THE EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mrs I Emmanuel-Adebayo	**V**	**Societe Generale**

Heard at: London Central **On**: 31 March 2021

Before: **Employment Judge Glennie**

Representation:
Claimant: In person
Respondent: Mr P Halliday (Counsel)

JUDGMENT ON INTERIM RELIEF APPLICATION

The judgment of the Tribunal is that the application for interim relief is refused.

REASONS

1. In her claim to the Tribunal the Claimant, Mrs Emmanuel-Adebayo, included a complaint of automatically unfair dismissal under section 103A of the Employment Rights Act 1996 (the reason or the principal reason for the dismissal was that she had made a protected disclosure). She also applied for interim relief.

2. I heard and determined that application at this hearing, giving oral reasons for my judgment. The Claimant requested written reasons, but subsequently withdrew that request in correspondence. The Respondent then requested written reasons, and these reasons are produced in response to the latter request.

3. Section 128 of the Employment Rights Act provides that an employee may apply for interim relief in circumstances which include presenting a complaint of unfair dismissal under section 103A. Section 129 includes the following provision:

(1) This section applies where, 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 –

(a) That the reason (or if more than one the principal reason) for the dismissal is one of those specified in –
(b) Section…………..103A……..

4. As to what is meant by the word "likely" in this provision, in **Ministry of Justice v Sarfraz [2011] IRLR 562** Underhill, giving the judgment of the Employment Appeal Tribunal, said that:

   "Likely does not mean simply more likely than not – that is at least 51% - but connotes a significantly higher degree of likelihood."

5. With regard to the reason for a dismissal, in **Abernethy v Mott Hay and Anderson [1974] ICR 323** the Court of Appeal identified this as what was in the mind of the employer when it decided to dismiss the employee.

6. For the purposes of this hearing I had witness statements from the Claimant and from Ms Stephanie Parente, who identified herself as the person who made the decision to dismiss the Claimant. I also had two bundles of documents, one from each party. There was no oral evidence or cross-examination of witnesses, and I approached the matter by making an assessment of the material before me.

7. The main focus of the parties' submissions was on the reason for the dismissal. There is a potential issue as to whether or not the Claimant made protected disclosures, but this was not developed to any significant degree in this hearing. I assumed for present purposes (without making any decision) that the Claimant would be able to show that she had made a protected disclosure or disclosures.

8. Mr Halliday submitted that the person best placed to give evidence of the reason why a decision was made is the person who made it. That must be true, in a general sense, but it is easy for an employer to make assertions about what its reasons were, and the Tribunal should not uncritically accept that without testing it against such information as is available at this stage.

9. Ms Parente states that there were two reasons for her decision to dismiss the Claimant, namely:

   9.1 The breakdown of her relationship with her line manager.

   9.2 Her failure to comply with an instruction not to correspond about various concerns (including, but not limited, to those on which the Claimant relies as protected disclosures) with senior managers, the Global head of HR and UK CEO, but to go through the channels prescribed in the grievance and whistleblowing policies.

10. I emphasise that I am not, at this stage, making any findings of fact. That will be the task of the Tribunal which conducts the full hearing. I have to assess whether it is likely, in the sense identified in **Sarfraz**, that the Tribunal will find, contrary to Ms Parente's evidence, that the sole or principal reason for the dismissal was the making of the (assumed) protected disclosures.

11. I found that the following factors tended to support the Respondent's position as to the reason for the dismissal:

    11.1 The Claimant was undoubtedly critical of her line manager. I accept that she may well consider, and may have grounds for so doing, that this was fair criticism and not personal. It is, however, possible at least in my judgment that the Respondent could take the view that the relationship had broken down.

    11.2 There were instructions to the Claimant not to make complaints to the Global head of HR and the UK CEO (Respondent's bundle pages 145 192). These followed an earlier reminder of the process at page 147. The Claimant subsequently made, or copied, complaints to the UK CEO (page 196) and the UK CEO and Global head of HR (page 229).

    11.3 The dismissal letter (page 299 of the Respondent's bundle) expressly stated the reasons for the dismissal as identified by Ms Parente. It might be said that it would be surprising if it did otherwise, and that an employer would be unlikely to refer to the making of protected disclosures as a reason. Nonetheless, it lends some support to what Ms Parente says.

12. There were the following points to take into consideration on the Claimant's side of the argument:

    12.1 Mr Halliday argued that it was unlikely that the Claimant would have been dismissed for making protected disclosures, as doing so was at least potentially a part of her job as Risk Officer. I could see some force in this, but I recognise that equally employers may react to unwelcome disclosures by dismissing the person who has made them.

    12.2 The Claimant maintains that the relationship with her line manager had not broken down. I am unable to resolve that issue on the information before me or in this type of hearing: I can only say at this stage that the Tribunal may ultimately find either that it had, or that it had not.

    12.3 The Claimant pointed out that in her email of 29 December 2020 at page 135 of the Respondent's bundle she stated that she intended to contact the Regulator about her concerns, and that she in fact did this. She pointed to the chronology of events that followed this, being

that she was suspended in January 2021 and dismissed in March 2021. To this, Mr Halliday pointed to emails at pages 139 and 175 following the Claimant's of 29 December 2020, in which the Claimant was told that she was free to raise matters with the Regulator or her MP. He said that there was no evidence of any attempt to restrain the Claimant from doing this. It seemed to me that an employer might say that an employee was free to take her concerns to the Regulator or her MP, while at the same time or subsequently resolving to dismiss her if and when she did; but I could not say that this was likely state of affairs, at least in the absence of a consideration of all the evidence.

13. I have considered all of the matters described above and have asked myself whether, looking at the matter overall, the Tribunal hearing the case is likely to find that the sole or principal reason for the dismissal was the making of a protected disclosure or disclosures.

14. I find that this test is not satisfied. The Tribunal might, in my judgment, make that finding; but it is not possible to say that that there is a significantly better than 51% chance that it will. It is not necessary, or desirable, for me to express any view about the case beyond that.

15. The application for interim relief therefore fails.

Employment Judge Glennie

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Employment Judge Glennie

Dated: …………25 June 2021…………………..…..

Judgment sent to the parties on:

25/06/2021.

For the Tribunal Office : OLU