



# EMPLOYMENT TRIBUNALS

**Claimant: Mr P Holmes**

**Respondent: Kirklees Council**

**7 March 2022**

**Before: Employment Judge Shepherd**

**Appearances:**

**For the Claimant: Mr Toms, counsel**

**For the Respondent: Mr Oldham QC**

## **JUDGMENT ON THE CLAIMANT'S APPLICATION FOR INTERIM RELIEF**

The claimant's application for interim relief is refused.

### **REASONS**

1. The claimant was represented by Mr Toms and the respondent was represented by Mr Oldham.
2. I was provided with a bundle of documents consisting of 313 pages. I considered those documents to which I was referred by the parties. I also had sight of written statements from Antony Pearson, UNISON Regional Manager, Charles Carruth, UNISON regional organiser, Colin Parr, the respondent's Strategic Director Environment and Climate Change and Deborah Lucas, Head of People Services.
3. This was an application by the claimant for an order for interim relief on the basis of the claim for dismissal by reason of taking part in the activity of an independent trade union pursuant to section 152 of the Trade Union and Labour Relations (Consolidation) 1992 (TULCRA).

4. The claimant presented a claim to the Employment Tribunal on 9 February 2022. The complaints brought were for detriment for taking part in the activities of UNISON, unfair dismissal for the reason or principal reason that he took part in (or proposed to take part in) the activities of UNISON contrary to section 152(1)(b) of TULCRA, unfair dismissal contrary to section 94 and section 98 of the Employment Rights Act 1996. The claimant also claims that he was subject to direct age discrimination.

5. The claimant applies for interim relief under section 161 of TULCRA. A certificate pursuant to section 161(3) has been provided and it is accepted that the procedural requirements have been met.

6. I have to decide whether it appears to me likely that, on determining the complaint, the claimant will succeed in establishing that the reason (or if more than one the principal reason) for the dismissal was on grounds related to Trade Union membership or activities.

7. The claimant has been employed by the respondent since September 1973. He has been on full time release from the respondent as the UNISON branch secretary since 1998. In July 2021 he was elected as National President of UNISON.

8. The requirement to decide whether it is likely that the claimant will succeed at a full hearing of the unfair dismissal complaint pursuant to section 152(1)(b) does not require me to make any findings of fact and I must make the decision as to the likelihood of the claimant's success at the full hearing on the material before me.

9. I have considered the claim form and grounds of complaint. I have considered the witness statements provided by Antony Pearson, Charles Carruth, Deborah Lucas and Colin Parr. I have also considered the documents to which I was referred by the parties and the submissions from Mr Toms and Mr Oldham.

10. The basic task I have to decide is to make a broad summary assessment on the material available doing the best I can with the untested evidence from both parties to enable me to make a prediction about what is likely to happen at the eventual hearing before a full Tribunal.

11. When considering the "likelihood" of the claimant succeeding at the Tribunal, the test to be applied is whether he has a "pretty good chance of success". In the case of *Taplin v C Shipham Ltd* 1978 ICR 1068 the EAT

expressly ruled out possible alternative tests such as “a real possibility” or “reasonable prospect” of success. The burden of proof in an interim relief application is intended to be greater than that at the full Tribunal where the Tribunal need only be satisfied on the balance of probabilities that the claimant has made out his case.

12. Deborah Lucas, the respondent’s Head of People Services commissioned the investigation report from an external investigator regarding the claimant. That report was shared with the claimant’s line manager and it was decided that the case should proceed to a disciplinary hearing. The decision to dismiss the claimant was made by Colin Parr, the respondent’s Strategic Director Environmental and Claimant Change. The letter of dismissal states that two allegations in respect of the claimant’s misconduct were upheld and the claimant was dismissed for gross misconduct.

13. Colin Parr, the dismissing officer, states that he considered all the evidence and the investigation report. He says that he genuinely believed that the claimant had committed misconduct warranting dismissal. This is set out in the letter of dismissal.

14. I had the benefit of detailed written and oral submissions provided by Mr. Toms on behalf of the claimant and Mr Oldham on behalf of the respondent. These were helpful. They are not set out in detail but both parties can be assured that the I have considered all the points made and all the authorities relied upon, even where no specific reference is made to them.

15. Mr Toms submitted that all the matters investigated concerned the claimant’s Trade Union activities and many were historic and were about the manner in which the claimant carried out his Trade Union duties. There was evidence of antagonism towards UNISON and the claimant by senior management. The report of the investigator was weak and tentative and there were no reasonable grounds for Mr Parr’s conclusion that the claimant was guilty of gross misconduct.

16. Mr Oldham submitted that the positive evidence as to whether the claimant’s Trade Union activities were the reason for his dismissal all goes one way, against the claimant’s assertion. If the claimant is not alleging that Colin Parr was manipulated by others, then he would have to show Mr Parr was motivated by hostility to him or trade unionism. Mr Parr’s statement says categorically that he was not, that he considered the charges on their merits and, having considered all the evidence, he

believed that the claimant had committed misconduct warranting dismissal. Colin Parr also states that he fully supports the trade union movement and there is nothing to contradict this, and no basis on which he can be disbelieved.

17. The written statement of Deborah Lucas makes it clear that she is a lifelong member of trade unions and is a current member of UNISON. The statement says that she is a strong believer in the role of trade unions and has worked hard to foster positive trade union relationships. She commissioned the disciplinary investigation and she was not motivated by trying to damage the claimant or UNISON.

18. The investigation report, in its conclusions, states that, on the balance of probabilities, the claimant's behaviour towards UNISON staff and stewards was bullying and controlling in its nature. Colin Parr's letter of dismissal states that his view is that the claimant had displayed completely unacceptable behaviour by bullying, intimidating and manipulating staff. His statement is clear that his decision was not motivated by the claimant's Trade Union activities.

19. It will need to be shown that the reason for dismissal given by Colin Parr was not true or that he had been manipulated by others. That can only be shown by consideration of all the evidence at the substantive hearing. There are factual disputes with regard to the motivation of Colin Parr and the way in which he dealt with evidence and it is alleged there were no reasonable grounds for his conclusion that the claimant was guilty of gross misconduct. Even if that is established, it will be necessary to go further and show that the reason for the dismissal was the claimant's Trade Union membership or activities.

20. The claimant may believe that his dismissal was for the reason or the principal reason of his Trade Union activities. He may succeed at the substantive hearing but there is nothing within the material available to me or the witness statements, which have not been subject to challenge or interrogation, that would enable me to conclude that it is pretty likely that the claim of dismissal by reason or principal reason of his Trade Union membership or activities will succeed. There are a number of disputes about factual issues that will need to be determined by the Tribunal at the full hearing.

21. In all the circumstances, the application for interim relief is refused.

Case Number: 1800365/2022

**Employment Judge Shepherd**

**14 March 2022**