



EMPLOYMENT TRIBUNALS

Between

Claimant: Mr V Manne

Respondent: Poundland Limited

Heard at London South Employment Tribunal on 14 July 2017

Before Employment Judge Baron

Representation:

Claimant: The Claimant was present in person

Respondent: Patrick Keith - Counsel

JUDGMENT AT A HEARING TO CONSIDER AN APPLICATION FOR INTERIM RELIEF

It is the judgment of the Tribunal that the application fails.

REASONS

- 1 Judgment was given orally at the hearing. These reasons are provided at the request of the Claimant.
- 2 The Claimant presented a claim form ET1 to the Tribunal on 29 June 2017. The claim included an allegation that the Claimant was unfairly dismissed. The Claimant is applying for interim relief under the provisions of section 128 of the Employment Rights Act 1996. The provisions which are material in considering whether such application are as follows:

128 Interim relief pending determination of complaint

- (1) An employee who presents a complaint to an employment tribunal--
- (a) that he has been unfairly dismissed by his employer, and
 - (b) that the reason (or, if more than one, the principal reason) for the dismissal is one of those specified in section 100(1)(a) and (b), 101A(d), 102(1), 103 or 103A or in paragraph 161(2) of Schedule A1 to the Trade Union and Labour Relations (Consolidation) Act 1992,
- may apply to the tribunal for interim relief.

129 Procedure on hearing of application and making of order

(1) This section applies where, on hearing an employee's application for interim relief, it appears to the tribunal that it is likely that on determining the complaint to which the application relates the tribunal will find that the reason (or, if more than one, the principal reason) for his dismissal is one of those specified in section 100(1)(a) and (b), 101A(d), 102(1), 103 or 103A or in paragraph 161(2) of Schedule A1 to the Trade Union and Labour Relations (Consolidation) Act 1992.

(2) The tribunal shall announce its findings and explain to both parties (if present)--

- (a) what powers the tribunal may exercise on the application, and
- (b) in what circumstances it will exercise them.

- 3 The word 'likely' in section 129(1) has been the subject of decisions in *Taplin v. C Shippam Ltd* [1978] ICR 1068 and also more recently in *Ministry of Justice v. Sarfraz* [2011] IRLR 562 in which Underhill J said as follows:¹

... the essential point which emerges from *Taplin*: 'likely' connotes something nearer to certainty than mere probability.

- 4 Rule 95 of the Employment Tribunals Rules of Procedure 2013 provides as follows:

95. When a Tribunal hears an application for interim relief (or for its variation or revocation) under section 161 or section 165 of the Trade Union and Labour Relations (Consolidation) Act 1992 or under section 128 or section 131 of the Employment Rights Act 1996, rules 53 to 56 apply to the hearing and the Tribunal shall not hear oral evidence unless it directs otherwise.²

- 5 I did not hear any oral evidence. The task of an Employment Judge in a case such as this was summarised by Mr Recorder Luba QC in *London City Airport Ltd v. Chacko* [2013] IRLR 610 as follows:³

The application falls to be considered on a summary basis. The employment judge must do the best he can with such material as the parties are able to deploy by way of documents and argument in support of their respective cases. The employment judge is then required to make as good an assessment as he is promptly able of whether the claimant is likely to succeed in a claim for unfair dismissal based on one of the relevant grounds. The relevant statutory test is not whether the claimant *is* ultimately likely to succeed in his or her complaint to the employment tribunal but whether 'it appears to the tribunal' in this case the employment judge 'that it is likely'. To put it in my own words, what this requires is an expeditious summary assessment by the first instance employment judge as to how the matter looks to him on the material that he has. The statutory regime thus places emphasis on how the matter appears in the swiftly convened summary hearing at first instance which must of necessity involve a far less detailed scrutiny of the respective cases of each of the parties and their evidence than will be ultimately undertaken at the full hearing of the claim.

- 6 In this case the Claimant alleges that his dismissal falls within section 103A of the Employment Rights Act 1996, that is that the reason or principal reason for the dismissal was that he had made one or more protected disclosures. The Claimant relies upon having provided information as to a lack of safety shoes or boots, and the obstruction of fire extinguishers in the Respondent's store at 464-466 Brixton Road, London SW9. Although no response form ET3 has yet been presented the Respondent accepts that it dismissed the Claimant on 24 June 2017.

¹ At paragraph 19

² Rule 53-56 relate to the procedure for the holding of preliminary hearings.

³ At paragraph 23

The statutory category relied upon is in some other substantial reason within section 98(1)(b) of the Employment Rights Act 1996. The Respondent also accepts that the Claimant disclosed information within section 43B of the 1996 Act which he believed tended to show that the health and safety of individuals was being endangered, and hence falling within section 43B(1)(d). The Respondent does not accept that the provision of such information amounted to a protected disclosure or disclosures within section 43A.

- 7 I was provided with written submissions by each of the Claimant and Mr Keith. The Claimant also provided a witness statement and a similar statement was provided by the dismissing officer, Mark Tarr. There was a bundle of documents comprising those which each of the parties wished to introduce. I set out below the information which I have gleaned from the evidence. I will not call them 'findings of fact' because of the nature of this hearing.
- 8 The Claimant was employed as a Supervisor / Senior Sales Assistant by the Respondent from April 2015. The Claimant had presented an earlier claim to this Tribunal on 15 July 2016 – case number 2301334/2016. That claim has not yet been heard, and may well be listed to be heard along with this claim. That is a matter for the future. The principal allegations in the first claim are of race discrimination and victimisation. There is also a claim for unpaid holiday pay. In his witness statement for this hearing the Claimant said that he had been continuously discriminated against, bullied, harassed and victimised by a group headed by Richard Burness and Mr Khattak.
- 9 The Claimant then referred to issues relating to the Respondent's dress code. The Claimant said that colleagues had complained about a lack of protective shoes, and that he had been injured on 2 June 2016 when roller cage crushed two toes when he was receiving a delivery. He was off work for a month. The Claimant wrote to the Respondent's head office on 6 June 2016 complaining about the lack of shoes. He also said that some fire extinguishers and signs were not in their correct places, and/or the extinguishers were blocked. Finally he said that leftover food was in the store's chiller. That email was acknowledged and the Claimant was told that his concerns were to be investigated by Health and Safety.
- 10 On 17 September 2016 the Claimant sent an email of just over two pages to the Respondent raising various issues. He mentioned briefly the lack of safety shoes but that was not the predominant issue. He said the following:

Please note that in my grievances, I have clearly requested Poundland to create congenial working atmosphere and without any discrimination.
However, every week I am facing some problem at the store and due to which I am spending sleepless nights and causing a lot of stress to me.
I again and again request that you please don't create nay problems at my work place and let me continue with my job without any further disturbances.
- 11 There was a disciplinary hearing involving the Claimant on 16 December 2016. I was not provided with details of the allegations and the notes are

mostly illegible. What I did have was a document prepared by the Claimant for that hearing. He referred to the complaint of 6 June 2016. He alleged that the disciplinary hearing had been convened to harass and victimise him because of having issued his first claim to the Tribunal alleging discrimination. He alleged that records had been fabricated, and false allegations made to kick him out of the job by hook or by crook.

- 12 There was a grievance hearing on 19 January 2017, and the minutes were in the bundle. I did not have the original grievance document as far as I am aware. The minutes refer predominantly to issues concerning changes of hours and not being allowed to take holidays. There was one short mention of the accident on 2 June 2016, but that was in the context of being transferred from one store to another.
- 13 It appears that the Claimant appealed against the outcome of that grievance and prepared a further document for the appeal hearing on 6 May 2017. That document refers to various email complaints made by the Claimant but not the one of 6 June 2016. The general thrust is of discrimination and harassment. The notes of the appeal hearing make no mention of the issues relating to safety shoes or fire extinguishers.
- 14 On 24 May 2017 Mr Tarr wrote to the Claimant inviting him to a meeting because, it was said, the Respondent had been a serious breakdown in the working relationship. That meeting could not be held and there were further attempts to hold it. It eventually took place on 23 June 2017.
- 15 In the meantime the Claimant resurrected the issue of the protective shoes. He sent an email on 14 June 2017 to the health and safety officer in Lambeth Council, and various others. It was headed 'Whistle Blowing for H & S violation at Poundland Stores.' That prompted a reply from the Legal & Compliance Director of Lambeth Council on 27 June 2017 in which it was said that the Claimant's original complaint was investigated in June 2017 and that it had been found that the Claimant had ignored a clear direction not to engage in receiving deliveries.
- 16 The Claimant prepared a further document for the meeting on 23 June 2017. That document referred to a large variety of matters which I will not list here. Towards the end he included a section headed 'Whistle Blower complaint another reason for calling this meeting' and referred to his complaint of 6 June 2016, and the mention of the point in his document of 16 December 2016.
- 17 I had the notes of the meeting of 23 June 2017. The Claimant was asked to describe his relationship with the Respondent and its management. He referred to the throwing away of saleable stock, security matters, forging of documents, harassing and bullying, and being called to a disciplinary meeting while on holiday as a retaliation for presenting a claim to the Tribunal. He also alleged that a hostile atmosphere had been created to kick him out of the job. He further said that what was occurring was to prevent him from giving evidence in another claim to the Employment Tribunal to be heard in Watford. The loss of confidence issue could have arisen, he said, after he had filed a police complaint

against several managers. The Claimant then referred to the raising of health and safety issues.

- 18 Mr Tarr decided to dismiss the Claimant. The stated reason was that there had been a breakdown of relationships and that the Claimant had lost all trust in the Respondent. The letter confirming termination said that the Claimant felt that a hostile atmosphere was purposely created. Mr Tarr said that concerns which the Claimant had raised previously had been properly investigated. Towards the end of the letter Mr Tarr said that he had found that the Claimant had said on numerous occasions that he had lost all trust in the Respondent.
- 19 My function in these circumstances is to decide on the basis of the information before me whether it is likely (in the sense that that word has been interpreted in the authorities as set out above) that the Claimant will succeed at trial in showing that the reason, or principal reason, for his dismissal was the making of a protected disclosure which falls within section 43B(1)(d) of the 1996 Act.
- 20 My conclusion is twofold. The first is that in the circumstances I do not need to decide whether it is likely that the Claimant did make a protected disclosure. My second conclusion is that, whether or not the disclosure of the information in question was a protected disclosure, the Claimant has not shown that it was nearly certain that the Tribunal will find that the disclosure of the information was the reason or principal reason for the dismissal. The original complaint was made in June 2016. There was evidence before me that it had been considered at the time. The Claimant was invited to a meeting on 24 May 2017. The Claimant then revived the issue of safety shoes on 14 June 2017. Further, in the documents prepared by the Claimant himself summarised above he raised numerous other allegations against the Respondent, and the issue of the safety shoes faded into the background until 14 June 2017.
- 21 For the above reason the application fails.

Employment Judge Baron

17 July 2017