



# EMPLOYMENT TRIBUNALS

**Claimant: Mr N Barazandeh Pourhassani**

**Respondent: Volant Media UK Limited**

**Heard at: London Central remotely by CVP**

**On: 3 November 2020**

**Before Judge: Mrs A Isaacson**

**Representation**

**Claimant: Mr N Toms, Counsel**

**Respondent: Mr C Adjei, Counsel**

## JUDGMENT ON APPLICATION FOR INTERIM RELIEF

**The Judgment of the Tribunal is as follows:**

The claimant's application for interim relief is unsuccessful.

## REASONS

### **Background and the law**

1. The claimant presented a claim on 6<sup>th</sup> October 2020 for interim relief under section 128(1)(a)(ii) of the Employment Rights Act 1996 ("ERA") on the basis that the reason or principal reason for his dismissal was one specified in paragraph 161(2) of schedule A1 of the Trade Union & Labour Relations (Consolidation) Act 1992 ("TULR(C)A") and that the dismissal was unfair under sections 161 and 152 (a), (b), and (ba) of TULR(C)A.
2. The parties presented an agreed bundle, written and oral skeleton arguments and there were 8 witness statements, 4 from each party, including the claimant.

3. It was agreed that the application was within time and the required procedure had been followed.
4. Interim relief is an emergency interlocutory procedure designed to ensure the preservation of the status quo pending the hearing of unfair dismissal. For the application to succeed the Tribunal needs to be satisfied that the claimant is likely to succeed at a full hearing in showing that the dismissal was for one of the relevant inadmissible reasons. The interim relief prevents the dismissal from taking effect before the full hearing.
5. The Tribunal can order reinstatement or reengagement, or if the respondent is not willing to do either, a continuation of contract order which will have the effect of keeping the employee suspended on full pay until the final hearing.
6. To succeed the claimant must satisfy the Tribunal that he is likely to succeed at trial in showing that the dismissal was for a section 152 ERA reason. Case law has established that “likely to succeed” means a pretty good chance of success and not just a real possibility or reasonable prospects. The burden of proof is greater than at a full hearing where the test is on a balance of probability. Evidence of hostility towards a union can be persuasive as can an implausible alternative reason for dismissal.

### **Skeleton Arguments**

7. In brief, and not listing all the points made by both counsel, the claimant’s counsel argued that there was a complete absence of any supporting documentation that there was a genuine redundancy situation; no figures, accounts, minutes of any minutes regarding the need for redundancies. Out of 300 staff the only two long term staff made redundant were the claimant, the father of the NUJ chapel, and the mother of the chapel. There had not been any compulsory redundancies before; instead staff were redeployed, or freelancers let go.
8. The Explainer team was being expanded right up to the end of July: freelancers were offered permanent positions; new roles were created and appointed, which included the claimant being offered a £10,000 promotion; and further 3 roles were created and advertised.
9. Counsel argued there was undisputed evidence of hostility towards the NUJ:

*“The NUJ had been seeking recognition from R since at least 2018; see pages 50-51. C had played an increasingly leading part in the recognition campaign. R have resisted recognising the NUJ; see para 5 ET3 on page 33. On the 22<sup>nd</sup> June 2020 the NUJ submitted a formal application for recognition to R making it clear the matter was to be pursued with the CAC.... R sought to circumvent the NUJ application through entering into a ‘voluntary’ recognition agreement with the British Association of Journalists (“BAJ”) even though the BAJ were unknown to most of the workforce. The alleged agreement was announced on the 3<sup>rd</sup> July 2020; see page 74.”*

10. The claimant's counsel also referred to a number of paragraphs of a transcript of a voicemail left by Mr Armin Khameh, News Operations Manager and the alleged BAJ representative, on 4 July 2020, p76:

**“I’ve recognised this and that’s the way it is and there is no legal problem. I’ve spoken to lawyers and stuff and they can do whatever they want. It’s not important to me at all, I’ve got a plan for that and in time I’ll punish them if they want to thingy, if they want to carry on with recognition.”**

**“.....I said to him 'come let's negotiate' and at first he said 'yeah' and all this and then in the end he said 'no if they, if NUJ wants to come and all that, it's not going to happen. Because it's a legal thing and stuff and as NUJ representatives, I don't want to speak to them. I said well no not even representatives, if its just us.**

**He said 'not right now, if they want they can resign from NUJ, then we can sit and talk'. Um, so yeah that's what he said.”**

11. The claimant's counsel referred to the WhatsApp exchange between the claimant and Mr Enayat on 4 July 2020 at p85. Mr Enayat is the General Manager.

**“....thanks for reaching out. Unfortunately, I cannot engage with you as long as you are holding a position at the IITV NUJ Chapel and advocating for the NUJ. Of course, I am happy to talk to you regarding any other issue.”**

and

**“But we are going to talk about NUJ and chapel related issues no ? I’m afraid our conversation might be referred to in another context, something which I am trying to avoid. And to be blunt it seems you guys are more loyal to the NUJ than IITV. It seems your membership of the NUJ is coming before your employment with Volant. That doesn’t give me any reassurance to engage with you directly.”**

12. Claimant's counsel argued that the timing of the NUJ's application for statutory recognition through the CAC and the sudden turnaround from expanding the Explainer team to disbanding it was evidence that the true reason for the claimant's dismissal was his role in supporting the NUJ's application for recognition.

13. Claimant's counsel also argued that there were a number of inconsistencies in the respondent's witnesses' evidence. For example, the alleged timing of when Mr Enayat first considered redundancies.

14. Respondent's counsel argued there was evidence of a positive relationship and engagement in the past between the respondent and the NUJ.

15. He argued there was clear evidence of a genuine need for redundancies. He referred to Mr Pearce's evidence who alleged the delay to opening the Washington office had a significant impact on the respondent. It was alleged there was a significant extension to the costs of the project including in human resources, construction and reworking the set design and the DC authority's code requirements.
16. Respondent's counsel argued that MR Hassam, the claimant's line manager, also corroborated the need for cost savings. He alleged that there was a review in mid -June and it was decided to cease the non - news radio operations and in mid to late July the Explainer team was highlighted as an area where cost savings could be achieved.
17. Respondent's counsel also argued that the selection of the Explainer team was fair.

## Conclusion

18. I concluded that on the face of the documentation before me there is evidence of hostility towards the NUJ, and in particular, their application for recognition from Mr Enayat, directed towards the claimant as father of the chapel. Firstly, the respondent admits it opposes the NUJ's application for recognition. Then there are the quotes above from the message left by Mr Khameh about what Mr Enayat said to him and Mr Enayat's WhatsApp message exchange with the claimant. I believe both show an hostility towards the NUJ and claimant in his role as father of the chapel. In particular:

*" I'll punish them if they want to thingy, if they want to carry on with recognition"... If they want they can resign from NUJ, then we can sit and talk".. I cannot engage with you as long as you are holding a postion at the IITV NUJ Chapel and advocating for the NUJ....And to be blunt it seems you guys are more loyal to the NUJ than IITV. It seems your membership of the NUJ is coming before your employment with Volant".*

19. In addition, I considered the apparent pressure placed on the claimant at a meeting on 6 July 2020 as recorded by the claimant in an email to the NUJ p88/89.
20. The chronology of events also appear surprising. The respondent appears to be expanding the Explainer Team by making freelancers permanent, restricting and promoting the claimant's role, advertising for a number of further roles in the team. Yet, a few days after the NUJ makes an application for formal recognition to the CAC and the claimant has encouraged members to support the application, the claimant as father of the chapel and the mother of the chapel are put at risk for redundancy in a company without a history oi compulsory redundancies. This also needs to be put in the context of the earlier request for recognition and the sudden agreement with the BAJ.
21. However, I do not agree with claimant's counsel that there is absolutely no plausible alternative reason for the claimant's dismissal although it is

noted there is an absence of evidence supporting that there was a genuine redundancy situation. Three of the respondent's witnesses have alleged that the covid pandemic and the delay to the opening of the Washington office had a significant financial impact for the respondent. It is alleged that there were increased costs of implementing health and safety measures and the costs set out above by Mr Pearce regarding the Washington office.

22. It is alleged that a decision was made to cease the non -news radio output in July 2020 by freelancers not being reengaged and also renegotiating service provider contracts. It is alleged that the Explainer team was comparatively expensive to generate content in house for limited airtime and a decision was made to focus on news.
23. What is the real reason for the claimant's dismissal and whether there was a genuine redundancy situation will be a matter for the Tribunal to decide at the full hearing. Although there is evidence of hostility towards the claimant as the father of the chapel of the NUJ, since there is an arguable plausible alternative reason for redundancy set out in the papers before me I do not feel satisfied that the claimant is likely to succeed at trial in showing that the reason for his dismissal was for a section 152 ERA reason.
24. This doesn't mean that the claimant would not be successful. He may be able to persuade the Tribunal on a balance of probability, but I do not feel I can conclude that he has a higher chance, a pretty good chance of success.
25. Therefore, the claimant's application for interim relief is unsuccessful. I have case managed and a separate case managed order has been made.

Employment Judge A Isaacson

06/11/2020

JUDGMENT & REASONS SENT TO THE PARTIES ON

.06/11/2020

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FOR THE TRIBUNAL OFFICE