EMPLOYMENT TRIBUNALS

Richard Harris Claimant

-v-

National Association of Schoolmasters Union of Women Teachers ("NASUWT")
Respondent

Heard at: Exeter On: 12 December 2018

Before: Employment Judge Housego

Representation:

Claimant: Andrew Midgley, of Counsel
Respondent: Adam Ohringer, of Counsel, instructed by Slater and Gordon

JUDGMENT

1. An Order is made for the continuation of the claimant's contract of employment, pursuant to S129(9) of the Employment Rights Act 1996 (an interim relief order).

2. S130(2) requires the Order to specify the amount to be paid by the respondent to the claimant by reason of this Order. Directions are attached.

3. The claimant's application for leave to amend the claim and to add a second respondent is granted.

4. Directions are attached.

REASONS

Introduction

1. At the hearing on 12 December 2018 I gave a short ex tempore judgment. The parties requested full reasons and so this judgment is prepared.

2. The claimant has brought a claim for unfair dismissal, his employment having been terminated by the respondent by letter dated 25 October 2018. He seeks interim relief, under Sections 128-132 of the Employment Rights Act 1996.

Application to amend the claim

3. The claimant seeks leave to amend his claim, if it is necessary to do so. The respondent opposes this application. This is separate from the interim relief application, and a precursor to it. He also applies to add a second respondent and to add a new head of claim (detriment prior to dismissal), under S47 of the Employment Rights Act 1996.

The legal framework for an interim relief application

4. There are requirements a claimant must meet in order to seek an order for interim relief. In this case it is that the claimant must claim to have made protected public interest disclosures ("pid") and been dismissed as a result. The claimant so claims. He also claims that trade union activity is part of the reason why he was dismissed, but did not provide the necessary certificate[1] with the application for interim relief, and so that part of his claim is not for consideration, save that if it appears that a trade union reason is "likely" to be the reason for dismissal that may undermine the claim that it was "likely" to be for a pid reason.

5. In deciding whether an interim order is to be made, no findings of fact are made and no oral evidence is given. The claim and the defence are assessed on the papers, including witness statements, and upon considering submissions made by both parties.

6. An application for interim relief will succeed if it appears to the Tribunal that it is likely[2] 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 the dismissal is (in this case) public interest disclosures made by the claimant.

7. There has been case law about exactly what "it is likely" means. It is not the balance of probabilities. It is not the criminal standard of "beyond reasonable doubt". It is somewhere in between. Whether that is "a pretty good chance of success"[3] or other formulation does not really assist when the statute uses a word of simple English: "likely". Reformulating the test seems to me unhelpful, as it did to Mr Recorder Luba

[1] S161(3) of TULRCA 1992
[2] S129(1)
[3] London City Airport Ltd v Chacko [2013] IRLR 612 at paragraph 10 and Wollenberg v Global Gaming Ventures (Leeds) Ltd and Herd [2018] UKEAT/0053/18/DA, paragraph 25 [4] In Chacko

QC when suggesting those words[4]. Perhaps "probable" conveys a similar meaning. What is clear is that this is not a low hurdle – it is a "comparatively high"[4] test.

8. My task in dealing with an application such as this to do the best I can with such material as the parties are able to deploy by way of documents and argument in respect of their respective cases. I must then make as good an assessment as I am promptly able of whether the claimant is likely to succeed in a claim for unfair dismissal based on public interest disclosure. The test is not whether the claimant is ultimately likely to succeed in his complaint but whether it "appears" to me that it is "likely to succeed". This requires an expeditious summary assessment as to how the matter looks to me on the material that I have. Of necessity this involves far less detailed scrutiny of the respective cases and the evidence then will ultimately be undertaken. I have to do the best I can with the untested evidenced advanced by each party.[6]

Matters not in dispute

9. In this case there are some facts that are not in dispute.

10. The claimant is a union official employed by the respondent. As he is employed by a union, it is necessary for him to be represented by another union (because if he had a dispute with his employer his employer would be his opponent not his representative). The claimant is a member of the GMB union. So are many other employees of the respondent.

11. There had been a number of issues between the claimant and the respondent. The claimant was suspended on 15 November 2017, continuously until dismissed. There were three separate investigations. The first concerned alleged financial irregularities (alleged use of expense account for personal use), the second alleged representation of individuals while suspended, and the third concerning emails said to be malicious circulating within the membership of the respondent. The witness statements of the respondent expand on these, but is not necessary to go into detail. It suffices to say that relations between the respondent and the claimant were not good. It is relevant to observe that the suspension of the claimant was of 11 months duration when matters came to a head. This is a very long time to investigate alleged financial irregularities, and it is likely (and whenever I use this word it is not a finding of fact, but in the sense above) that there was a continuum of activity with an increasing likelihood that the only outcome would, in some way or other, be the exit of the

[4] Dandpat v University of Bath [2009] UKEAT/0408/2009, cited in Chacko at paragraph 10
[6] From the headnote of Chacko

claimant from his employment. Every Employment Judge is familiar with this scenario.

12. On 09 October 2018 the claimant attended a meeting of his own union, GMB, held in the Generous George pub, near the headquarters of the NASUWT. The claimant was a former president of the union branch. He was not expected at the meeting. The GMB had not invited him, as after his suspension the GMB committee had decided not to have contact with him until the disciplinary matters were resolved[5]. The claimant took an active part in that meeting to the extent that the respondent says that he took it on himself to chair it. The witness statements do not say who was expecting to chair the meeting.

13. The meeting being held in a pub, beer was drunk. The respondent says that someone at the meeting contacted Stephen Brown, who is chair of the NASUWT branch of the GMB, and who was not at the meeting, about the claimant drinking beer at that meeting. Stephen Brown is said to have contacted Chris Keates, General Secretary of the NASUWT to say that this was to excess, and that the claimant had driven himself away from the meeting, the suggestion being that he was over the alcohol limit to drive.

14. She says she then spoke to someone who had been at the meeting, Justin Adams, on 09 October 2018, and he says the same, and that he told her that the claimant had drunk 3 pints of Guinness, at least. She says that there had been previous issues with the claimant's treatment of his company car, which he retained when he was suspended. No disciplinary matter resulted from any of them. Ms Keates decided (her witness statement refers to no consultation with anyone else) to remove the claimant's company car, and to report the claimant to the police for drink driving. She says[8] she told the NASUWT head of personnel, Pete McCollin to do this, and that he did so. He says that when he tried he was told to log it online but was not able to do so[6].

15. Ms Keates wrote to the claimant on 09 October 2018 telling him not to drive the vehicle and that it would be collected from him[10]. This letter said that

"apparently" he had drunk 4 pints of Guinness, but also that "this is clearly a serious criminal offence"[7] and that in consequence she had taken the decision to remove his car from him.

[5] Statement of Justin Adams, a member of the GMB branch of the NASUWT, para 2, which for the purposes of this hearing I take at face value. [8] Witness statement paragraph 26
[6] Pete McCollin witness statement paragraph 5
[7] Bundle page 86

16. On 16 October 2018 the claimant replied to Ms Keates by email[8]. It is this email that is said to contain the pid. It contained a series of matters:

    16.1. This was a defamatory statement.

    16.2. He asked who made the allegation.

    16.3. He correctly pointed out that anonymous allegations were not acted on, as a matter of policy[9], and asked who had made it.

    16.4. He complained against the person making the allegation, under the bullying and harassment policy, and as a grievance.

    16.5. He complained against Ms Keates for reporting him to the police. This was stated to be a protected disclosure as it was a malicious lie and a waste of police time which was a criminal offence.

    16.6. It was said also to be a detriment related to his trade union activities.

    16.7. He said the he declined to resign in response to what he said was a fundamental breach of contract.

    16.8. If his requests were not met he would circulate all members of the union, and the National Executive, asking the latter to suspend her, and go to the press, as further pid.

    16.9. She had no right to remove his vehicle which was his contractual right.

    16.10. As a solution, it would end the matter if she apologised, withdrew the allegation made to the police, said who had made the allegation, and rescinded the instruction to give up the company car.

17. On 16 October 2018 the claimant emailed Committee members of the executive of the NASUWT[10]. He attached the letter from Ms Keates of 09 October 2018, and his reply to Ms Keates, described above. He asked the Committee to take action.
    He said that he had proposed moderate terms of settlement.

18. The claimant's email was rebuffed by Ms Keates in a short letter of 18 October 2018[11].

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[8] Bundle page 88

[9] This is in the NASUWT disciplinary policy at para 3.6 which states "Oral allegations must be confirmed in writing. Anonymous allegations will not be considered" (Bundle page 130). The Rules of NASUWT at (4)(a) provides that "Upon receipt of a complaint the Complaint Secretary shall send a copy of the complaint to the Respondent…"

[10] Bundle page 87

[11] Bundle page 97

19. There were then a series of meetings of the NASUWT, all held on 22 October 2018, at the same place, and in short succession, and with the same people in different combinations[12].

    19.1. A Joint Meeting of the National Officers and the Staff Review Committee with Ms Keates and the Deputy General Secretary Patrick Roach in attendance, decided to refer the matter of the emails sent to the committees to the National Officers Committee.

    19.2. That Committee, all 5 members of which were at the meeting above, again with Ms Keates and Mr Roach in attendance, then decided that the emails were "seriously defamatory and abusive of the General Secretary" and that the claimant had threatened further action. It resolved that "The National Officers would take such actions as necessary to protect the interests and reputation of the NASUWT" and that "the matters regarding the conduct of Richard Harris be referred to the SRC for consideration and decision."

    19.3. The Staff Review Committee, which comprised three people who were in all three meetings with two others who were in the first meeting but not in the second, again with Ms Keates and Mr Roach in attendance. This found, as a fact, that the General Secretary had acted appropriately in connection with the matters about which the claimant complained, and that the email of 16 October 2018 was a fundamental breach of contract by the claimant. It was also said to evidence a fundamental breakdown of mutual trust and confidence between the claimant and the respondent. It noted that he was suspended for investigation of potential matters of gross misconduct. It resolved that the conduct of the claimant "should be accepted as bringing his

    employment to an end" and that a letter should be sent to him to that effect terminating his contract with immediate effect.

20. Such a letter was sent, on 24 October 2018[13].

21. The claimant responded to this, in detail, on 31 October 2018[17]. While it deals with a whole range of matters this includes substantial exploration of his pid.

[12] Bundle pages 98-104
[13] Bundle pages 105-106
[17] Bundle pages 107-111

What is in dispute

22. Against this uncontested factual background several points arise. An agreed list of issues was provided to me. I bear in mind that I am not deciding the answers to these issues, but forming a swift view as to whether it is likely that the claimant's case on these points will succeed:

    22.1. Does the claimant need leave to amend his claim specifically to claim under S103A of the Employment Rights Act 1996? The claim form ticks the

    "unfair dismissal" box, but the only detail given is "interim relief", and in box 9.2, about want is sought, "At this stage I simply seek a determination of my interim relief claim". The claim form was accompanied by a lengthy particulars of claim setting matters out in some depth, and expressly referring to pid[14]. It asserts that his dismissal was because of the pid and, or alternatively, that it was because he had engaged in trade union activities including chairing the meeting of 08 October 2018, and at it planning strikes.

    22.2. If yes, do I grant it?

    22.3. Where there any protected disclosures, and if so what were they?

    22.4. If I decide that these questions in favour of the claimant, is he likely to succeed before a full Tribunal?

Amendment

23. It is necessary to amend specifically to plead S103A. The claim form expressly asks for interim relief and claims unfair dismissal, and the particulars of claim have pid all over them. There is no room for doubt as to what is being claimed. I do not consider that leave to amend is required in respect of the pid claim for unfair dismissal and interim relief - the thrust of what is alleged is absolutely clear from the letters written at the time and in the particulars of claim attached to the ET1. This includes the matters set out in the application to amend. It might have been better pleaded, but it was prepared by a litigant in person (even an experienced trade union official is not expected to be an expert employment lawyer). There is nothing new in the position put forward by the claimant in the hearing and in his witness statement today. There are the same bricks, but now better built by a different and more skilled architect. This is a re labelling case, within Selkent Bus Co Ltd v Moore [1996] ICR 836 There is no time point because the time limit had not expired when the application was

[14] Bundle pages 14-16

made, so no issue such as in Galilee v The Commissioner of Police of the Metropolis UKEAT/0207/16/RN.

24. If amendment were required I would permit amendment. An interim relief application has to be put in within 7 days. It has to be a rush job. It cannot be expected to be a manicured document. It is entirely unfair to expect everything to be done perfectly straight off, and by person acting as a litigant in person - even if one with experience. It would be absurd and unjust if a claimant was denied the use in an interim relief application of what he is fully entitled to add to the main claim now. The respondent submits that there is no "second bite at the cherry"[15] There is no logical reason that might justify denying a claimant an argument in an interlocutory hearing when he is fully entitled to use the same argument in the main hearing, having amended. There has been no prejudice to the respondent which is fully able to respond, and has done so.

25. Accordingly were amendment needed I would have granted the application.

Amendment to include detriment during employment (S47B of the Employment Rights Act

26. The claimant's time for making a fresh claim had not expired by 12 December 2018. Since he could bring a fresh claim there is no point making him go through the process of early conciliation (which would plainly be a formality) and then filing a new claim. The particulars already filed clearly set out all the matters in the application to amend. The overriding objective[16] is not served by requiring a new application and is served by granting the application as asked.

27. I have considered carefully the great volume of case law placed before me by the two able Counsel who appeared. There was much discussion of Mechkarov v Citibank NA UKEAT/0119/17 and UKEATPA/0335/17. The fundamental difference between that case and this is that the date Mr Mecharov's employment ended was 30 September 2013, and the pid claim was brought on 19 January 2015, some 15 months later[21]. In a directions hearing held on 13 March 2017 Employment Judge Foxwell held that the claimant's ET1 did not include a pid detriment claim (it had a pid dismissal claim). The time difference between that case and this is huge. The claimant in this claim was only dismissed by letter of 24 October 2018, some 7 weeks before the hearing. The entire argument about amendment is academic since the claimant can still claim afresh, claiming whatever he wishes. There is now no fee issue to

[15] Chacko paragraph 24
[16] Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, Schedule 1 paragraph 2
[21] Paragraph 2 of the decision

complicate matters. There is no prejudice to the respondent or the new respondent, since a new claim can be made should the application have been unsuccessful.

28. I grant leave to amend to include a second respondent, Ms Keates, and to claim S47B detriment for a pid reason during employment.

Qualifying disclosure issue

29. Were qualifying disclosures made? If so it is agreed that they are protected disclosures, because they were made to the employer (S43C(1)(a)).

30. The matters claimed to be disclosures fall into 3 categories. They are (a) the commission of a criminal offence (wasting police time), (b) breach of legal obligations (in relation to the claimant's car and in the conduct of disciplinary proceedings and dismissal) and (c) health and safety (the asserted effect on the claimant).

31. I conclude that (a) and (b) are protected disclosures. I do not find that (c) is a pid, but that does not affect the outcome.

32. The provisions of S47B(1) are clear. A qualifying disclosure is something disclosed which in the reasonable belief of the worker is made in the public interest and tends to show that one of the headings that follow is met.

33. Taking first the matter said to be a criminal offence pid. It was reasonable of the claimant to believe, in the circumstances of this case, that the allegation of drink driving was malicious and that it was malicious of the General Secretary herself to report it. She was doing so on two reports, one being double hearsay, and to no point as by the time she so decided it was the afternoon of the next day, and so there was no possibility of any action being taken by the police. The claimant was not to know that the police would be so disinterested that they would tell the respondent to log it on a webpage and that the respondent could not work out how to do it.

34. Wasting police time is a topic that makes the headlines. The Claimant knew that the General Secretary had no reason to be helpful to him and is likely reasonably to have believed that she was doing so maliciously: therefore he was reasonable to think that it was not a genuine report: and that would (if so) be to waste police time.

35. It was a disclosure, because it was sent to people who did not know about it (the Committee members).

36. The disclosure was in the public interest: that it was made in the context of an employment disagreement does not preclude that conclusion. The General Secretary of the NASUWT is the leader of a union with several hundred thousand members, and those members are teachers, each of whom will teach 20 or 30 children each, all

of whom have families. If the General Secretary of such a union were to be wasting police time, that is by its very description a matter of public interest.

37. Secondly the asserted breach of legal obligation in respect of the car: the claimant had a contractual right to the car. He was reasonable to think that it could not unilaterally be taken from him by an executive action by the General Secretary without any process, and with no findings of fact. The letter[17] which starts off with "apparently" then states as fact that he had "clearly" committed a serious criminal offence. He was reasonable to consider that there was no genuine reason to do this without proper process, that it was being used as a pretext to advance the dispute between them. The claimant thought he had some proprietary right to the car. The contractual right to the use of a company car does not, of course, confer any proprietary (ownership) rights in the vehicle itself, as the claimant was asserting. He did not have to be right. He just has to have a reasonable belief in what he was saying. It seems to me that a Tribunal will find that he did have that reasonable belief. It is common ground that he had used the same car for some years. Ms Keates was unhappy about how he looked after it (or did not do so). Paragraphs 17-22 of her witness statement set out her unhappiness about this over a whole closely typed page. It is not unnatural for him to have come to regard it as "his" car.

38. Was this pid in the public interest? There is case law about whether something in the private interest of the employee may also be in the public interest[18], to the effect that it is all a question of scale. The larger the number of people whose interests are engaged by a breach of contract of employment, the more likely it is that there will be other features of the situation which will engage the public interest. In this case, if it was a private sector employer, no. For a union representing 300,000 or more teachers, treating its own employees this way, yes. There is a broader aspect to this matter than the interests of the claimant. The whole scenario has "public interest" written through it. As indicated above, quite apart from the 300,000 members, the public has an interest in the respondent as the largest teaching union, and how it runs itself. Almost everyone has a connection with a school age child somewhere in a family or friendship circle. It is a public interest matter how the biggest teaching union conducts itself. This is far wider than one of a group of managers of estate agents[24]. Therefore this also was a public interest disclosure.

39. Thirdly the asserted pid related to health and safety. The email of the claimant to Ms Keates, sent to the Committee and said to be such a pid stated "It also involves

[17] Bundle page 86, dated 09 October 2018
[18] Chesterton Global Ltd v Nurmohamed [2018] ICR 731 paragraph 32-37
[24] Chesterton

causing damage to my health, safety and well-being, another ground for this protected disclosure. You know that I have a number of health-related disabilities.

These have been aggravated by your astonishingly irresponsible conduct." For this to be a pid would be to widen the scope of pid hugely. Potentially it would turn every bullying or harassment claim into a pid. That cannot be right. Nor is it something in the public interest. Matters involving pid often involve worsening mental health, or at least great stress, by the person making the disclosure. That is a consequence of making a pid, not a pid in and of itself.

Protected disclosures

40. It is common ground that any matter that is a qualifying disclosure is also a protected disclosure, because it was made to the members of the Committees running the employer.

Causative link between pid and dismissal

41. The next stage is to see whether the disclosures are likely to be the reason for the dismissal. This is not fact finding. It is a broad overview of the evidence I have been shown. The statute says it must be "likely" that the public interest disclosure is the reason or principal reason for the dismissal. The claimant must show that he has "a pretty good chance of success".

42. The respondent is absolutely clear that it was the Staff Review Committee which dismissed the claimant. The Chair of that committee, Fred Brown, in his witness statement[19] said that while he knew that the claimant had been suspended and that other matters were being investigated he knew nothing of the detail, at all. The corollary is that all he knew was the email of 16 October 2018. That contained the pid.

43. The claimant says that the General Secretary wanted to get rid of him and used this as the pretext. That may well be right, but that was not what she said that she told Mr Brown's committee. The claimant is entitled to take Mr Brown at his word, and it is a challenging submission for Counsel for the respondent that the evidence of one of their own witnesses should be reversed.

44. Perhaps the General Secretary engineered the whole thing, but even if so, the Respondent's pleaded case is that it was the Staff Review Committee that made the decision, and that they knew nothing of the back story.

[19] Paragraphs 3 and 4

45. So what reason did the Staff Review Committee give for dismissing the claimant? This is set out in the letter of dismissal[20]. It states, as fact, that the claimant had breached the fundamental duty to show mutual trust and confidence and that the respondent accepted that as terminating the employment with immediate effect.
It set out four main reasons for that conclusion.

46. First to threaten a defamation action, second to complain of bullying and harassment by the persons who reported him to the police (when his reported conduct was said to have put people at risk), thirdly that he wanted the General Secretary suspended or would go to the press, and lastly that he had described her as a despot.

47. This omits the olive branch at the end, which asked only for an apology, to tell the police that the allegation was withdrawn, to know who had made the allegation in the first place and the retraction of the withdrawal of the car.

48. These were all reasonable requests to make in the circumstances (and that the claimant wanted the police contacted shows that it was a concern to him, so reinforcing my conclusion that it was likely to be a genuine belief).

49. While I make no findings of fact, the actions of the General Secretary do not seem, from the papers I have seen, likely to be justifiable. They may be understandable in the context of what appears to be a no holds barred political struggle, but that is not the point at all. There seems no authority for the General Secretary to remove a car. The NASUWT policies say that oral complaints will not be processed unless reduced to writing. They say that complaints must be sent to the person complained about. They say that anonymous complaints will not be processed at all. It is likely that a full Tribunal will give these points great weight.

50. The four points in the dismissal letter were not seen in context by the Staff Review Committee. That is because the Staff Review Committee had no context in which to see it. The General Secretary is not on any of the three Committees that met on 22 October 2018 sequentially on the same day in the same place, and decided on dismissal, but she and her deputy were present throughout all three meetings. It seems to me not just likely but inevitable that a full Tribunal will consider that the principles of natural justice were not observed.

51. There is no evidence that any of the Committees gave the slightest thought as to whether the claimant might have a point. They were unlikely to be disposed to be critical of the General Secretary whom they allowed to be present throughout.

[20] 24 October 2018, bundle pages 105-106

52. The claimant did not call the General Secretary a despot, but accused her of acting like one. This is not a mere linguistic nuance: this was to object to the action not the person. And he had a point, as the car removal that prompted this was a unilateral decision by the General Secretary - her letter says "I have decided…"

53. The actions to which the claimant was responding cause an understandably strong reaction, but with a positive suggestion at its end. This was plainly a difficult matter, with a long history, as the Staff Review Committee knew, and in the context of a large union, used to conflict and its resolution. For the claimant strongly to set out a position and end with a suggested positive route forward is far from unknown. It is not of itself likely to be a credible reason, from my overview of the case, for the dismissal.

54. The respondent considers that the manner in which the respondent wrote that was the cause of the dismissal, not what he wrote, and cites as an exemplar of this the case of Panayiotou v Chief Constable of Hampshire Police [2014] IRLR 500. This is a case I know well, as by coincidence I was the judge at first instance. The critical difference is that in that case all the action came from the claimant, not from the respondent, as here, and this claimant was reacting to what the respondent did.

55. The other significant difference is that the claimant in this case sought a route forward, offering negotiation, whereas in the Panayiotou case, one initial public interest disclosure (which was a correct disclosure of something that was amiss) escalated into over 800 other asserted disclosures because the claimant was not satisfied with what was done to resolve the issue he had raised. He became totally unmanageable and by the time he was dismissed he had worked in his job only a few months over some 4 or more years, and the work generated by his complaints was huge.

56. The respondent says that the claimant was sure that the General Secretary wanted him dismissed because of his trade union activities (for the GMB). He may be right. That would be likely to be fatal to his claim for interim relief if the General Secretary had dismissed him. But she did not have the authority to do so, it appears, and it was the Staff Review Committee dismissed him. That the General Secretary may have orchestrated the outcome is not to the point, as she did not make the decision, and the respondent does not say that she gave information to the Staff Review Committee to lead them to do so on union related activities. It is reasonable for the claimant (and for me) to expect the respondent to have said what it meant in the letter of dismissal.

57. Even if the claimant thought it was trade union related activity that caused his dismissal, the interim relief is sought because of the reason for the respondent, not what the claimant thought it was.

58. Accordingly it is likely that the decision to dismiss was by reason of the email of 16 October 2018. That contained the public interest disclosures. That does not necessarily mean that the reason was those public interest disclosures. The respondent says that it was the manner in which he wrote that led to the dismissal. Without knowledge of the history that led up to this that cannot be reasonable, as set out above. It also is to ignore the ending of emails to General Secretary and Committee with emollient overtures. That reason also is not enough to refuse the application.

59. The reason the Staff Review Committee objected so strongly was that the claimant said that he would go to the press if his public interest disclosures were not acted on. They had no intention of acting on them. That is the principal reason that leaps from the pages. Accordingly it is likely that the principal reason for the dismissal was the public interest disclosures made by the claimant.

60. This last is an important point. The claimant had threatened to go public – to the press – but he had not done so. He had threatened to do so if his pid was not acted upon internally. The Committee refused to do so, and dismissed the claimant instead, and that was because of the pid in his email to them.

61. For these reasons the application for interim relief succeeds.

62. As required by S129(3) I enquired of the respondent whether they were willing to reinstate or reengage the claimant. After time for consideration they declined to do so. Accordingly I made a continuation of contract order as required by S129(9) of the Employment Rights Act 1996.

63. I make directions as attached.

Employment Judge Housego

Date 11 January 2019

ORDERS

I make the following orders of my own volition pursuant to Rule 29 in Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.

1. The hearing of 12 December 2018 did not deal with the amount to be paid by the respondent to the claimant, as required by S130(2) of the Employment Rights Act 1996. If they can agree the terms to be covered as required by that subsection the parties are to notify the Tribunal of them, by 4pm on 01 February 2019 when a further Order will be made by consent. If they cannot agree then by that date and time they are to so notify the Tribunal and a further hearing will be listed to determine the amount to be paid, and to make further case management decisions.

2. By 4 pm on 01 February 2019 the claimant is to file the amended claim permitted by the judgment to which these orders are ancillary.

3. The respondent has leave to file an amended response by the same date as the second respondent must file her response to the amended claim.

4. A telephone case management hearing will be listed for the first date after 08 March 2019.