



THE EMPLOYMENT TRIBUNALS

Claimant: Mr M Brown

Respondent: Deepocean 1 UK Limited

Heard at: North Shields Hearing Centre **On:** Friday 14 December 2018

Before: Employment Judge Shore

Representation:

Claimant: In Person

Respondent: Ms S James, Solicitor

JUDGMENT

1. None of the claimant's claims of unfair dismissal for the reason or principal reason that he made a protected disclosure and/or detriment because he made a protected disclosure have any reasonable prospect of success and all are struck out pursuant to Rule 37(1)(a) of Schedule 1 of the Employment Tribunals (Constitutional Rules of Procedure) Regulations 2013 ("the 2013 Rules").

REASONS

The Claims

1. The claimant's claims were of unfair dismissal for the reason or principal reason that he made a protected disclosure and/or detriment because he made a protected disclosure.
2. It is common ground that the claimant worked for the respondent from 13 October 2016 until he resigned on 23 March 2018. The unfair dismissal claim was one of automatic unfair dismissal by reason of having made a protected disclosure advanced pursuant to section 103A of the Employment Rights Act

2016 (ERA). The claimant did not have two years' continuous service, so could not bring a "standard" claim of unfair dismissal. Claims of unfair dismissal under section 103A ERA do not require the claimant to have 2 years' continuous service.

3. The claimant was unrepresented and drafted his own ET1.

This Hearing

4. This hearing was set up by a private preliminary hearing (PPH) before Employment Judge Johnson at North Shields on 19 October 2018 from which, a set of case management orders dated 30 October 2018 was produced and sent to the parties on 31 October 2018.
5. The PPH before Employment Judge Johnson followed a PPH before Employment Judge Garnon at Middlesbrough on 28 August 2018. The purpose of that hearing was a standard PPH to clarify the claims made, define the issues and make Orders for the future management of the claims.
6. Employment Judge Garnon made a note of the discussion in the PPH that records that the Claimant agreed that his claim needed further detail before the Respondent and the Tribunal could see exactly what was being claimed and the factual basis for those claims.
7. No doubt bearing in mind that the claimant was a litigant in person and had no legal training, EJ Garnon set out in his Order the relevant parts of the ERA that deal with the sort of claims that the claimant said he wanted to make. He also helpfully set out the law on constructive dismissal and on what constitutes a protected disclosure.
8. The Employment Judge Ordered the claimant to supply further information that was set out in some detail and in plain language at paragraphs 4 and 15 of the notes of the discussion by 21 September 2018. Employment Judge Garnon was at pains to express to the claimant that he did not have to set out the legal principles involved, just the facts on which he relied.
9. When the matter came back before Employment Judge Johnson, it is clear from the detailed note he made of the discussion he had with the claimant that the claimant had not produced the further information required by the Order of Employment Judge Garnon. Whilst expressing some sympathy with the claimant, Employment Judge Johnson commented that the document that the claimant had submitted, "unfortunately, ...does not properly identify the protected disclosures upon which the claimant's case is founded."
10. The note of the discussion records that Employment Judge Johnson explained to the claimant that what the respondent and Tribunal needed to see is a document of quality, not quantity. He then went into a lengthy explanation, in what I regard to be plain English, as to what was required of the claimant. He was advised that his first effort was phrased in general terms and lacked any meaningful detail, which meant that it would be difficult for the claimant to conduct his claims, difficult for the tribunal to understand and almost impossible for the respondent to properly prepare its defence.

11. The claimant was told that he would be given one further opportunity to give the further information required and had to supply that further information by 16 November 2018.
12. I am satisfied that neither Employment Judge could have been more helpful in explaining to the claimant exactly what was required of him.

Hearing and Findings of Fact

13. The claimant had produced the second set of further information about his case and I had the chance to read it, together with the whole of the file, before the hearing commenced.
14. Ms James opened the hearing by giving me a brief history of the case. She acknowledged that the claimant was unrepresented and had attempted to put his case as well as he can. At the first PPH, Employment Judge Garnon found that the claimant had not given enough information to make out a public interest disclosure (PID) claim and had given the claimant assistance to enable him to provide the details required.
15. At the second PPH, Employment Judge Johnson had found that the claimant's attempt to provide further information about his case was not compliant with the terms of Employment Judge Garnon's Order and explained the situation and the details required to the claimant in detail.
16. Despite that advice, the document produced by the claimant seemed to have ignored the advice to provide quality not quantity and did not comply with the requirements of the original Order. She therefore applied for the claimant's claims to be struck out.
17. The claimant said that the claim had been difficult for him from the start. He is not a legal person; he is an ordinary working man. He had no legal backing and had spent hours on the documents he had produced. What he had produced was the best he could do.

Decision

18. I have some empathy for the situation that Mr Brown finds himself in, but he simply failed to put any cogent details, evidence or argument to me in support of his claim to have made protected disclosures. However, it was clear from the lengthy notes made by Employment Judges Garnon and Johnson at the previous preliminary hearings that they had explained to the claimant the nature of his claim, the legal principles behind the claim, the workings of the Tribunal and what was required of him in terms of further information.
19. I am sorry to say that the claimant has almost entirely failed to meet any of the requirements of Employment Judge Garnon's Order insofar as setting out the basis of his claims of having made a PID.

20. I accept all of Ms James' submissions on the issue of the further information. The document produced by the claimant does not get to the heart of the matters that he was required to give further information about. With the greatest of respect to him for his efforts to produce what many employment lawyers find difficult, he has simply not identified the acts or failures to act which placed him at a disadvantage and had not identified who did or said what and when they did or said it. He also failed to provide sufficient detail of what he said or wrote to whom, when he had written or said it, and why he believed the information disclosed a relevant failure and why it was in the public interest to disclose it.
21. Much of the narrative provided by the claimant was very general and seemed to assume that any complaint that could have the words 'health and safety' attached to it would automatically be a protected disclosure without giving the vital context of the additional information required by the Order.
22. The overriding objective contained in Rule 2 of the 2013 Rules requires the Tribunal to achieve a just and fair hearing. The Tribunal has to ensure that the parties are on an equal footing. That means that the Tribunal and the respondent have to understand what the claimant is claiming. In this case, despite having been given two bites at the cherry, the claimant has been unable to present a cogent case that explains how he will show that he suffered detriments because he made PIDs and was dismissed because of the PIDs he made.
23. I find that the claimant's claims of automatic unfair dismissal because he made a protected disclosure and detriment for making a PID have no reasonable prospect of success because the documents he produced at this hearing and previously do not show that he made one or more protected disclosures that were in the public interest and met the other requirements of the law. Most of the information provided by the claimant discloses, at best, complaints that relate to his personal working relationship with colleagues. There is no public interest in making a complaint on those grounds.
24. I therefore find that the claims for automatic unfair dismissal pursuant to Section 103A of ERA and detriment because of PIDs have no reasonable prospect of success and strike them out.

EMPLOYMENT JUDGE SHORE

**JUDGMENT SIGNED BY EMPLOYMENT
JUDGE ON
8 January 2019**

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