Case Number: 3323572/2019

EMPLOYMENT TRIBUNALS

Claimant		**Respondents**
Mr William Egan	**v**	(1) Prowess Limited (2) Robert Mark Cutmore-Scott (3) Samuel Mark Cutmore-Scott

Heard at: Bury St Edmunds **On:** 25 October 2019

Before: Employment Judge Cassel

Appearances
For the Claimant: Mr D Chapman, Solicitor.
For the Respondents: Ms C Elvin, Litigation Consultant.

JUDGMENT

1. The claim for interim relief under the provisions of s.128 of the Employment Rights Act 1996 fails and is dismissed. This is because it does not appear to the tribunal that it is likely on determining the complaint to which the interim application relates that the tribunal will find that the reason, or if more than one, the principal reason for the dismissal is one specified in s.103A of the Employment Rights Act 1996.

REASONS

1. The application for consideration in this case of interim relief is brought under the provisions of s.128 and s.129 of the Employment Rights Act 1996 by the claimant, Mr William Egan.

2. He was employed as a maintenance manager for the first respondent. The second and third respondents are directors of the first respondent. The claimant's employment commenced on 1 July 2019 until 21 September 2019 when he was summarily dismissed.

3. The basis on which an application for interim relief is made in this case is that the claimant made a disclosure qualifying for protection under s.43B of the Employment Rights Act 1996. The disclosure on which he relies is an email that was sent on or around 19 September 2019 which raised concerns under the provisions of s.43B. Mr Chapman clarified that the basis on which he was arguing the disclosures qualified as such under the Act covered those unlawful acts detailed under (a) to (f) of s.43B with the exception of (e) and among other things there were alleged criminal offences, a breach or breaches of health and safety, and a likely or threatened miscarriage of justice.

4. The disclosure was made to his employer and satisfies the provisions of s.43C of the Employment Rights Act 1996.

5. There is no issue that the application for interim relief was made within 7 days of the presentation of the claim form in this case. What the tribunal's role is, is clear from all the authorities in that considering under s.129 whether it appears that it is likely on determining the complaint to which this application relates the tribunal will find that the reason, of if more than one, the principal reason was in this case s.103A, an automatically unfair dismissal by reason of making a protected disclosure.

6. The task for the tribunal is to make a broad assessment on the material available to try to get an understanding of the evidence and to make a prediction of what is likely to happen at the eventual substantive hearing of these claims. I have considered the well-known authority of Taplin v v C Shipham Ltd [1978] IRLR 450 and I have also considered London City Airport Ltd v Chacko [2013] IRLR 610 which are judgments which are relevant to the approach that the tribunal must take in this application. The phrase that is helpful in this situation is considering whether there is "a pretty good chance" that a claimant will establish that he was dismissed for the particular reason on which he relies, in this case that of a protected disclosure. On the basis of the evidence presented to me I am not persuaded that that has been made out. I must stress that I am not making findings of fact, but what I have to do is to consider the evidence that was made available to me.

7. At the outset of these proceedings I brought the representatives attention back to rule 95 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 and I made it clear that I was not to hear oral evidence and certainly did not direct that oral evidence should be given.

8. I was provided with a series of documents which comprised first a bundle of documents which I was told was agreed; second a witness statement from the claimant, an attendance note from his solicitor, two sets of documents including metadata and finally a MBNA credit card statement. At this stage I thanked both representatives who were very helpful in this application and who explained to me at some length the relevant evidence and those matters that I should consider.

9. Although a claim form was submitted, no response to the claim has formally been submitted, but Ms Elvin, who appeared for the three respondents, pointed to the letter of dismissal which is produced at page 47 and made it clear that the response will be submitted on the basis of what was stated in the letter of dismissal written and signed by the second respondent, Robert Mark Cutmore-Scott. In that letter there were three matters which he will say caused him to reach the decision that he did:

    9.1 That on 11 September 2019 the claimant drove a company car in excess of 100 mph.

    9.2 That on 19 September 2019 the claimant removed property from 'The Harper' in the form of a credit card and computer.

    9.3 That on 20 September 2019 the claimant used the credit card to make a personal purchase in the sum of £429 in High Wycombe.

10. However, in dealing with the application today the substance of the matter before me and I remind myself that it is only in relation to the protected disclosures, is centred upon a series of emails.

11. There is a substantial dispute about the emails between the parties and simply put, the claimant states that he received them, the respondents state that they were not sent and are either forgeries or faked.

12. I understand that at the substantive hearing technical evidence will be submitted to attempt to prove or disprove whether the emails were authentic and that will possibly call for expert evidence to be given. Neither of the representatives today are such experts and they both readily accepted that. Again, I stress that I make no findings of fact but I note in considering the emails and other documents that have been presented that terminology, spelling errors, grammatical errors in the emails that the claimant claims that he received from the second respondent, bear in many instances a remarkable resemblance to such errors in his own emails and messages, and little resemblance to other documents and usage of language by the second respondent from whom they are alleged to emanate.

13. There are of course many issues for the tribunal to consider at the substantive hearing and I again stress that I am just looking at one of the claims in relation to the application for interim relief.

14. I appreciate that I have not heard evidence and I am simply taking into account what has been brought to my attention today, so for all these reasons having made my broad assessment to try and get an understanding of this case, to make a prediction about what is likely to happen at full hearing, it does not on the face of what I looked at today appear to me more than likely that the claimant will be successful in his claim of protected disclosure. I thus cannot come to the view that he had

a pretty good chance of success applying the test that I have to bearing in mind the authorities to which I have referred. So, for these reasons the application fails and is dismissed.

15. Finally, I explained to the parties that having heard this application, I shall not sit on the substantive hearing and leave it to a Judge and members to determine the issues that will no doubt be raised.

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Employment Judge Cassel

Date: 4 November 2019

Sent to the parties on: .....

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For the Tribunal Office