



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr R Patel

v

CSS Security Services (Mid) Ltd

Heard at: Birmingham

On: 7 January 2020

Before: Employment Judge Broughton

Appearances:

For Claimant: in person

Respondent: Mrs S Younis, consultant

JUDGMENT

Application for Interim Relief

The Claimant's claim for interim relief is unsuccessful.

Employment Judge Broughton

7 January 2020

REASONS

1. The claimant initially brought his claim for interim relief on 10 December 2019 at a time when he believed he was still employed.
2. He subsequently issued his claims against 6 or 7 further respondents. He informed me that, since then, he has also made applications for interim relief against at least some of them. I explained that such a remedy was only available against his employer and that, as a result, those applications would have to be refused, an outcome which he said he would appeal.
3. It was the claimant's case that he received notice of his dismissal on 12 December 2019. His application for interim relief was accepted on 19 December 2019 and this hearing was listed.
4. It was very difficult to identify the claimant's claims. His original claim form largely cut and pasted the relevant law. Since issuing his claim just a few weeks ago he had sent the tribunal numerous emails and attachments that were difficult to follow.
5. He attended today with several more bundles of documents, most of which were irrelevant to the considerations at this hearing.
6. During the hearing the claimant repeatedly failed to answer simple questions about the details of his interim relief application. He constantly sought to argue the merits of his other claims or matters outside the jurisdiction of this tribunal, albeit in a somewhat chaotic and haphazard way.
7. When I attempted to bring him back to the issues, he would continue on his way, ignoring me and speaking over me. Even when some semblance of order returned, he would start again.
8. On one occasion he approached the bench without invitation and refused to return to his seat such that I had no alternative but to warn him about his conduct, something I returned to at the end of the hearing.
9. The claimant worked for the respondent as a security guard in Aldi stores in the midlands from 16 October 2019. It appears that there were issues from the outset and the claimant was not offered any shifts after 12 November 2019. He was dismissed by letter dated 9 December 2019 which he said was not received until 12 December 2019.
10. The respondent's case was that the claimant failed his probation period principally because of a failure to follow management instructions and client complaints about his conduct.
11. It took around 3.5 hours to identify what appeared to be the claimant's alleged protected disclosures. He was very unclear about dates and times and who was involved and what evidence he may have and, at times, his

explanations were different and even contradictory. However, after extensive efforts he appeared to say that his disclosures were as follows:

- a. On 30 October 2019 the claimant said that a packet of nappies fell off the shelf near a customer and her baby. He said that he informed the respondent's managing director, Mr Adam, and was told to log the incident with Aldi, which he did.
 - b. Also on 30 October 2019 the claimant said that he reported to a "female Aldi manager" that one of the fire exits was blocked which he said was a particular concern as the store was selling fireworks at the time. He said he reported this to the respondent via WhatsApp on 9 November 2019 and that he also subsequently reported it to Coventry City Council, seemingly on 12 November 2019.
 - c. On 4 November 2019 the claimant said that another security guard posted a photo of a shoplifter. Mr Adam, the managing director of the respondent dealt with this on the day but the claimant, apparently, subsequently raised the matter with the ICO on 17 November 2019, albeit only after the respondent stopped providing him with shifts. The claimant also informed the police. He also claimed to have informed Aldi on 17 or 25 November 2019 but there was confusion over this as he may have used the wrong email address.
 - d. On 6 November 2019 the claimant said that he asked for a jacket as he was cold and his uniform hadn't arrived although it appeared that may have been the day he received his uniform.
 - e. On 12 November 2019 the claimant said that he informed Coventry City Council about an alleged sale of alcohol to a minor which resulted in a store visit.
 - f. On or around 20 November 2019 the claimant said that he reported a blocked fire exit and the fact that he was not initially provided with a fleece jacket to Solihull Borough Council.
 - g. On 9 and/or 10 December 2019 the claimant said that he reported the respondent for failing to comply with a subject access request he had made on 5 December 2019. His complaint appeared to be that, whilst he was shown the witness evidence against him from Aldi staff, he was not provided with copies.
12. It was the claimant's case that one or more of these was the sole or principal cause of his dismissal such that he could claim under section 103A Employment Rights Act 1996 ("ERA")
13. He sought interim relief under sections 128 and 129 ERA and so I must be satisfied that his claim for automatic unfair dismissal is likely to succeed.

14. As mentioned, I had considerable difficulty extracting the above information. The claimant also struggled to explain how some of these alleged disclosures met the relevant tests under s43B and ss43C to 43H ERA.
15. For example, the request for a fleece appeared to be a personal not public matter. Moreover, reporting matters such as the nappy, fleece or photo incident when they had, on the information before me, already been appropriately dealt with or remedied would arguably not be in the public interest.
16. I noted that the escalation in reports to external bodies seemed to occur after the claimant was no longer being provided with work. This could also call into question whether they were made in the public interest.
17. Additionally, it appeared that the decision not to offer more work to the claimant was taken on or around 12 November 2019 such that any of his actions thereafter were unlikely to have been the principal causes of his dismissal.
18. The claimant had considerable difficulty in letting me know how he said the respondent was aware of many of his alleged disclosures. For example, he eventually seemed to accept that the respondent may have been unaware of his report to the police.
19. It appears to be part of the claimant's case that employees of Aldi asked for him to be removed from sites because of his alleged disclosures. However, it seems to me that, if true that may found a claim for detriment but, for the purposes of this interim relief application, the respondent must in some way have been aware of the disclosures.
20. I was referred to Royal mail v Jhuti [2019] UKSC 55 but, it seems to me, that probably does not apply when a third party is responsible for an "invented" reason for dismissal. In relation to a number of the disclosures, the respondent denied knowledge and there was little evidence to the contrary before me.
21. The claimant was, for example, adamant that he had informed the respondent about his complaint to the ICO about the photo. When he eventually produced the relevant email, dated 10 December 2019, it transpired that this only referenced the claimant's subject access request. At that time, the respondent was not in breach, nor could the claimant reasonably believe that they were, given that he only requested documents 5 days before.
22. In any event, it was the respondent's case that the decision to dismiss was taken on 9 December 2019, in accordance with the date on the dismissal letter. They offered to produce further evidence to prove this which the claimant refused so, for the purposes of this hearing I accept the respondent's position such that they could not have been aware of the claimant's complaint to the ICO until after the decision to dismiss.

23. The claimant said that he had covertly recorded a number of meetings which seemed surprising for someone so concerned with the rights of others, privacy and the GDPR. He made the unlikely claim that he had raised this with the ICO and received their approval
24. Ultimately, the respondent's principal contention was that the claimant failed to follow instructions and that the client had complained that he talked too much and was disruptive.
25. That appeared consistent with the limited evidence before me and was exactly how the claimant presented before me and so it seems to me that there is a good prospect that the reasons given for dismissal were genuine.
26. I was made aware that the claimant had been dismissed for similar reasons from previous employers and his resulting claims were struck out.
27. I note that the respondent expressly informed the claimant that he was right to raise health and safety matters that concerned him but that he should do so in an appropriate manner.
28. In those circumstances I cannot say on the basis of what was presented to me that the claimant's claim of automatic unfair dismissal is likely to succeed and so his application for interim relief must fail.
29. That is not to say that all of the claimant's claims are, necessarily, without merit, merely that I cannot say they are likely to succeed at this stage.
30. I mentioned the claimant's conduct earlier and I regret to record that he did repeatedly ignore my requests and instructions, spoke over people, was argumentative and even, at one stage, refused to sit down albeit that he did, ultimately, apologise.
31. I informed him that if such conduct was repeated he would potentially be at risk of being struck out and/or a costs award or other sanctions.
32. I expressly told him that it was not acceptable to email the tribunal with lengthy, difficult to follow, repetitive communications, often with large attachments serving no particular purpose. Regrettably, he sent a further one the same day. Again, he was warned that this could amount to unreasonable conduct.
33. It appears the claimant has had at least 3 similar claims struck out for such reasons in the last year so he must, by now, be fully aware of his obligations.
34. It appeared likely that significant work would be required to identify the issues for the claimant's various claims against various respondents. It was also clear that there would be at least some applications for strike out or deposit orders and so I have extended the listing for the preliminary hearing to 2 days on 28 and 29 April 2020. I leave it to the employment

judge at that hearing to determine how to address the issues and when the private hearing should become public.

35. Any applications by any party, whether for strike out or otherwise, should be made at least 14 days before that hearing.