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**EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 4110316/2021**

**Interim Relief Hearing Held by Cloud Video Platform on 6 September 2021**

**Employment Judge F Eccles**

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**Miss S Messi**

**Claimant  
In Person**

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**All People Employment Ltd**

**First respondent  
Represented by  
Mr A Maxwell,  
Solicitor**

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**FedEx Express UK Transportation Ltd**

**Second Respondent  
Represented by  
Mr C Adjei  
Counsel**

**JUDGMENT**

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The Judgment of the Employment Tribunal is to refuse the application for interim relief.

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## REASONS

### BACKGROUND

1. The claimant has made a number of complaints including unfair dismissal. The claimant claims that the reason (or, if more than one the principal reason) for her dismissal is that she made a protected disclosure in terms of Section 103A of the Employment Rights Act 1996 (ERA). The claimant has applied for interim relief pending determination of her complaint in terms of Section 128 of ERA.  
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2. This is the second occasion that the claim has called for a hearing on the application for interim relief. A hearing on 3 August 2021 was postponed because the Tribunal was unable to obtain a French Interpreter. A preliminary hearing took place on the same day at which case management Orders were issued by an Employment Judge to assist with preparation of today's hearing. The Orders included the claimant being required to identify her purported protected disclosures; preparation of witness statements; exchange of documents and preparation of a Joint Bundle. The claimant applied to play recordings at the hearing. The Employment Judge ordered that the claimant identify the relevant parts of the recordings, transcribe them, and agree with the respondents which parts of the recordings should be played. The claimant made subsequent applications to play all recordings at the hearing. The applications were refused. The Employment Judge was not persuaded that the claimant was unable to comply with the Orders made in relation to the recordings or that there was a change in circumstances that would justify revoking and/or varying the Orders already made.  
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3. In advance of today's hearing the parties provided the Tribunal with witness statements and a Joint Bundle. The claimant submitted that there were documents missing from the Bundle. The claimant submitted that they had been deliberately omitted from the Bundle by the second respondent. The documents were identified by the claimant. The Tribunal was satisfied that, apart from a contract of employment, the documents identified by the claimant were in the Bundle.  
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4. The hearing was held by Cloud Video Platform (CVP). The claimant represented herself. She gave evidence. The first respondent was represented by Mr A Maxwell, Solicitor. They called Mr Joe McCafferty, CEO to give evidence. The second respondent was represented by Mr C Adjei, Counsel. They called Mr Ryan Bennett, Manager to give evidence. Ms V Javelaud attended the hearing as French Interpreter.

## ISSUES

5. In terms of Section 129 of ERA, to grant the application for interim relief, it must appear to the Tribunal that it is likely that the complaint of unfair dismissal for making a protected disclosure will succeed. "Likely" in this context means a "pretty good chance" of success at the final hearing. This is more than the chance of succeeding on the balance of probabilities or having a reasonable prospect of success (*Taplin v C Shippam Ltd 1978 IRLR 450*).

6. The above test must be applied to each aspect of the complaint. The issues to be considered in relation to the claimant's complaint of unfair dismissal were identified as;

(i) Was the claimant an employee of the first and/or second respondent?

(ii) Did the claimant make a protected disclosure within the meaning of Part IVA of ERA? &

(iii) Was the reason (or, if more than one, the principal reason) for her dismissal that she made a protected disclosure?

## DISCUSSION & DELIBERATIONS

7. Employees have the right not be unfairly dismissed in terms of Section 94 of ERA. It is the claimant's position that she was an employee of both the first and second respondent. She has not provided the Tribunal with a copy of a written contract of employment with either respondent. It is the second respondent's position that they have not disclosed a contract of employment with the claimant because no such document exists. The documents before

the Tribunal are inconsistent with the claimant being an employee of either respondent. The first respondent has provided an agency worker agreement signed by the claimant (P6). The second respondent's position is consistent with being a Hirer contracting with the first respondent for the supply of agency workers, including the claimant. The documents before the Tribunal show the claimant referring to herself as "agency staff" (P19/110) and of raising concerns about the "AWR" which the claimant does not dispute refers to the Agency Worker Regulations (P23/126).

8. In all the circumstances, it did not appear to the Tribunal that it is likely that the claimant will be able to show that she was an employee of either respondent and that her complaint of unfair dismissal is likely to succeed.
9. If the Tribunal is wrong about the above, it went on to consider whether it is likely that the claimant will succeed in showing that she made a protected disclosure within the meaning of Part IVA of ERA. In her ET1 the claimant relies on a purported protected disclosure made on 2 July 2021 to show that she was unfairly dismissed in terms of Section 103A of ERA. In response to the Tribunal's Order, the claimant identified additional purported protected disclosures that she claims were made on various dates before 2 July 2021. Three of the purported protected disclosures are concerned with data subject access requests by the claimant and which are said to have been made to the Information Commissioner's Office. The protected disclosure said to have been made on 20 May 2021 is concerned with alleged furlough fraud and disclosed to HMRC. One of the protected disclosures said to have been made on 25 May 2021 is concerned with a breach by the first respondent of the claimant's data protection rights and is said to have been disclosed to "everyone" at the first respondent. The protected disclosure said to have been made on 2 July 2021 was concerned with alleged breach of covid related health measures and disclosed to HSE.
10. From the available material, it did not appear to the Tribunal that the claimant is likely to succeed in showing that on each of the occasions relied upon she

made a protected disclosure within the meaning of Part IVA of ERA. For example, it is unclear that the purported disclosures about data subject access requests were, in the claimant's reasonable belief, made in the public interest and/or disclosed information of a relevant wrongdoing in terms of Section 43B of ERA. There is no mention of the protected disclosures said to have been made on 25 May 2021 in the claimant's witness statement and no persuasive supporting documentation has been disclosed. Mr McCafferty of the first respondent accepts that he received an e mail alleging issues of furlough fraud on 20 May 2021. It is his position that the e mail was anonymous and that he was not contacted by HMRC about the matter. The claimant did not dispute Mr McCafferty's evidence in this respect.

11. If the Tribunal is wrong about the above, it went on to consider whether the claimant is likely to be able to show that making the purported protected disclosures was the reason (or, if more than one the principal reason) for her dismissal. It is the respondents' position that the claimant's assignment ended because the second respondent asked that she be removed due to unacceptable conduct and poor performance. This is supported by an e mail from the second to the first respondent dated 1 July 2021 (P10). The e mail (P10) is said to have been sent by Ryan Bennett who claims to have had no knowledge of the claimant making protected disclosures when he sent the e mail (P10). The claimant does not dispute that the e mail (P10) is genuine. The purported protected disclosure of 2 July 2021 was made after the e mail was sent (P10) and could not therefore have been the reason for the claimant's dismissal (which is denied). It is the first respondent's position that the claimant's assignment ended at the second respondent's request and for the reasons given in Ryan Bennett's e mail (P10). As referred to above, three of the purported protected disclosures were made to the Information Commissioner's Office. One was anonymous, one was sent to HMRC, and one was sent to HSE after the instruction was received by the first respondent to remove the claimant.

12. In all the circumstances, it did not appear to the Tribunal that it was likely that the claimant will succeed in her complaint that the reason for her dismissal is that she made a protected disclosure.

**CONCLUSION**

5 13. The Tribunal concluded that in all the circumstances it should refuse the application for interim relief. It did not appear to the Tribunal that it is likely that the claimant will succeed in her complaint of being unfairly dismissed in terms of Section 103A of the Employment Right Act 1996.

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Employment Judge: Frances Eccles  
Date of Judgment: 7 September 2021  
Entered in register: 10 September 2021  
and copied to parties

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*This document should be treated as signed by me – Employment Judge F Eccles – in accordance with the Presidential Practice Direction of 1 May 2020.*