



EMPLOYMENT TRIBUNALS

Claimant

Mr I Polonski

v

Respondent

Cordant Recruitment Ltd

T/a PMP Recruitment

PRELIMINARY HEARING

Heard at: Leeds by CVP

On: 12 February 2021

Before: Employment Judge O'Neill

Appearance:

For the Claimant: In Person

For the Respondent: Paul Brill (Solicitor with Cordant Group)

JUDGMENT

1. It is agreed that the Respondents name is Cordant Recruitment Ltd T/a PMP Recruitment and the Tribunal record is amended.
2. The application for interim relief is refused.

REASONS

Claims

1. The Claimant has brought claims including unfair dismissal for having made a protected disclosure. There are also other complaints which appear to relate to disability and nationality and unfair dismissal.
2. The matter before the Tribunal today is an interim relief application relating to the protected disclosure unfair dismissal claim and no other matter.

Evidence

3. The documents before the Tribunal included: the ET1 and correspondence with the Tribunal, pay slips, texts to Mr Kempster, a statement from Mr Kempster the ATS Operations Manager for the Respondent, the Claimant's written contract of employment and texts from Mr Kempster to the Claimant dated 26 and 27 January 2021 and 2 February 2021.
4. The claimant (through the interpreter) and Mr Kempster answered questions at the hearing.
5. The claimant is a Russian speaker and the tribunal was greatly assisted by the interpreter Svetlana Cuessar.

Law and Issues

6. Under ERA 1996 ss 128(1)(a) and 129(1)(a) and 130 Interim relief may be granted to restore an employee to their employment pending a final determination of their claim for (among other things) unfair dismissal for whistleblowing under ERA 1996 s 103A provided the application is made within 7 days of dismissal.
7. The employee may be restored to employment by means of reinstatement or reengagement on comparable terms or a continuation of contract order
8. The Tribunal must assess the strength of the case and decide whether the Claimant has a pretty good chance of succeeding. (*Taplin v C Shippam Ltd [1978] IRLR 450*). Pretty good chance is a significantly higher degree of likelihood than more likely than not. (*Ministry of Justice v Sarfraz [2011] IRLR 562*).
9. Does the Claimant have a pretty good chance of showing that he made one or more qualifying disclosures as defined in section 43B of the Employment Rights Act 1996 as summarised below?
 - a) What did the claimant say or write? When and to whom
 - b) Does the Claimant have a pretty good chance of showing that this constitutes information in relation to a matter in d below
 - c) Does the Claimant have a pretty good chance of showing that he believed the disclosure of information was made in the public interest? And it was a reasonable belief.
 - d) Does the Claimant have a pretty good chance of showing that he believed it tended to show one or more of the following and that his belief was reasonable
 - a. a criminal offence had been, was being or was likely to be committed;
 - b. a person had failed, was failing or was likely to fail to comply with any legal obligation;
 - c. a miscarriage of justice had occurred, was occurring or was likely to occur;
 - d. the health or safety of any individual had been, was being or was likely to be endangered;

- e. the environment had been, was being or was likely to be damaged;
 - f. information tending to show any of these things had been, was being or was likely to be deliberately concealed.(a cover up)
- e) Does the Claimant have a pretty good chance of showing that he made the disclosure to his employer or a designated person in *sections 43C, 43D, 43E, 43F, 43G, or 43H* of ERA 1996.
- f) Does the Claimant have a pretty good chance of showing that the dismissal (if there was one) was due to the disclosure.

Discussion

10. The claimant agrees that he is the employee of the respondent and works under an express contract of employment. A copy of which is before the tribunal and is dated 17 September 2020.
11. The claimant agrees that the respondent's business is to recruit and supply workers to large national companies on an agency basis. Amazon is one such, company and the claimant was supplied to Amazon to work at its distribution warehouse at Pontefract Lane, Leeds.
12. The claimant agrees that under the contract of employment the respondent promises to provide not less than 336 hours of work in any year. Mr Kempster for the respondent company says that the claimant has had over 465 hours of work and been offered over 600 hours. The Claimant agrees this is his contract and that is what it says and he has worked those hours.
13. The claimant says he began his employment on 1 October 2020 but his employment ended on 21 January 2021. The contract says the employment begins on the first day of the assignment as shown on the first payslip. The payslip with payday 16th of October 2024 pay period 28/2020 (which is the earliest payslip before me) gives a commencement date of 28th of September 2020.
14. Mr Kempster explains that client demand may vary and there are peaks and troughs and for a company like Amazon a peak is the pre-Christmas period. The claimant was one of a number of employees taken on to cover the buildup to Christmas. After Christmas the parties agree that Amazon reduced the headcount by 160 people. The Claimant accepts the numbers released from Amazon.
15. Mr Kempster says that there was an objective formula in determining who should be taken out of the Amazon site based on data relating to performance and attendance. According to Mr Kempster the claimant was selected because of his attendance levels.

16. In a text to the claimant dated 26 January 2021. Mr Kempster explained to the Claimant that the respondent's records appear to show that the claimant had been scheduled to work 610 hours since his employment began at Amazon, but had completed only 450 hours because of sickness and other time the claimant had chosen to take off. Because of this level of attendance Mr Kempster says the claimant was issued with a 'record of concern' which is in effect a warning. The Claimant agrees that he had had issues and that he had taken time off but he felt he had been treated unfairly regarding the absences and does not accept that he was selected fairly.
17. The claimant felt abandoned by the respondent has having been removed from the assignment on 21 January 2021 . He could not obtain replies to his texts over the weekend of of 22nd 23rd and 25th of January, save that there was one reply to the effect that the manager was away on holiday until the following week. The claimant's emails came to the attention of Mr Kempster, who replied to the claimant by email on the 26th and 27th of January 2021. In his email, Mr Kempster says *'I have reviewed a few pieces on this and want to clarify just a few points, this is the end of assignment from Amazon LBA8 and is driven by the reduction in volume, which in turn means a reduction in the requested headcount for PMP recruitment, your employment is still active with PMP recruitment and you can seek alternative assignments via our website (www.PMPrecruitment.co.UK)..... You can reapply Amazon assignment after serving eight week gap in service....'*
18. Mr Kempster says that the claimant is still employed by the respondent as confirmed in his email to the claimant of 26 January and he encouraged the claimant to use the respondent company website to seek another position and assured him that there were vacancies within a 20 mile radius. Mr Kempster did not rule out the claimant returning to Amazon if that company increased its demand for workers through the respondent. The Claimant does not accept that there were jobs within 20 miles.
19. The claimant accepts that he has received these emails from Mr Kempster and has been given no letter of dismissal and no P45.
20. The claimant has had difficulty in giving details of the disclosures he relies upon and was unable to recall when and to whom he made his verbal disclosures. He says that he made disclosures on numerous unspecified dates in December to persons unknown.
21. After some prompting from me the claimant gave some examples which he agreed could be summarised as follows:
 - a) The claimant told the respondent that loading the lorries was heavy work and he had a pain in his stomach
 - b) he complained to the respondent that he had been unfairly accused of five unauthorised absences which were due to illness and isolation pending a covid test or following an NHS notice

- c) he complained to the respondent that he had been required to work to back-to-back shifts of six days, i.e., for 12 days in a row without a break, which he asserted was unlawful
22. The claimant agrees that these complaints were never put in writing.
23. The claimant also agrees that these were all complaints relating to his own contract and were about his own concerns in the workplace and how he was being treated.
24. Mr Kempster told the tribunal that he was unaware that the claimant had made any such complaints.

Conclusions

25. The claimant has failed to show on the balance of probability that he has a pretty good chance of succeeding at the final hearing in his claim for unfair dismissal under section 103 A ie for having made a public interest disclosure (otherwise known as whistleblowing).
26. The claimant has failed to show on the balance of probability that he has a pretty good chance of succeeding at the final hearing in showing that he was dismissed at all.
27. The written contract of employment document shows the respondent to be the employer, that they have an obligation to provide a yearly minimum number of hours which they have fulfilled, it provides for assignments with a particular client to be ended and places no specific obligation on the respondent to find other work within any specific period or location when such an assignment comes to an end.
28. The claimant was not singled out but was one of 160 people who were taken off the Amazon assignment after Christmas. Mr Kempster told the tribunal that facilities were set up on the site for all staff affected to obtain information about other vacancies.
29. Mr Kempster's emails to the claimant tend to show on an ordinary reading of the text, and the tribunal at the final hearing may well find, that the respondent regarded the claimant as continuing in their employment and that other work was available through the PMP website and return to Amazon could not be ruled out, if demand from Amazon increased.
30. The claimant was told on 19 January 2021 that his assignment was ending on 21 January 2021. I am told he was given no less notice than the rest of the cohort and that the contract provides for only two days' notice. The claimant was understandably worried having lost his position with Amazon and having no alternative employment lined up. He felt abandoned when no one from the respondent company replied immediately to the texts he sent on Friday 22, Saturday 23 and 25 January 2021 (except to tell him that the manager was on

leave and would be back next week). However, Mr Kempster replied by emails of the 26 and 27 of January 2021, which are likely to be found to have been sent in a reasonable period of time and to be reassuring as to the Claimant's continued employment position and job options and that there has been no dismissal.

31. The claimant has failed to show on the balance of probability that he has a pretty good chance of succeeding at the final hearing in showing that he made a qualifying disclosure (i.e. a disclosure about a matter listed in S43B) which was in the public interest. The claimant agrees that the matters he relies on as a disclosure relate to his own contract and personal interest and his treatment in the workplace. A tribunal at the final hearing is in my view unlikely to find that the claimant has shown a disclosure made in the public interest, save for the possible matter of the respondent's alleged policy relating to Covid isolation which the claimant alleges is contrary to public policy.
32. Even if the claimant could show that he made a qualifying disclosure in the public interest the claimant has failed to show on the balance of probability that he has a pretty good chance of succeeding at the final hearing in showing that his assignment at Amazon was brought to an end or that he has been otherwise dismissed because of such a disclosure. He was but one of 160 people released from the assignment in January 2021 and according to Mr Kempster those 160 were selected using an objective formula for selection criteria (although given the claimant's objections I make no finding as to whether the formula was objective and/or properly applied, and leave that to the tribunal hearing the case). Mr Kempster denies being aware of any disclosure, the claimant accepts that there had been issues concerning his attendance. Mr Kempster has from the outset asserted that a selection criteria had been applied related to performance and attendance and in the circumstances on the material before me today, it looks likely that the claimant will be found to have been selected under a procedure based on that data.
33. In all the circumstances I refuse the application for interim relief and make no order.

Employment Judge CJ O'Neill

12 February 2021