been by reason of his having made a Protected Disclosure and not by reason of his gross misconduct as Wards had alleged. This meant that his dismissal was automatically unfair. The judge said that he did not consider any reasonable employer would find the allegations against Mr Wharton to constitute gross misconduct and that they (Wards) were "scraping the barrel" in an attempt to justify his dismissal. Wards have appealed against elements of the Tribunal's decision and the parties are awaiting directions from the Employment Appeal Tribunal as to how the appeal is to be dealt with.

Mr Wharton said: "I firmly believe that I did the right thing in reporting my concerns to the Council, and felt extremely aggrieved, angry and upset to have been dismissed as a result. This case, and the treatment I have suffered from Wards, has taken over mine and my family's lives for the past year."

Clare added: "We were extremely pleased to win Mr Wharton's case. The information Mr Wharton gave us showed that he had suffered terrible treatment from his employer, which no employee should have to tolerate. The case also highlights how essential it is that employees feel able to raise real concerns they might have in relation to the practices of their employer, and that they are protected when they do so."

More/...

The law surrounding this area is complex, and Shacklocks says it's important that an employee seeks advice, not only when they believe they are being subjected to detriment, or have already been dismissed for making a protected disclosure, but also if they are thinking of making a report to ensure it is done in a way which will afford them protection.

If you would like advice on any aspect of employment law issues please contact Clare McShane on Tel: 01623 423073.

**Notes to Editors:**

In cases like Stephen Wharton's, where an employee believes their employer is committing an act of malpractice, the employee can report it to an appropriate person under the Public Interest Disclosure Act 1998, which protects workers who expose wrongdoing. It applies where a worker has a reasonable belief that their disclosure tends to show one or more of the following offences or breaches has occurred or is likely to occur:

- a criminal offence;
- the breach of a legal obligation;
- a miscarriage of justice;
- a danger to the health and safety of any individual;
- damage to the environment; or
- deliberate covering up of information tending to show any of the above.

When done in the right way and in the correct circumstances, an employee making such a report should enjoy protection from dismissal or other detriment. If an employer does dismiss the employee, or subjects them to some detriment as a result of them having made such a report, then they are likely to open themselves up to an Employment Tribunal claim, and if the employee is successful in their claim, the compensation is unlimited.

Stephen Wharton won on five accounts:

1. The complaint under Employment Rights Act 1996 Section 103A succeeds.
2. The dismissal was also unfair by virtue of Section 98A(1) of the same Act
3. The complaint of wrongful dismissal succeeds.
4. The complaint under Employment Rights Act 1996, Section 47B (Detriment) succeeds
5. The breach of contract claim for sick pay also succeeds

Shacklocks is a business committed to valuing lifetime relationships with clients. The firm provides legal, financial and investment advice to businesses and private clients and was established over 150 years ago.

Shacklocks holds the prestigious Lexcel accreditation, awarded by the Law Society only to firms demonstrating high levels of quality, client care and management. It currently has a staff of 70 people, including six partners. Shacklocks has been featured in the legal 500 annual survey of the top UK law firms for the last five years and has seven offices throughout the East Midlands.

The firm's Managing Partner is Martin Fallows who can be contacted at [martinf@shacklocks.co.uk](mailto:martinf@shacklocks.co.uk) or on 07872 339718. If you would like an image to accompany this story or an interview with a lawyer experienced in business legal issues please contact Kim

Peatfield. We are also happy to discuss feature ideas on other law related issues and provide specialists, comments, statistics and advice on forthcoming legislation.

**If you would like further comment or information on this case please contact Clare McShane from Shacklocks on: Tel: 01623 423073.**

Issued by:  
Kim Peatfield  
*Write Stuff PR*  
Tel: 01335 350476  
Mob: 07966 478781  
[writestuffpr@w3z.co.uk](mailto:writestuffpr@w3z.co.uk)  
Issued 20<sup>th</sup> October 2008