Case No: 3320102/2019

EMPLOYMENT TRIBUNALS

Claimant **Respondent**

Mr G Attipoe **v** **Tsys Managed Service EMEA Limited**

Heard at: Watford **On:** 29 July 2019

Before: Employment Judge Smail

Appearances:

For the Claimant: In person
For the Respondent: Mr N Benton, Solicitor

JUDGMENT having been sent to the parties on 13 August 2019 and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013, the following reasons are provided:

REASONS

1. The claimant applies for interim relief. He submits that there is a pretty good chance that the tribunal will find that the principal reason for his dismissal was that he made a protected disclosure or protected disclosures, in particular around the cold workplace temperatures on or around 27 February 2019 in an email to the Operations Director, Timothy White, entitled Heating Issue and Employee Welfare. He had been challenged by a Manager, Julie, for wearing a hat. He stated that as it was cold and he had no hair and so he has to wear a hat when it is it cold. He stated there was no adequate heating for the Night Team including himself.

2. The claimant claims unfair dismissal in a claim form presented on 10 July 2019. That includes a claim for automatic unfair dismissal. The respondent understands that it is faced with a claim around protected disclosures.

3. The claimant wishes also to present the claim as a matter of race relations. He says that he and three other employees, all are black or of minority ethnic origin, have been dismissed or disciplined by the respondent for raising allegations. I know very little about the claims of the other three colleagues. I have seen a disciplinary invitation letter addressed to Albert Bonsu which invites him to a disciplinary hearing for a serious allegation of gross misconduct, specifically relating to abusive, violent or intimidating behaviour against a fellow employee, customer or supplier of the company. I do not know how plausible is the allegation that this disciplinary is victimisation for anything on what I know at the moment.

4. We have agreed that I hear the account of the claimant and the respondent's witness, Mrs Susanne Linsmeier. Each has been cross examined. It is agreed that I do not find facts as such but instead form an impression as to whether there is a pretty good chance that the tribunal will find that the principal reason for the dismissal was that the claimant had made the alleged, or indeed, other protected disclosures. For example, the claimant said to me that he had raised matters of racial harassment experienced by a colleague in December 2018 and again around his own disciplinary process in April/May 2019. Whilst for present purposes he nails his colours to the heating mast, I am open to the possibility that he will subsequently claim that he made other types of protected disclosures. And for what it is worth I bear those in mind in assessing the present matter.

5. It follows from our agreed approach that my impression arrived at today is not binding on any subsequent proceedings. My impressions do not amount to findings of fact binding subsequent process. My impressions are simply that - in relation to the present application.

6. The problem for the claimant on what I know at the moment, and admittedly it is at an early stage of the process, and the claimant is not joined for example by three other claimants claiming related matters, is that on the face of it the respondent's disciplinary process makes sense internally in its own right. Mrs Linsmeier tells me she knew nothing about the alleged disclosures. She may have known something about the matter of heating on the night shift. She says members of the night shift are always saying it is too cold. Instead she tells me she was briefed upon the disciplinary charges before her only. She was not tipped off, she says, that the claimant was a trouble maker and that this was an opportunity to dismiss him. I expressly asked her whether subsequent disclosure is likely to unearth any such communication between her other managers or HR. She tells me on oath that there will be no such evidence. Well, we shall see of course; but, for the moment I have what Mrs Linsmeier tells me.

7. The disciplinary charges that she examined were that, first of all, on 13 April 2019, the claimant had taken an unauthorised 2 hour 10 minute break away from work. When CCTV was examined to see where he was, it was seen that he had taken a mobile phone into the workplace which was in breach of the respondent's workplace security principles. The respondent analyses sensitive commercial information for clients and mobile phones have to be left in lockers so as to avoid the opportunity of taking photos or otherwise recording the sensitive information of the clients. And also, for what it is worth, the wearing of hats, apparently, is prohibited in the absence of medical support for similar concealment security reasons.

8. The respondent rejected the claimant's systems failure explanation for his 2 hour 10 minute absence because the self-reset facility on the computer should have meant that he was available to go back online after 15 minutes. Even if the computer was not available to him he should have stayed on the work floor assisting colleagues rather than absenting himself for the length of time he did.

9. This was not the only disciplinary matter that was known about. The

claimant had received a final written warning on 23 April 2019 for falling asleep at work. He had received a six-month warning issued on 19 October 2018 which is, as far as I can work out, covers 13 April 2019 for a data security breach which was also possessing a mobile phone in the work area. So, there was a warning, a final written warning and a third matter. It is said that the last matter was said to amount to gross misconduct. The respondent might also have said that it was a third warning in a series of warnings.

10. In short then, there is, on what I have seen at this very early stage, a cogent body of evidence pointing to misconduct as the reason for the dismissal. The claimant wishes to assert that it was his protected disclosures or that he wishes to assert that there is a climate of racial victimisation at this respondent. While assertion of course is one thing, evidence is another. It seems to me that the claimant has his work cut out to demonstrate that there is a prima facie case of protected disclosures or race discrimination playing a role here. Maybe if he is joined by three other claimants then the totality of what is put before the tribunal will point in another way but we are not there today.

11. The 'reason why' analysis, that is to say trying to identify the reason why he was dismissed, points to the misconduct. It does not presently point to the protected disclosure in relation to the cold in February 2019.

12. So, I am going on my impression of what I know. These are not findings of fact for the reasons given above. My impression is that the claimant does not have a pretty good chance of showing that the principal reason for his dismissal was protected disclosures as alleged, or another type of disclosure that there might be, attracting the right to claim interim relief.

13. In respect of this application for interim relief, it is my conclusion that the application is dismissed.

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Employment Judge Smail

Date: …23.10.19……………….

Judgment sent to the parties on

......25.10.19...............................

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For the Tribunal office