



THE EMPLOYMENT TRIBUNAL

SITTING AT: LONDON SOUTH
BEFORE: EMPLOYMENT JUDGE BALOGUN
BETWEEN:

Mr JD Amaglo

Claimant

AND

Encor Group UK Plc and others

Respondents

ON: 15 April 2019

Appearances:

For the Claimant: In Person

For the Respondent: Mr S Nicholls, Counsel

JUDGMENT ON INTERIM RELIEF APPLICATION

The application for interim relief is refused.

REASONS

1. By a claim form presented on 12 March 2019, the Claimant claims, among other things, that he was automatically unfairly dismissed by the first Respondent for making protected disclosures pursuant to section 103A of the Employment Rights Act (the "ERA"). Included within the claim was an application for interim relief pursuant to section 128 ERA.
2. The issue I had to determine in relation to this application was whether the Claimant's automatic unfair dismissal claim was likely to succeed at the substantive hearing.

The Law

3. By section 128(1) ERA, an employee who presents a complaint of automatic unfair dismissal pursuant to section 103A may apply to the Tribunal for interim relief.
4. An application for interim relief will be granted where, on hearing the application, it appears to the Tribunal that it is likely that on determining the complaint to which the application relates, a tribunal will find that the reason for dismissal is the one specified. (s.129(1) ERA)
5. The case of Taplin v Shippam Ltd (1978) ICR 1068 EAT defined "likely" in section 129(1) as a "pretty good chance of success". That test was reaffirmed in the case of Dandpat v The University of Bath and Ors UKEAT/0408/09
6. The standard of proof required is greater than the balance of probability test to be applied at the main hearing. The EAT recognised in the *Dandpat* case that such a high burden of proof is necessary as the granting of such relief will prejudice a Respondent who will be obliged to treat the contract as continuing until the conclusion of the proceedings. Such a consequence should therefore not be imposed lightly.
7. Section 103A ERA provides that an employee who is dismissed shall be regarded as unfairly dismissed if the reason or principal reason is that the employee made a protected disclosure.
8. Section 43B ERA defines a qualifying disclosure as any disclosure of information which is made in the public interest and which, in the reasonable belief of the worker making the disclosure, tends to show one or more of the matters set out in sub-paragraphs a-f.
9. The particulars of the alleged disclosures are unclear from the ET1 and I therefore spent a considerable amount of time during the hearing seeking clarification from the Claimant. Unfortunately, that exercise proved fruitless as the Claimant was unable to sufficiently articulate verbally the factual basis of the disclosures or how they met the requirements of section 43B(1) ERA.
10. It became apparent that further particulars, in writing, of the alleged protected disclosures were required and that these would need to be ordered at a later stage in the process, probably at a case management discussion, after the ET3 had been lodged.

11. However, in terms of this hearing, the lack of clarity as to the nature of the alleged disclosures meant that it was impossible for the high standard of proof for an interim relief order to be met.
12. The application for interim relief was therefore refused.
13. The Respondent reserved its position as to costs

Employment Judge Balogun
Date: 29 April 2019