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EMPLOYMENT TRIBUNALS

Claimant

Respondent(s)

Mr Y Huang

AND

(1) Vanquis Bank Limited
(2) Mr Keith Coulter
(3) Mr Christopher Sweeney

Heard at: London Central

On: 15 December 2017

Before: Employment Judge Gordon (Sitting alone)

Representation

For the Claimant: George Pollitt, counsel

For the Respondent: Paul Goulding QC

Reasons provided following request pursuant to Rule 62(3) of the Employment Tribunal Rules of Procedure 2013.

REASONS

1. This is an application under section 128 of the Employment Rights Act 1996 for interim relief. The application is based on section 103A of the Act, that is that the reason or, if more than one, the principal reason for Mr Huang's dismissal was that he had made one or more protected disclosures.
2. By section 129 of the Act, if on a hearing of such an application it appears to the Tribunal that it is likely on determining the complaint that the Tribunal will find that section 103A does indeed apply, then section 129 applies.
3. That section provides for reinstatement, re-engagement or continuation of the Claimant's contract of employment. Case law tells me that the word "likely" in section 129 does not mean the same as "on the balance of probabilities" but it is somewhere between that level of satisfaction and certainty. The way it was put in **Taplin v C Shippam Limited [1978] ICR 1068** by the Employment Appeal Tribunal was that the Claimant must have a "pretty good chance of success" at the final hearing to achieve the interim relief. The policy behind the need for that construction of Section 129 was

explained in **Danpat v University of Bath & Another**, Employment Appeal Tribunal case in 2009, that if interim relief is granted the employer would have to continue paying the Claimant's salary and would not be able to get it back if the Claimant fails in the final hearing. Hence the rather higher test than would usually be applied in determining matters under Section 103A.

4. Rule 95 of the Tribunal rules says that in such applications, rules 53 to 56 apply. Those rules make provision for preliminary hearings in the Tribunal. There are strict time limits for bringing an application for interim relief. I am satisfied those have been complied with in this case. Rule 95 also says that the Tribunal shall not hear oral evidence unless it directs otherwise. In the ordinary course I may read written evidence and look at documents and the claim form and response to decide the application.
5. I have considered Mr Huang's witness statement and statements from Christopher Sweeney and John Hutchinson both dated 13 December 2017. I have looked at an amended version of the particulars of claim and I am going to give leave for the ET1 claim form to be amended in that form. I have also received helpful oral submissions today from both counsel and also read their written arguments. They have cited various authorities. I have also received Mr Pollitt's chronology.
6. The bare facts of this matter are that Vanquis Bank Ltd is a financial institution. The Claimant started with the bank on 26 September 2016 as a Customer Analytics and Decision Science Director. There is an organisational chart in the bundle on page 249 which shows that Christopher Sweeney is the Chief Executive Officer of the bank and Keith Coulter who is the Director of Cards reported to Mr Sweeney. The Claimant reported to Mr Coulter who would therefore be regarded as his line manager.
7. The Claimant had two direct reports to him that was John Hutchinson, Head of Decision Science and Luke Anamourlis, the Chief Data Officer. Mr Hutchinson and Mr Anamourlis had I think, between them about 22 employees who reported to them. So the Claimant had quite a senior position in the bank's hierarchy.
8. When he started with the bank, the Claimant was given a pack which explained that he needed leadership and manager qualities and also he should be able to work properly in a team – this was described as “collaborative partnerships”.
9. The Claimant started on six months' probation. That would have taken him up to 25 March 2017 but the period of probation was extended for a further three months for reasons which I will have to come back to. His employment was eventually confirmed on 28 June 2017. Then what happened was that he was effectively suspended from work at a meeting on 9 October 2017 and ultimately was dismissed altogether from the bank on 10 November 2017.
10. It is said on the Claimant's behalf that his dismissal was because of the protected disclosures that he had made and in the ET1, that is the Claim

Form put into the Tribunal which has particulars of claim attached, there were a number of protected disclosures mentioned.

11. The first protected disclosure relied on was on 20 June 2017. This concerned another member of staff who was possibly an independent contractor who was with the bank for a while.
12. There was another alleged protected disclosure on 9 August 2017. That concerned the bank possibly inflating its profit figures.
13. A third protected disclosure was said to have been made on 20 September 2017 concerning inflated profit figures.
14. And on 25 September 2017, the Claimant says that at a Credit Committee Meeting he raised concerns about the misuse of a behavioural score card model in multiple business strategies. That, as far as I understand, is to do with the bank's obligations in relation to its financial reserves.
15. On 4 October 2017, there was another protected disclosure relating to a marginal utilisation model, which was said to concern a breach of the FCA Regulations.
16. On 11 October 2017, the Claimant sent an email to Mr Sweeney and others, which seemed to have taken up a lot of his previous alleged protected disclosures. The is called a "complaint of wrong doings" email.
17. The Claimant says that because of these disclosures, the bank retaliated against him. He says that on 26 September 2017 he was confronted by Mr Coulter about complaints made against him. Then he found that a trip which he was due to make to Amsterdam on behalf of the bank had been cancelled in his calendar. Then at a meeting on 28 September 2017 Mr Coulter suggested that he should go home for the rest of the day. Then as I have said, on 9 October 2017, he was effectively suspended. He says that these things were a detriment to him and arose from his protected disclosures. Importantly for this application, he also says that his later dismissal was because of his disclosures.
18. On the case as pleaded and as described in the Claimant's witness statement, the timing of those events are a strong coincidence. On the face of it, it would appear that he may well have been dismissed because of the protected disclosures. This appears also to be supported by the suggestion, as submitted on his behalf, that his employment was confirmed following the period of probation despite any continued concerns expressed at that time about his interaction with other members of staff. Since these issues were raised prior to that confirmation, it appeared that they had been resolved successfully at that time.
19. Also it is said that it would appear that the decision finally to dismiss him was not made until the letter of dismissal was completed and sent to him. Hence all the protected disclosures up to that time should be considered as

potentially having affected the decision to dismiss him. It is said that the coincidence of the dismissal is too strong to be ignored.

20. The view that I have reached however, having read the witness statements and the documents in the bundle to which I have been referred, and also having heard and read the submissions, is that the Respondents have an equally strong defence.
21. What the Respondents say is that the decision to dismiss the Claimant was made by the Chief Executive Officer, Mr Sweeney and it was his decision alone. Secondly, the reason for Mr Sweeney's decision to dismiss the Claimant was questions relating to his conduct. Finally, it is said that Mr Sweeney was not aware of any protected disclosures when he made those decisions.
22. The Tribunal is only too well aware that employers are in some cases able to set up a process capable of obscuring the real reason for a dismissal. But in this case everything the Respondents say in this application is consistent with the internal documentation that I have seen. So that when it is said that Mr Sweeney made the decision alone, there does appear to be sufficient evidence to support that assertion and there is no reason for me to disbelieve it. All that evidence is set out in Mr Goulding's written submission in paragraphs 22 and 23, and it is unnecessary for me to repeat it in these reasons. It is clear that Mr Sweeney was at least heavily involved in the decision to dismiss the Claimant. Certainly, on what I have seen, I accept that it seems likely that it would be found by the Tribunal that Mr Sweeney made the decision to dismiss the Claimant on his own.
23. It is true that prior to Mr Sweeney making his decision, Mr Coulter who was the Claimant's line manager and possibly also Cath Willers of HR recommended the Claimant's dismissal to Mr Sweeney. It is said on the Claimant's behalf that Mr Coulter was affected by at least one of the alleged protected disclosures (the one concerned with the other member of staff or independent contractor who is taken on by the bank from time to time). There may well be a subtle argument about whether Mr Coulter's knowledge of the alleged protected disclosure might have fed the decision made by Mr Sweeney but it is impossible for me to resolve that question in a paper hearing. It would have to be examined very carefully if relied on at a final hearing.
24. It is true that there was a delay between the suspension and the sending out of the dismissal letter. It is said on behalf of the Claimant that the decision to dismiss was taken over that time. But the Respondents say that the delay was because the bank was looking for a way to end the Claimant's employment other than by dismissal. This does seem to be the likely explanation for that delay from what I have seen. On behalf of the Claimant a reference was made to a document which was relied on as showing that the decision had not been made earlier, but I do not think it is properly read in that way.

25. The second point made by the Respondents is that the reason for the dismissal was the Claimant's conduct. It seems to me that this is probably correct on what I have seen. The way it is put in Mr Sweeney's witness statement is that his decision was based on the Claimant's abrasive communication and management style. He was concerned about the impact on other members of the team and he held the view that the Claimant was incapable of improving and maintaining this to the required standards. That reason given by Mr Sweeney is corroborated by the fact that the initial period of probation was extended and the reason given at that time was communication issues and as can be seen from the documents in the bundle 74J up to 74U. Those concerns continued up to the confirmation of employment and afterwards. What was said in those papers was that there were areas of improvement, he needed personal development and a good working relationship with his peers and colleagues. There are numerous references to those difficulties at that time.
26. The conduct reason is also corroborated by concerns expressed by the two people who report to the Claimant, that is Mr Anamourlis and Mr Hutchinson. Both of them stated that they could no longer work with the Claimant. The evidence is that they both said that separately. In fact Mr Hutchinson said that he was in constant conflict with the Claimant and just could not work with him any more. These are things that would have to be examined by the Tribunal hearing this matter but it is certainly on the face of it strong evidence that Mr Sweeney made the decision to dismiss for that reason.
27. It seems to me likely from the paper evidence that a decision was made at a meeting on 21 September 2017 that something had to be done about the Claimant's employment. That was a meeting between Mr Coulter and Cath Willers of HR. At that meeting there was a discussion about moving the Claimant to a new role.
28. By all accounts, that was followed up by a very unfortunate meeting on 28 September 2017 where certainly on the Respondents' case, the Claimant behaved very badly. It seems to me likely, but only of course taking a provisional view, that at that meeting a decision was made that it was inevitable that the Claimant's employment would have to come to an end in one way or another.
29. It was around about that time and I suspect that it was probably after that meeting rather than before, that the Claimant's trip to Amsterdam was cancelled.
30. On the Respondents' evidence it was about that time that a severance proposal was prepared. It appears that this was because Mr Sweeney had decided to terminate the Claimant's employment.
31. Certainly that afternoon, it was suggested to the Claimant by Mr Coulter that he should go home and calm down for the rest of the day.

32. There was another meeting a couple of weeks later on 9 October 2017. That by that time the decision had been made to terminate his employment is shown by the fact that the Claimant was presented with a script which is on page 162G of the documents. This explained the difficulties as the bank saw it, with his continued employment. It was on that day that the Claimant was effectively suspended. He was told to go home and he remained on paid leave until his subsequent dismissal.
33. All the evidence and all the documents surrounding these meetings are entirely consistent with the Respondents' case that the difficulties that were being expressed were questions of conduct, team work and leadership problems and nothing at all to do with protected disclosures.
34. Going back to my task today, and that is to decide under Section 129 whether it appears to the Tribunal that it is likely that in determining the complaint, the Tribunal will find that Section 103A does indeed apply, I do not think that is shown to me today.
35. In the circumstances, I must dismiss this application for interim relief.

Employment Judge Gordon on 2 January 2018