



EMPLOYMENT TRIBUNALS

Claimant: Mrs S Garnier

Respondent: The Governing Body of Holy Spirit Catholic Primary School

Heard at: Manchester (by CVP)

On: 10 March 2021

Before: Employment Judge Phil Allen

REPRESENTATION:

Claimant: In person

Respondent: Mr Kenward of Counsel

JUDGMENT

The Judgment of the Tribunal is that:

1. It will not grant the claimant the interim relief sought. The claimant has not established what is required under section 129 of the Employment Rights Act 1996.

REASONS

1. This was an application by the claimant brought under sections 128 and 129 of the Employment Rights Act 1996 for interim relief. It has been considered under those provisions.

2. The claimant was employed by the respondent from 1 September 2019 as an assistant headteacher, until she was dismissed effective on 31 December 2020. The claimant worked part-time. She was initially employed on a fixed term contract to 31 August 2020, but was subsequently engaged on a further fixed term to 31 December 2020. The claimant was informed about the fact that she would be dismissed, or at least that her contract would not continue beyond 31 December 2020, in a Zoom meeting with the respondent's headteacher and chair of Governors on 23 July 2020. The claimant alleges that she made various public interest disclosures and contends that they were the reason why she was dismissed. In the hearing she particularly focussed upon disclosures she contended she made on 1 July 2020. The claimant had sought interim relief in the claim form entered at the Tribunal on 14 December 2019, that is within the time required by section 128(2) of the Employment Rights Act 1996.

3. The question that I am required to address is laid out in section 129(1) of the Employment Rights Act 1996. An application for interim relief is granted where (as it applies to this claim): on hearing an employee's application for interim relief, it appears to the Tribunal that it is likely that on determining the complaint to which the application relates the Tribunal will find that the principal reason for the claimant's dismissal was that she had made a protected disclosure. That is: where I consider that it is likely that the claimant will succeed in a claim for automatic unfair dismissal under section 103A of the Employment Rights Act 1996.

4. The claimant represented herself at the hearing. The respondent was represented by Mr Kenward, counsel.

5. Prior to the hearing I was provided with a bundle which, including statements, was numbered up to page 324. That bundle included statements from: the claimant; Ms Daniels, Ms Odempsey, Mr Hewitt and Ms Parker (on the claimant's behalf); and, for the respondent, Ms Shiels, Ms Leatherbarrow, and Ms Armstrong. The Tribunal reviewed the entire bundle prior to the hearing, but highlighted to the parties that they needed to refer to any specific documents (and the details of those documents) during the hearing, if they wished to ensure that they had been read and considered.

6. The claimant was given the opportunity to explain why she believed that interim relief should be granted and why she contended that the test in section 129 would be satisfied. Mr Kenward was then given the opportunity to explain why the respondent contended it should not be/would not. Each of them referred to documents and statements in the bundle. After Mr Kenward had concluded, the claimant was given the opportunity to further address issues in response to what he had said. In accordance with rule 95 of the Employment Tribunal rules of procedure, I did not hear oral evidence.

7. I adjourned to consider my decision, and returned and provided the parties with the decision and the reasons for it. I emphasised that by the very nature of an interim relief hearing, the reasons were relatively brief. After the reasons were explained verbally, the claimant requested that reasons be provided in writing.

8. I would start by highlighting that the test in section 129(1) is not an easy test for any claimant to meet, particularly in a summary hearing of the type which was conducted. The requirement is for the claimant to show that it is likely that she will ultimately succeed in her claim. The test is not simply one of deciding whether the claimant has a reasonable prospect of success, nor is it a question of whether on the balance of probabilities the claimant will succeed. The test requires a significantly higher degree of likelihood than that, which is what I am told in the case of **Ministry of Justice v Sarfraz [2011] IRLR 562**.

9. In his submissions, the respondent's representative referred to the test being whether the claimant has a "*pretty good*" chance of succeeding in the final hearing before the Tribunal, a phrase which is used in the decision in the case of **Taplin v CC Shippam Ltd [1978] ICR 1068**.

10. What is apparent to me from the documents that I have seen, the statements that I have read, and the submissions that I have heard, is that this is a complex case. There are significant disputes of fact. The claimant's evidence, and the statements that she has provided, contain material differences to the statements prepared by the respondent's witnesses. There are a number of points upon which

the evidence is in dispute. That evidence will need to be tested at a full hearing, when it can be challenged in cross examination.

11. At heart, in terms of the claimant's dismissal, there are two competing explanations (and indeed at the final hearing there may be more).

12. On the respondent's case (and in summary), it says that after the claimant declined a permanent full-time contract there was (what I can summarise as) discussion and internal debate about whether the claimant would be retained in employment, and ultimately the decision that was made was that the claimant would not be retained because the respondent did not want the role of assistant headteacher filled permanently on a part-time basis.

13. The claimant says that her contract was terminated due to her having made one or more public interest disclosures. The claimant, in particular, points to a document prepared by the respondent's Head Teacher which appeared to show that she intended to extend the claimant's part-time contract for the full academic year 2020/2021 (which is not, in fact, what occurred).

14. The respondent's representative in some detail explained the respondent's case and how the document to which the claimant referred arose. In summary, the respondent's position is that the document was not a record of a decision that was made by the school's Governing Body, as it needed to be, and that document was not actioned. The respondent's representative has also explained in some detail, by reference to parts of the statements prepared by the respondent's witnesses and the documents provided, why the respondent contends that what occurred, and the decision to end the claimant's contract effective 31 December 2020, was not as a result of any disclosures made. As a result, the respondent has demonstrated that the respondent has a case which will need to be considered and determined when all the evidence has been heard at a final hearing.

15. I should highlight that the claimant may succeed in her claim when it is ultimately heard.

16. I am of the view that it is likely that a public interest disclosure was made by the claimant, and, possibly, a number of public interest disclosures were made by her.

17. However, based upon an examination of the material which has been put before me and having considered what I have heard today, for the reasons I have briefly explained, I cannot say that it is likely that the Tribunal who determines the case will find that the principal reason for the claimant's dismissal was that the claimant made a public interest disclosure. To apply the phrase from the **Taplin** judgment upon which the respondent's representative placed emphasis, I cannot say that the claimant has a pretty good chance of establishing that at the final hearing (even though it is entirely possible that she may do so).

18. For that reason, the application for interim relief does not succeed and I have not granted the claimant the interim relief sought.

Employment Judge Phil Allen

11 March 2021

JUDGMENT AND REASONS SENT TO THE PARTIES ON
16 March 2021

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