



EMPLOYMENT TRIBUNALS

Claimant: Mr I Hashmi
Respondent: HSBC Group Management Services Limited
Heard at: East London Hearing Centre (by Cloud Video Platform)
On: 10 January 2022
Before: Employment Judge Gardiner

Representation

Claimant: In person
Respondent: Ms Diya Sen Gupta QC

JUDGMENT was sent to the parties on 12 January 2022, following delivery of oral reasons at the conclusion of the hearing, dismissing the Claimant's application for interim relief. The Claimant has applied for written reasons.

REASONS

1. Until his dismissal on 8 October 2021, the Claimant was employed by the Respondent as a Risk 2025 Project Manager. In these proceedings he claims his dismissal was an automatically unfair dismissal for making protected disclosures. He also claims he has suffered age, race and disability discrimination, although these discrimination claims are not relevant to the issue to be determined at this hearing.
2. The basis of the Claimant's claim is set out in the two-page document attached to his Claim Form. This identifies him as a whistleblower, who "has been internally speaking up since early this year regarding major regulatory compliance issues with the credit risk policies, credit risk data, credit systems architecture and transformation initiatives". Later, in paragraph 5 of his Claim Form he refers to "the bank's continuing non-compliance with regulatory guidelines". He says at paragraph 7 that he raised these matters with Jackson Tai, the Independent Director on the Respondent's Board, on 4 October 2021. He then refers to an unexpected call from his line manager, Simon Penny on 8 October 2021 in which he was told that he was being dismissed.

3. At this hearing the Claimant is seeking interim relief under Section 128 Employment Rights Act 1996. If the criteria set out in that Section are met, this entitles a claimant to keep their job pending a final decision on the merits of the Claimant's claim at a subsequent hearing.
4. The Claimant instigated Early Conciliation on 2 November 2021 and received his Early Conciliation Certificate on 25 November 2021. On 20 November 2021 he issued these proceedings. Due to staff shortages at the Tribunal Service, there was a delay in acknowledging the claim and notifying the Respondent of the proceedings. That was done by post and email on 16 December 2021. On the same day, the parties were notified that there would be a one-day hearing held on 10 January 2022 to consider the Claimant's application for interim relief.
5. At this hearing, the Claimant has represented himself. The Respondent has been represented by Ms Diya Sen Gupta QC. I have been provided with an electronic bundle of documents and a witness statement from Mr Andrew Grisdale. A Skeleton Argument was submitted on behalf of the Respondent, as well as a Cast List and a bundle of relevant authorities.
6. The test I have to apply is whether it appears to the Tribunal that it is likely that the Tribunal will find that the reason the Claimant was dismissed or selected for redundancy was that he had made a protected disclosure (Section 129 ERA 1996). This requires the Tribunal to carry out an expeditious summary assessment as to how the matter appears on the material available, doing the best it can with the untested evidence advanced by each party. This necessarily involves a far less detailed scrutiny of the parties' cases than will ultimately be undertaken at the full hearing. When considering the likelihood of success at the Final Hearing, the correct test to be applied is whether he or she has a 'pretty good chance of success' at the Final Hearing – *Taplin v C Shippam Limited* [1978] ICR 1068. This is a higher hurdle than the hurdle that applies at the Final Hearing, which is to decide the case on the balance of probabilities.
7. Where, as here, the complaint is of automatically unfair dismissal for making a protected disclosures or automatically unfair selection for redundancy for the same reason, the Tribunal at the Final Hearing will need to decide the following issues:
 - a. Were there protected disclosures?
 - b. Were the protected disclosures the principal reason for the dismissal?

Protected disclosure

8. A protected disclosure is a qualifying disclosure made to the employer. A qualifying disclosure is a disclosure of information which in the reasonable belief of the claimant tends to show wrongdoing in a prescribed respect and which is reasonably believed by the claimant to be in the public interest. Ms Gupta has set out the legal

principles which apply in deciding whether an alleged disclosure falls with the terms of the statutory provision.

9. The Claim Form does not identify the particular protected disclosures on which the Claimant relies in support of his claim for automatically unfair dismissal. In argument during the course of this hearing, I asked the Claimant to identify the particular documents on which he was relying either as protected disclosures or as evidence of disclosures made verbally. I now deal with each of the alleged disclosures, evaluating whether the Claimant has a pretty good chance of showing that they were protected disclosures:
- a. An email of 14.7.21 at pages 134 to 135 of the bundle: I do not consider that the Claimant has a pretty good chance of showing that this was a protected disclosure. No legal obligation is identified within the email nor is there any information disclosed that tends to show breach of PRA Guidelines. The focus of the email is the Claimant setting out his views as to how credit risk, data systems and portfolio management are organised. He suggests that there needs to be the ability to aggregate credit data and have an overriding credit flow architecture. He does not include any information that points to breaches of Guidelines if the current system is maintained. The conclusion of the email, set out in bold, is a request for “an opportunity of collective brainstorming on the way forward”.
 - b. A slide deck dated 15.7.19 [139]. This does not disclosure information with sufficient specificity such that it tends to show breach of a legal obligation. Rather it suggests the Claimant has ideas as to how things might be done differently going forwards. The words “Doing things differently” appear on page 140. Mr Hashmi relies on the criticisms made on page 141. The impression given by these comments is that there are weaknesses in the current structure. The comments are general and contain little factual specificity. There is nothing in this document to suggest the factual basis on which the Claimant believes PRA Guidelines are not being followed or may not be followed in the future. Rather, on pages 142 and 143 the Claimant identifies solutions to the problems he has identified.
 - c. The email of 16 July 2021 opens by thanking Mr Grisdale for “this opportunity for an open discussion around core challenges and proposed solutions” [150]. It does not appear to disclose any information tending to show a breach of a legal obligation. There is a passing reference to BIS in the first numbered point, but this is only in the context of revising market best practice.
 - d. The email of 21 July 2021 [152] says he was not offered a brainstorming opportunity. It asks for support to “help us rethink and propose concrete solutions for all three of the proposed next steps”. It does not appear to disclose information tending to show a breach of a legal obligation;

- e. On 2 August 2021 he emailed to say that he would be working to provide the management with prescriptive details on his proposed next steps. He referred to regulatory guidance but did not indicate any specific respects in which he considered that regulations were being breached [153];
 - f. An email of 2 August 2021, the same date, asked for a couple of individuals to help with providing senior management with prescriptive details on his proposed next steps – these were identified as regulatory guidance but no specific information was provided as to how this was believed to be being breached [156];
 - g. The deck of slides on 7 September 2021 was discussed during the hearing – the Claimant was not able to identify any specific respects stated within the slides in which there were breaches of a legal obligation;
 - h. The final document identified which predates notification of the dismissal decision is an email to Mr Lewis and Mr Ford which makes a series of observations, including that there is poor quality data at source. There is nothing here to indicate that there was reasonably believed to be a breach of a legal obligation;
 - i. The Claimant was vague as to what was communicated to Mr Tai on 4 October 2021 during the 45-minute meeting. There is insufficient evidence for me to conclude that there is a ‘pretty good chance of successfully’ showing that it contained verbal protected disclosures.
10. My summary assessment based on the documents in the bundle and the discussion in the course of argument is that the Claimant is unlikely to be able to show that he has made a protected disclosure.
11. Even if this legal hurdle is surmounted, I do not consider that the Claimant has a pretty good chance of establishing that any protected disclosure was the reason for the Claimant’s dismissal. I have not been provided with a witness statement from the dismissing officer, Mr Penny, who is apparently unwell and so away from work. However, the contemporaneous documents in the bundle show a well-documented pattern of concerns being raised about the Claimant’s conduct and performance. The Claimant’s role was a temporary one which was due to come to an end at the end of December 2021 in any event. On the papers I have seen, the most likely explanation for the Claimant’s dismissal is that this fixed term contract was coming to an end in circumstances where there were concerns about the Claimant’s conduct and performance and where there were, on the Respondent’s evidence, budgetary restrictions which meant that only two of the three temporary roles could be retained. The Claimant’s role was paid at a higher level. Removing his role created a larger financial saving.

12. In these circumstances, I dismiss the application for interim relief. This is not a case where I am persuaded that the Claimant has a pretty good chance of succeeding in his automatically unfair dismissal claim at the Final Hearing.

**Employment Judge Gardiner
Dated: 23 March 2022**