



## EMPLOYMENT TRIBUNALS

### Claimant

### Respondent

Mr M Clark and Mr M Coxwell v The Raphael Medical Centre Limited

Heard at: Southampton

On: 26 November 2018

Before: Employment Judge Jones QC

Appearances:

For the Claimants: In person  
For the Respondent: Mr G Self, Counsel

## DECISION

1. Mr Clark's application for interim relief fails; and
2. Mr Coxwell's application for interim relief fails.
3. The Parties are directed to take the steps set out at Schedule 1.

## SUMMARY REASONS

### (a) Mr Clark's application

1. Mr Clark's contention was that he made a protected disclosures to Wiltshire CCG and the NHSE during the course of an unannounced inspection of the Glenside Neuro Rehab Hospital in Salisbury that took place on 2 November 2018 and that those disclosures were, at least in part, the reason for his dismissal.
2. He told the Tribunal that the disclosures were not the sole reason for termination. Nor were they the principal reason – they were, as he put it, half the reason, the other half being the raising of a number of health and safety concerns during the course of his employment. He said that he did not know, and had no specific evidence to establish

that Dr Florschutz, who dismissed him, was aware of the disclosures made during the inspection. He surmised that he was.

3. In the circumstances, and for the reasons given orally at the hearing, I was not satisfied that Mr Clark was “likely”, within the meaning of **ERA 1996, s. 129(1)**, to establish that he had been dismissed for making protected disclosures. In approaching that question I applied the test of whether Mr Clark had a “pretty good chance of success” (for which see **Taplin v C Shippam Ltd** [1978] ICR 1068) which is a standard higher than balance of probabilities.

(b) Mr Coxwell

4. Mr Coxwell, in contrast, did allege that reason or principal reason for dismissal was protected disclosures that he had made to Wiltshire CCG, the NHSE and Wiltshire Council at meetings on 12 and 17 October 2018 and during the unannounced inspection.
5. Mr Coxwell’s principal difficulties were also with causation. He said that the lack of previous complaint about his performance (indeed the recent payment of a bonus) and the timing of the dismissal (just two working days after the inspection) strongly suggested that he was dismissed because Dr Florschutz thought he had made disclosures during the inspection. The Respondent says the relationship had broken down and points to emails exchanged immediately before the inspection in which the Claimant issues Dr Florschutz with an ultimatum to which the latter reacts unhappily. Mr Coxwell’s evidence was that both he and the authorities were careful to make sure that Dr Florschutz was not told that he had made disclosures and that the Mr Coxwell only revealed that when Dr Florschutz produced a dismissal letter and handed it to him. That being so, Mr Coxwell faces a real difficulty establishing that the disclosures upon which he relies were known to Dr Florschutz at the point at which he made the decision to dismiss and, in the circumstances, I am not persuaded that he is likely to succeed in the **Taplin** sense.

*Employment Judge Jones QC*  
Dated: 23 December 2018  
Sent to the parties on:

.....

For the Tribunal:

.....

## SCHEDULE 1

### DIRECTIONS

1. On or before 9 December 2018 each Claimant shall produce and serve on the Respondent (and copy to the Tribunal) a summary document setting out:
  - (1) The date on which each alleged protected disclosure was made;
  - (2) Whether the disclosure was made orally or in writing;
  - (3) To whom the disclosure was made;
  - (4) The information disclosed; and
  - (5) The basis on which it is alleged that the disclosure qualifies for protection.
2. Time for submission of the ET3 is extended to 11 January 2018. The grounds of resistance should specifically respond to the particulars provided by the Claimants in accordance with the first direction above;
3. The case will be listed for a 2 hour telephone case management preliminary hearing, reserved to EJ Jones QC to take place at 10 am on 25 February 2019.

### CONSEQUENCES OF NON-COMPLIANCE

1. Failure to comply with an order for disclosure may result on summary conviction in a fine of up to £1,000 being imposed upon a person in default under s.7(4) of the Employment Tribunals Act 1996.
2. The Tribunal may also make a further order (an “unless order”) providing that unless it is complied with, the claim or, as the case may be, the response shall be struck out on the date of non-compliance without further consideration of the proceedings or the need to give notice or hold a preliminary hearing or a hearing.
3. An order may be varied or revoked upon application by a person affected by the order or by a judge on his/her own initiative.