



# EMPLOYMENT TRIBUNALS

## Claimant

## Respondent

Mr T Ryan

v

The Paddocks Care Home Limited

**Heard at:** Norwich

**On:** 19 December 2019

**Before:** Employment Judge Postle

## Appearances

**For the Claimant:** In person

**For the Respondent:** Miss Zakryelska, Consultant

## INTERIM RELIEF JUDGMENT

### Application under Section 129 of the Employment Rights Act 1996, for Interim Relief:

The Claimant's application for Interim Relief is not well founded.

## REASONS

1. This is an Interim Relief Application under Section 128 / 129 of the Employment Rights Act 1996, ("ERA").
2. The Claimant asserts that his dismissal was automatically unfair under Section 103A ERA and that was due to making qualifying protecting disclosures. The qualifying disclosures relied upon by the Claimant under Section 43B ERA appear to fall under sub-sections a, b and d, namely that a criminal offence has been committed, is being committed, or is likely to be committed, that person has failed, is failing or is likely to fail to comply with any legal obligation which he is subject to and d, that the health or safety of an individual has been, is being or is likely to be in danger.
3. The Respondents assert that the principal reason for the Claimant's dismissal was his capability. The Claimant was employed as a Carer in the Respondent's Care Home which is a residential and dementia home and was employed from 1 September 2018 until his dismissal on

26 November 2018. At the time of the Claimant's dismissal he was still under his probationary period.

4. The Claimant would appear to assert that he reported dangerous staffing levels between 1 or 5 November to the General Manager, they appear to have been reported in a couple of emails which appear largely to be 'handover' emails and reporting the fact that staff had failed to turn up to work on nights.
5. There were also issues reported by the Claimant verbally about an electric trip switch in the home, again reported in early November and an issue getting residents of the care home out of bed early in the morning before 6am, which the Claimant asserts is considered under the guidance of the Care Quality Commission as abuse. He also says there had been food issues raised, but apparently, they were resolved in that there were kitchens open during the night and food available for the residents if required.
6. The Claimant was dismissed at a meeting on 26 November, the Respondents say the reason for his dismissal due to the fact the Claimant arrived on shift strongly smelling of cannabis on 21 November, medication errors, attitude and poor documentation. In order for the Claimant to succeed, the Claimant has got to show that the principal reason for his dismissal was the making of protected disclosures.
7. The law on Interim Relief Applications is as follows:
8. The Tribunal have to consider whether it is likely that the Claimant will succeed at a full hearing. The statutory test is not whether the claim is ultimately likely to succeed, but whether it appears to the Tribunal that this is likely. That requires the Tribunal to carry out a summary assessment as to how matters appear on the limited material available to me. It does not require me to make any findings of fact at this stage, but I must make a decision as to the likelihood of the Claimant succeeding at a Full Merits Hearing based on, and I repeat, the very limited material before me, there are no detailed pleadings and there is no written witness statement. I have to make this broad assessment on the limited information available through the oral evidence given by the Claimant.
9. When considering the likelihood of the Claimant succeeding, the correct test to be applied is whether he has a pretty good chance of success. The burden of proof in such a hearing is clearly greater than that at a Full Merits Hearing, it is a much higher level.

## **Conclusions**

10. My conclusions based on the evidence before me and it is based on the very limited oral evidence available at today's hearing, is that I am not so persuaded that the Claimant is pretty likely, or has a pretty good chance of

success, having made my broad assessment of the information available to me at this stage.

11. Therefore, I do not grant the Interim Relief Application. That is not to say of course, the Claimant does not have any chance of success at a Full Merits Hearing.
12. The hearing was conducted with the Claimant in person in Norwich, the Respondent's representative having mistakenly gone to Watford Employment Tribunal, the hearing was conducted with the Respondent's representative via speaker phone.

\_\_\_\_\_  
Employment Judge Postle

Date: .....07/01/2020.....

Sent to the parties on: .....10/01/2020

.....  
For the Tribunal Office