



# EMPLOYMENT TRIBUNAL

**Claimant:** Mr I Miah

**Respondent:** World Business Organisation Ltd t/a ICC UK (1)  
Mr C Southworth (2)

**Heard via Cloud Video Platform (London Central) On:** 12 April 2022

**Before:** Employment Judge Davidson

## Representation

Claimant: in person

Respondent: Mr S Sanders, Counsel

# JUDGMENT

**It is not likely that, on determining the complaint to which the application relates, the Tribunal will find that the reason or principal reason for the claimant's dismissal is that specified in s103A ERA 1996. Interim relief is therefore not appropriate in this case.**

# REASONS

1. By a claim presented on 24 March 2022, the claimant brought claims of automatic unfair dismissal as a result of making a protected disclosure, race discrimination, money claims and breach of contract.
2. He applied for interim relief and the hearing was held before the respondent had filed its Grounds of Resistance.
3. The tribunal had the benefit of written arguments from both claimant and respondent, a bundle of documents from each party and a joint bundle of authorities. A witness statement of the second respondent was also before the tribunal.

The claimant's case

4. The claimant was employed by the first respondent from 24 January 2022 until the termination of his employment on 25 March 2022.
5. The claimant relies on a verbal disclosure in 'early February' 2022 to the second respondent, which he says was the reason for his dismissal on 18 March 2022. The claimant refers to general conversations in the workplace about COVID testing and the need for physical presence in the office. A colleague of the claimant, Jessica, tested positive after an office meeting. He states that the February disclosure was repeated in an email of 23 March 2022.
6. The claimant also relies on the 23 March 2022 email as a protected disclosure both of itself and as evidence of the earlier disclosure in February. The content of the email is not the same as the content of the February disclosure described by the claimant. Although this post-dates the dismissal decision, he maintains that the first respondent did not give him an appeal hearing because he sent that email, which contained protected disclosures.
7. From the respondent's failure to follow contractual procedures as set out in the Handbook, the claimant infers that his dismissal was a result of him raising health and safety concerns.

The respondent's case

8. The facts relied on by the respondents are set out in a witness statement from the second respondent. The second respondent does not remember the specific conversation in February 2022, relied on by the claimant.
9. He took the decision to terminate the claimant's employment during the probationary period for the reasons set out in detail in his witness statement. At the time these were summarised to the claimant as being related to
  - 9.i.1. his performance
  - 9.i.2. his relationship with team members and
  - 9.i.3. concerns raised by Parliamentary staff after a visit by him and colleagues.
10. Given that the claimant was within his probationary period, the cumulation of issues meant that the second respondent thought it was appropriate to terminate the employment rather than address each of the issues separately, particularly as he had no confidence that the claimant would change. He informed him of the decision by telephone on 18 March 2022 and followed up with an email explaining the reasons on 21 March 2022. He was put on garden leave for his one week notice period and his employment ended on 25 March 2022. The dismissal was not for a disciplinary reason and therefore no procedures were applicable and no appeal was offered. In any event, the

respondent's case is that the procedures were non-contractual and the claimant had no entitlement for these to be followed.

### The law

The relevant statutory provisions and legal authorities are as follows:

11. Section 128 Employment Rights Act (ERA) 1996 provides:

**128. Interim relief pending determination of complaint**

(1) An employee who presents a complaint to an employment tribunal that he has been unfairly dismissed and –

(a) that the reason (or if more than one the principal reason) for the dismissal is one of those specified in –

- (i) section 100(1)(a) and (b), 101A(1)(d), 102(1), 103 or 103A, or
- (ii) paragraph 161(2) of Schedule A1 to TULRCA 1992,...

may apply to the tribunal for interim relief.

12. The question to be considered upon an application for interim relief is set out in s129 ERA 1996:

**129. Procedure on hearing of application and making of order**

(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 that the reason (or if more than one the principal reason) for the dismissal is one of those specified in section 100(1)(a) and (b), 101A(1)(d), 102(1), 103 or 103A

13. Interim relief can therefore be ordered where the Tribunal finds that it is likely that a final hearing will decide that the reason (or principal reason) for dismissal was the employee having made protected disclosures contrary to s 103A ERA1996.

14. The meaning of the word 'likely' for these purposes has been considered in several cases. In *Taplin v C Shippam Ltd [1978] IRLR 450 EAT*, (decided under similar provisions relating to interim relief applications in dismissal for trade union reasons) the EAT held that it must be shown that the claimant has a 'pretty good chance' of succeeding, and that that meant something more than merely on the balance of probabilities.

15. A 'pretty good chance' of success was interpreted in the whistleblowing case of *Ministry of Justice v Sarfraz [2011] IRLR 562, EAT*, as meaning 'a significantly higher degree of likelihood than just more likely than not'. Underhill P stated in *Ministry of Justice v Sarfraz [2011] IRLR 562* that, "in this context 'likely' does not mean simply 'more likely than not' – that is at least 51% - but connotes a significantly higher degree of likelihood."

16. The Claimant must show the necessary level of chance in relation to each essential element of s103A ERA 1996 automatic unfair dismissal, see *Simply Smile Manor House Ltd and ors v Ter-Berg [2020] ICR 570*.

17. The Claimant must therefore show that it is likely that the Tribunal at the final hearing will find that:

1. he made the disclosure(s) to the employer;
2. he believed that it or they tended to show one or more of the matters listed in the ERA 1996 s 43B(1);
3. his belief in that was reasonable;
4. the disclosure(s) was or were made in the public interest; and
5. the disclosure(s) was or were the principal cause of the dismissal.

18. "Protected disclosure" is defined in s43A Employment Rights Act 1996

In this Act a "protected disclosure" means a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H.

19. "Qualifying disclosures" are defined by s43B ERA 1996,

43B Disclosures qualifying for protection (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—

...

that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject...

...

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

20. The disclosure must be a disclosure of information, of facts rather than opinion or allegation (although it may disclose both information and opinions/allegations), *Cavendish Munro Professional Risk Management v Geldud [2010] ICR; Kilraine v LB Wandsworth [2016] IRLR 422*.

21. The test for "reasonable belief" is a subjective test.

22. In determining whether the reason for the Claimant's dismissal was his alleged disclosure, it is not sufficient for the disclosure to be "in the employer's mind" or for it to have influenced the employer. The Tribunal must consider whether that disclosure was the "sole or principal reason" for his dismissal.

### Discussion and decision

23. I have to assess whether it appears likely that a final hearing would find that the claimant succeeded in each of the elements of an automatically unfair dismissal claim for having made a protected disclosure.

*Has there been a protected disclosure?*

24. On the evidence before me, I do not find it likely that a tribunal would find that the February 2022 conversation was a protected disclosure. There is a lack of clarity regarding the date, the words used and the information disclosed. The second respondent does not recall the conversation. For the claimant to succeed in this part of his claim, he will need to show more than I have seen today. I note that he does not rely on this alleged disclosure in his written submissions dated 11 April 2022.

25. In relation to the 23 March 2022 email, this may well satisfy the requirements of a protected disclosure but for the reasons set out below, I do not need to determine this today.

*Was that the reason for dismissal?*

26. As a matter of logic, the 23 March 2002 email cannot be the reason for the dismissal which took place on 18 March 2002.

27. The claimant alleges that other detriments followed the 23 March 2022 email, in particular not being offered an appeal. However, interim relief relates only to dismissals, not detriments. In any event, I do not consider it likely that the claimant will be able to establish that the respondents did anything different as a result of receiving the 23 March 2022 email. The decision to dismiss had been taken and communicated to the claimant.

28. Even if the claimant manages to show that the February conversation was a protected disclosure, I do not find it likely that he will be able to establish that this was the reason for his dismissal, which was decided over a month later, particularly in the light of the evidence from the respondent of the different reasons given for the dismissal.

29. In conclusion, the claimant's application for interim relief fails and is dismissed.

30. A case management hearing will be listed to make case management orders for the matter going forward, to discuss and finalise a List of Issues for the full merits hearing and to list the hearing.

Employment Judge Davidson  
Date 6 May 2022

JUDGMENT SENT TO THE PARTIES ON  
06/05/2022.

FOR EMPLOYMENT TRIBUNALS

Notes

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CVP hearing

This has been a remote which has been consented to by the parties. The form of remote hearing was Cloud Video Platform (CVP). A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing