



EMPLOYMENT TRIBUNALS

Claimant: Ms Sarah-Louise Stanley

Respondents: Hollies Day Nurseries Limited

Record of a Preliminary Hearing heard at the Employment Tribunal

Heard at: Nottingham **On:** 6 January 2022

Before: Employment Judge Hutchinson (sitting alone)

Representation

Claimant: Mr George Miller, Legal Executive

Respondent: Mr Patrick Keith, Counsel

JUDGMENT

The Employment Judge gave Judgment as follows;

The application for Interim Relief fails and is dismissed.

REASONS

1. The Claimant presented her claim to the Tribunal on 16 December 2021. She had been employed by the Respondents as an Administrator/PA from 7 June 2021 until her dismissal on 13 December 2021.
2. She claims;
 - Unfair dismissal under section 103A EMPLOYMENT RIGHTS ACT 1996 (“ERA”).

- Unfair dismissal under section 100(1)(c) ERA.
 - Unfair dismissal contrary to section 100(1)(d) ERA.
 - Unfair dismissal under section 100(1)(e) ERA.
 - Unfair dismissal contrary to section 99 ERA.
 - Whistleblowing detriments.
 - Failure to make reasonable adjustments.
 - Discrimination arising from disability.
3. In respect of the claim made under section 103A ERA she also made a claim for interim relief. The claim for interim relief is only made in respect of that claim. The claim of unfair dismissal under part X of the ERA does not require early conciliation where there is a valid claim for interim relief.
4. It is not in dispute that in this case there is a valid claim.

The Hearing Today

5. The matter was listed today to deal only with the application for interim relief which is made under section 128(1)(a)(i) ERA.
6. It is not in dispute that on an application for interim relief I must carry out a broad assessment of the evidence to determine whether it appears to me “likely” that the complaint to which the application relates will succeed. I was referred by Mr Miller to the case of ***Taplin v C Shippam Limited [1978] ICR1068***.
7. As agreed, I confine myself to the claim of unfair dismissal made under section 103A ERA. I have to decide only whether that claim is likely to succeed namely that the reason or principle reason for the dismissal was that the Claimant had made a protected disclosure.
8. The outcome of the case could have serious consequences for the parties because if the Claimant is successful I would order reinstatement or re-engagement or make an order for continuation of the contract pending the outcome of the hearing. In a case such as this that could mean a wait of almost 2 years.
9. My task was to carry out an expeditious summary assessment as to how the matter appears to me on the material available at the time of the hearing. Doing the best, I can with the untested evidence advanced by each party.
10. In this case I have considered;
- 10.1 The ET1.
 - 10.2 Two statements made by the Claimant.
 - 10.3 A statement of Myles Pike.
 - 10.4 A statement of Drew Pike.
 - 10.5 A statement of Elizabeth Clyde.
11. The last 3 named are all employees/Directors of the Respondent’s Company

which is a family business.

12. There was also a bundle of documents provided to me by the Respondents and where I refer to page numbers it is from that bundle.
13. I heard submissions from both Mr Miller who also provided me with a skeleton argument and Mr Keith.

Relevant Law

14. Section 103A ERA provide;

“(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure”.

15. Section 43B ERA defines a protected disclosure;

“(1) In this Part a “qualifying disclosure” means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following—

.....

(d) that the health or safety of any individual has been, is being or is likely to be endangered”.

16. There is a number of matters which the Claimant will have to satisfy the Tribunal when it comes to hearing and in particular;
 - 16.1 Did she disclose information.
 - 16.2 Did she believe the disclosure information was made in the public interest.
 - 16.3 Was that belief reasonable.
 - 16.4 Did she believe it tended to show that the Health and Safety of any individual had been, was being or was likely to be endangered.
 - 16.5 Was that belief reasonable.
17. The burden of truth will be on the claimant to establish that she made a protected disclosure and that that was the reason or principal reason for her dismissal. As Mr Miller says, when considering whether disclosure has been made in the reasonable belief that it was in the public interest there are no absolute rules and it is for the Tribunal to decide whether the disclosure being made in the public interest based in the circumstances of a particular case. As per the case of ***Chesterton v Nurmohamed [2018] ICR731*** the disclosure has to serve a wider interest than the private or personal interest of the person making the disclosure.
18. If the Claimant can satisfy the Tribunal that she did make a protected disclosure

she will then have to go on to establish that the disclosure was the reason or principle reason for her dismissal. The disclosure that is relied on in this case is her email of 12 December 2021. That email is at page 39 of the bundle. It was sent at 07.45 on that day. It says;

"Hi Myles

Under the new guidance, "go to work if you must but work from home if you can" ... I am writing to let you know that from Monday 13 December I'll be working from home.

All my work is online, cloud-based work, and as a pregnant and chronic asthmatic person I am not comfortable ignoring the Government guidelines and being made to work in a small cabin with only one entrance with up to three people.

I'll log on during my usual working hours of 8.00am until 4.30pm with a half hour lunch break apart from Tuesday 14 December from 9.00am until approx. 10.30am (blood test with the midwife) and Monday 20 December I'll be finishing at 2.45pm as I have my 12 week scan at the City Hospital at 3.30pm, both of which fall under antenatal care.

As before, my last working day before Christmas will be Tuesday 21 December.

*Thanks.
Sarah"*

19. Mr Miller's contention is that looked as at a whole the Claimant's email "clearly disclosed information that tended to show that her health and safety was likely to be endangered by working from the office". He says that the Claimant has "A pretty good chance" of showing that she reasonably believed her disclosure to be in the public interest.
20. He submits that the disclosure concerned the Respondents non implementation of measures to reduce the risk of transmission of Covid 19. That this serves a wider interest than the Claimant's own personal interest. He says that reducing the risk of Covid 19 infection does not just affect the Claimant, it affects us all.
21. Whilst I am satisfied that the email may well be likely be regarded as a qualifying disclosure without having the evidence tested, I am satisfied that I could not say that the Tribunal dealing with the matter after hearing the evidence is likely to find that this is a protected disclosure. On the face of it, it does not appear to me to be a disclosure made in the public interest but only one that relates to herself.
22. The second issue for the Claimant is over the reason for the dismissal. Again, Mr Miller's contention is that she has a "pretty good chance" of showing that the reason or principle reason for her dismissal was her protected disclosure.
23. In this case I cannot ignore the evidence given by the 3 witnesses for the Respondent who all say that the decision to dismiss her was made on 10 December 2021, 2 days before the Claimant says that she made a protected disclosure. Drew Pike tells me that the claimant was due to move from their Mapperley site to their Sherwood head office from 13 December 2021. He had collected her PC and delivered it to the head office, and they were setting up the PC in advance of the claimant starting there. Myles Pike found items on the PC

which showed that she had been using it for personal use during working hours. There were also some password protected documents he could not open and there was a safeguarding concern that they might need to report. I am told that the directors decided by the end of Friday 10th of December 2021 that they were going to dismiss the Claimant. They did not need to give a reason because she had only worked there for just over 6 months.

24. I also can't ignore the Claimant's letter of 30 November 2021 at pages 36 and 37 of the bundle. That letter makes it clear that she was not happy about the proposed change of daily working pattern so that she would be required to work on a Friday rather than a Wednesday particularly as it involved her travelling to the new office at Sherwood.
25. It can be seen from that letter that she really wanted to work from home and that the main reason for that was her sons childcare and the fact that she would have to get him up and dressed and out of the house by 6.15am on a Friday as opposed to the 8.00am at the moment. She made it clear that she wasn't prepared to agree to any change in her working pattern and that she wanted to work from home but that the main reason for that was not about any concerns over Covid 19.
26. Mr Miller says to me that the timing of the dismissal is "damning". It is certainly unfortunate for the Respondents although it would seem to me to be strange for the Respondent to simply decide to dismiss the Claimant just because they received that email.
27. By 9.30am on 13 January the Claimant's access to the Respondents systems was revoked (page 43). This is consistent with the Respondents statements that they had already decided to dismiss the Claimant because of conduct.
28. The Claimant says that the reaction of Myles was immediately negative (page 38) but that is not conclusive of the fact that he decided to dismiss her because of the email. The Claimant was in effect committing an act of gross misconduct by refusing to obey a reasonable instruction to attend her workplace, so it does not surprise me that his response was "negative".
29. Mr Miller contends that the dismissal letter was rushed and contains material inaccuracies. The letter had been written without legal advice and rushed because they wanted to be able to tell the Claimant that she was dismissed immediately when she said she would not be coming in to work. According to their evidence they wished the Claimant to come in so they could dismiss her in person. It is not surprising in these circumstances that it contained inaccuracies.
30. Having now obtained advice they have subsequently written confirming what they say is the real reason for the dismissal, namely her dishonesty (page 44).
31. Having attended this hearing they have refined that further and say that they dismissed her because of safeguarding concerns.

32. Whether they paid her in lieu of notice or not does not answer the question of whether she was dismissed because of whistleblowing.
33. Having considered all before me and heard the representations I cannot say that this claim for a whistleblowing dismissal is likely to succeed and therefore the claim for interim relief fails and is dismissed.

Employment Judge Hutchinson

Date: 13 January 2022

JUDGMENT SENT TO THE PARTIES ON

17 January 2022

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FOR THE TRIBUNAL OFFICE

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