



EMPLOYMENT TRIBUNALS

On an application for interim relief

Claimant: Mr R Patel
Respondent: Heart Security Services Ltd
Heard at: Nottingham
On: Monday 25 February 2019
Before: Employment Judge Blackwell (sitting alone)

Representation

Claimant: In person
Respondent: Ms P Hall, Consultant

JUDGMENT

The Claimant's application for interim relief pursuant to section 128 of the Employment Rights Act 1996 is refused.

REASONS

1. Mr Patel represented himself and relied upon a number of documents which appear in the agreed hearing bundle. Ms Hall represented the Respondent and she too relied upon documents appearing in the joint bundle.
2. Mr Patel brings an application for interim relief pursuant to section 128 of the Employment Rights Act 1996. Subsection (1) reads

“128 Interim relief pending determination of complaint.

(1) *An employee who presents a complaint to an employment tribunal that he has been unfairly dismissed and—*

(a) *that the reason (or if more than one the principal reason) for the dismissal is one of those specified in—*

(i) section 100(1)(a) and (b), 101A(1)(d), 102(1), 103 or 103A, or

...”

Section 100(1)(a) and(b) reads:

“100 Health and safety cases.

(1) *An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that—*

(a) *having been designated by the employer to carry out activities in connection with preventing or reducing risks to health and safety at work, the employee carried out (or proposed to carry out) any such activities,*

(b) *being a representative of workers on matters of health and safety at work or member of a safety committee—*

(i) *in accordance with arrangements established under or by virtue of any enactment, or*

(ii) *by reason of being acknowledged as such by the employer,*

the employee performed (or proposed to perform) any functions as such a representative or a member of such a committee,

...”

3. In this case, Mr Patel relies upon section 100 which deals with Health and Safety issues. The first difficulty that Mr Patel has is that section 128(1)(a) is limited to subparagraphs (a) and (b) of subsection (1) of section 100. Mr Patel does not contend that he was a representative of workers or member of a safety committee so as to bring him within subsection (1)(b) but he appears to be saying that as a security officer he was charged with certain “activities” so as to bring him within subsection (1)(a). It does not seem to me that there was any such “designation” simply by employing Mr Patel as a security officer.

4. However, if I am wrong about that, then what activities did he carry out? I accept for the purposes of these proceedings that he has raised with his employer a number of matters. For example:

- his employer’s failure to provide an appropriate first aid kit;
- a failure to salt and grit premises at which Mr Patel worked;
- a failure to comply with smoking policy; and

- a failure to follow procedure on signing visitors in and out of the site for which Mr Patel was responsible.

5. These are examples of many issues which Mr Patel says he brought to the attention of his employer. As I understand it, Mr Patel's case put in layman's terms is 'that I made such a nuisance of myself by reporting matters which other guards did not, that that was the cause of my dismissal'.

6. Ms Hall for the Respondent draws my attention to a number of examples where Mr Patel reported late for work and in particular at page 95 of the bundle, she draws to my attention a complaint by a fellow guard that Mr Patel had been late on 2 February and he goes on:

"... he has been late every time he's taken me off ... I don't mind once or even twice but he's doing it every shift and he gives the same excuse of I had to use the toilet ..."

7. Mr Patel was on a probationary period and he was seen by his supervisor on 8 February 2019. I have read the notes of that interview beginning at page 109.

8. That led to the dismissal letter of 11 February 2019 at page 120 and the Respondent's concerns were set out as follows:

"...

- 1. Your persistent lateness, resulting in complaints by numerous other members of staff. Several prior warnings were discussed given on this matter.*
- 2. Client complaints about the way in which you had approached them to deal with matters.*
- 3. Client concern raised about your inappropriate levels of communication (ie, interrupting work and raising concerns about discretion).*
- 4. Tying up the Control telephone line for long periods meaning the line couldn't be used for purpose – again this was discussed many times previously with you and you were asked to email and log any issues.*

..."

9. The issue is a simple one before me in pursuance of section 129(1) which reads as follows:

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—

(a) *that the reason (or if more than one the principal reason) for the dismissal is one of those specified in—*

(i) *section 100(1)(a) and (b), ...”*

10. Mr Patel has an arguable case that his repeated reports of breaches of various health and safety regulations may have caused his dismissal but it falls short of the standard of “likely”.
11. On the basis of the material I have seen, it is my view that it is at present more likely that the reasons set out in the dismissal letter at paragraph 8 above are the reasons for the dismissal.
11. Therefore, Mr Patel’s interim relief application should be refused.

Employment Judge Blackwell

Date: 26 February 2019

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE

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