



# EMPLOYMENT TRIBUNALS

## Claimant

## Respondent

Mr Ron Leon

v

Breakspears Medical Group Limited

Heard at: Norwich

On: 25 April 2022

Before: Employment Judge M Warren

## Appearances

For the Claimant: Mr Menzies, Solicitor

For the Respondent: Miss Ahmad, Counsel

## JUDGMENT on INTERIM RELIEF APPLICATION

1. The Claimant's Application for Interim Relief succeeds.
2. The Claimant's Contract of Employment shall continue in force from 22 March 2022 until determination or settlement of the Claimant's complaint. Until such time, the Respondent shall pay the Claimant £2,597 per month, from which sum the Respondent shall deduct and account to the Inland Revenue for such taxes and National Insurance as may be properly due.

## REASONS

### Background

1. This is an Application for Interim Relief by Mr Leon.

### The Law

2. The Law in relation to Interim Relief can be found in the Employment Rights Act 1996 ("ERA"), Section 128 of which provides that an Interim Relief Order can be made in a case where there is a claim of Automatic Unfair Dismissal, as in this instance where that reason relied upon is having made protected disclosures, (whistle blowing) under Section 103A.

3. Section 129 says that such an Application will succeed if it appears to the Tribunal that it is likely that on determining the complaint, the Tribunal will find that the reason for dismissal was that the Claimant had made protected disclosures.
4. The relevant Authorities, some of which I have been referred to, are:
  - 4.1 Taplin v C Shippam Limited [1978] ICR 1068: ‘likely’ means, “a pretty good chance of success”.
  - 4.2 Dandpat v University of Bath [2010] EWCA Civ 305.
  - 4.3 London City Airport Limited v Chacko UKEAT/0013/13/LA, where Mr Recorder Luba QC speaks of my role today as carrying out an expeditious summary assessment on how the case appears on the material available to me, doing the best I can on untested evidence and that necessarily, this is a far less detailed scrutiny of the case than would take place at Final Hearing.
  - 4.4 Al Qasimi v Robinson UKEAT/0283/17/JOJ where Her Honour Judge Eady QC, (as she then was) refers to this task as being very much an impressionistic one.
  - 4.5 I am grateful to both parties for their reference to the Judgment of Underhill P in Ministry of Justice v Sarfraz [2011] UKEAT 0578 – for the claimant to succeed on an interim relief application in a whistleblowing case, the tribunal must find that he or she is likely to succeed on each element of such a claim.

### **Papers before me today**

5. In advance of the hearing, I had nothing other than a scanned copy of the Claim Form and the Particulars of Claim from the staff. The parties had filed documents by email, but unfortunately they have not been passed on to me, which meant that before we were able to get going today, I had to read a number of documents during a break. Those documents included a Skeleton Argument from Miss Ahmad for which I am grateful, the ET1 and Particulars of Claim, the ET3 and Grounds of Resistance, and a bundle from the Respondents, (reference to page numbers below, is to page numbers in the bundle). Included within the bundle were statements by Ms Godfrey and Mr Adams and letters to the General Medical Council from the Claimant dated 2 December 2021 and 10 January 2022; I have read all of those. I also had a Witness Statement from Mr Leon and a Witness Statement from Mr Monroe for the Respondent.

### **The Facts**

6. It is important to note that I am not making, ‘findings of fact’. With that in mind, the facts are broadly speaking as follows:

7. The Respondent is a clinic which employs about 40 staff, providing specialist investigations and treatments for patients suffering from allergy and environmental illness. The clinic is led by one Doctor Jean Monroe. The Managing Director of the respondent company is Mr Alistair Monroe, Dr Jean Monroe's son. It is from Mr Monroe that I have a witness statement for the Respondents.
8. Mr Leon was employed by the Respondent as a Clinical Nutritionist on 1 February 2007 through to 22 March 2022. Following his dismissal, he issued these proceedings on 29 March 2022. Within his Claim Form and the Particulars of Claim, he made an application for Interim Relief. There is of course no Early Conciliation Certificate, because one is not required where there is an application for Interim Relief.
9. The claim consists of a claim for Automatic Unfair Dismissal for having made protected disclosures, contrary to s.103A ERA 1996.
10. Dr Jean Monroe's licence to practice was surrendered in August 2021.
11. Mr Leon says that in a meeting with Mr Alistair Monroe in March or April 2021, he said that he felt that there were times when Dr Monroe recommended unnecessary tests, that other colleagues felt the same, he gave a specific example of an Italian patient identified as CC as one such individual, and he suggested that Dr Monroe commonly instructs staff to have that person repeat tests previously administered. He says that at the conclusion of the meeting, Mr Monroe said to him, *"let's just keep this between us"*.
12. Not content with how things were dealt with, Mr Leon says that he had a further meeting with Mr Monroe on 7 October 2021, a meeting which was attended for part of the time by a Ms Cottrell. He says that within this meeting, he made a number of disclosures to Mr Monroe, including:
  - 12.1 Repeating what he had said previously about patient CC.
  - 12.2 Reference to another patient, ID, as having had the same blood tests several times previously and that when he had mentioned this to Dr Monroe, her response had been, *"we need to have justification for treatment"*. He made the point in respect of that individual that on the same day that the blood samples were taken, treatment was administered. In other words, treatment was administered before the Respondent knew the outcome of the blood tests.
  - 12.3 He made reference to blood samples being stored for a long time and frozen for up to a year before being sent on for testing.
  - 12.4 He made reference to Dr Monroe shredding clinical notes. He suggested that she attended patient consultations in the company of one of two doctors the Respondents had employed since her licence to practice had ceased, that she effectively conducted those

consultations, but shredded her notes afterwards so as to destroy the evidence that she had done so.

- 12.5 He made reference to concerns about what is called 'cocktails' of allergy treatments being administered to patients. Those patients complaining of their having nil effect.
- 12.6 He expressed his concern at noticing a Vaccine Technician with severe arthritis in their hands, he queried whether that person was capable of preparing these cocktails and suggested that there should be an inquiry into that.
13. Mr Leon says that Mr Monroe dismissed his various concerns.
14. On 2 December 2021, Mr Monroe wrote a letter to the General Medical Council, which is in the bundle starting at page 44. Mr Menzies, for Mr Leon, focused upon some specific points from that letter. In particular, reference to Dr Monroe carrying out unnecessary tests. The letter gives a number of examples. Mr Leon referred to Dr Monroe shredding her notes to disguise that she was conducting consultations and he further alleged that in fact, she was conducting some consultations entirely on her own. He gave specific examples. There are other allegations made in the letter, but these two specific areas of allegations are what Mr Menzies focused on in his submissions.
15. The General Medical Council informed the Respondent of the complaints that it had received and that it would investigate them.
16. Mr Alistair Monroe met with Mr Leon on 5 January 2022 and amongst other things, assured him that he was a whistle blower protected under the law and that he would not be dismissed as a consequence.
17. On 7 January 2022, Mr Alistair Monroe suspended Mr Leon. The letter of suspension is at page 54. Mr Leon wrote a further letter to the GMC on 10 January 2022, in which he gave more information about the Italian patient, about Dr Monroe shredding notes and one or two other things, (page 57).
18. On 1 February 2022, Mr Leon was invited to an investigatory meeting by Mr Alistair Monroe, (page 68). Mr Monroe conducted the investigation into allegations of gross misconduct. An disciplinary hearing ensued and Mr Leon was dismissed by Mr Monroe. The letter of dismissal dated 22 March 2022 is at page 177.
19. The allegations against Mr Leon, upheld by Mr Monroe, were:
  - 19.1 Breach of confidentiality in that on 5 January 2022, he had discussed specific details relating to the GMC referral with Tracey Godfrey and Jason Adams;
  - 19.2 That by discussing those matters with Ms Godfrey and Mr Adams, he was guilty of conduct likely to bring the company into disrepute

- 19.3 In breach of Data Protection Regulations he had used his mobile phone to take a photograph of personal information relating to a patient on a colleague's screen;
- 19.4 In breach of Data Protection Regulations and risking patient confidentiality, he had removed confidential patient information from the Respondent's premises and had taken it home;
- 19.5 He had engaged in inappropriate contact with a patient known as NLE, including sending her text messages and visiting her to discuss her well being and health treatment when he had not been authorised to do so; and
- 19.6 Contrary to an express management instruction, in his suspension letter, that he must not speak to patients whilst on suspension, he did so with NLE.

### **Conclusions**

20. My conclusions on this matter are firstly, I consider Mr Leon to have a pretty good chance in succeeding in persuading a tribunal that his disclosures to Mr Monroe were protected disclosures. It seems to me that he would be able to persuade a tribunal that he was disclosing breaches of legal obligations, not to commit fraud, not to recommend and charge for treatment which patients did not need and a legal obligation to give advice that is in the best interests of one's patients. Certainly, it was likely to be a legal obligation on the part of the Respondent to give such advice to its patients, and that the health and safety of those patients was a concern. It seems to me he is likely to be able to persuade a tribunal that those disclosures meet the definition of protected disclosures and that he reasonably believed them to be a breach of legal obligations.
21. Mr Leon is also likely to succeed in persuading a tribunal that his disclosure to the GMC is similarly protected in accordance with s.43F ERA 1996 as the GMC is a prescribed body.
22. It seems to me that Mr Leon is very likely to succeed in persuading a Tribunal that those are matters of public interest. The public is bound to be concerned with information relating to the financial conduct of medical advisors and as to the appropriateness of advice or treatment being given.
23. What though about the dismissal? The test for me is whether Mr Leon is likely to succeed; whether he has a pretty good chance of succeeding in persuading a tribunal that the reason, or the principal reason, for his dismissal was that he had made those disclosures:
  - 23.1 First of all we have a remarkable coincidence of timing, in terms of the disclosures being made and the suspension, investigation and dismissal following swiftly on. Perhaps in itself not so surprising,

because the subject matter of the allegations are intertwined with the protected disclosure.

23.2 Next we have the fact that Mr Monroe, the Managing Director of the business, is the son of Dr Monroe, who is the primary subject matter of the complaint to the GMC and of the investigation, yet he is both investigator into the allegations against Mr Leon when there are plainly serious questions over his objectivity and then to compound matters, he is the dismissing officer. One might say, he is both the policeman investigating an allegation against his relative and he is also the Judge deciding the outcome of the charges.

23.3 What of the reasons for dismissal that are offered up in the dismissal letter? In the first place it is relevant to note that they are all linked one way or another to the disclosures. To review very summarily the allegations:

23.3.1 Breach of confidentiality in discussions with Ms Godfrey and Mr Adams: I have looked at the statements at page 174 and they seem to me to be relatively innocuous. I do not think it is necessarily the case, certainly not automatically the case, that any discussion about some complaint having been made to the GMC is something that is going to amount to gross misconduct. I think that the references in the letter of 22 March 2022 to asserting inappropriate influence and undermining the process are, it seems to me, likely to be regarded as over statements and exaggeration.

23.3.2 The second allegation about bringing the company into disrepute by those discussions seems to me to be simply a repetition of the first allegation and an attempt to pad things out, to exaggerate and make it all seem worse.

23.3.3 Allegation three is breach of Data Protection Regulations by using his phone to take a picture of personal information on a screen. Briefly, the explanation behind this is that Mr Leon was gathering information to use in his referral to the GMC. One needs to bear in mind that there had been references, (on his case of course) by Mr Monroe to keeping things between themselves and, he says, the shredding and destroying of notes, the destruction of evidence.

23.3.4 The fourth allegation is his taking home documents, not in paper form, but on a data stick, as I understand it. Again, he was collecting evidence that he wanted to submit to the GMC. Again, as with the third allegation, this probably is a breach of Data Protection Regulations and of patient confidentiality. Mr Leon will say he had no understanding of that and had inadequate training in that respect from the

Respondents. But in any event, one needs to view this in the context of Mr Leon making a disclosure to the GMC about matters which he regarded as serious when he thinks evidence has been and will be destroyed.

23.3.5 The fifth and sixth allegations are about his contacting a patient called NLE and from what I read about that, as best I could make out, it seemed to me that he was demonstrating care and concern for a patient of the practice. I found it hard to conceive or understand why that might be regarded as gross misconduct in the particular circumstances. It may well have been, but I found it hard to conceive of this.

24. In respect of all of these matters, they may amount to misconduct, or in some cases, in certain circumstances, might be regarded as gross misconduct. However, it seems to me there is a pretty good chance that Mr Leon will be able to persuade a tribunal that in the context of the GMC disclosures and the earlier disclosures to Mr Monroe, whereas an objective person might not have regarded these as matters as warranting dismissal, that Mr Monroe determined to remove Mr Leon for the disclosures which he made directed at his mother, that he set out to find reason to dismiss him and the reason for dismissing him was that in truth, the disclosures he had made and not the conduct as alleged.
25. On balance, my impression is that Mr Leon has a good case and the Respondent's case at first blush on reading it through, seemed to me desperate and with respect, sometimes crass. My finding is that he has a pretty good chance of success, he is likely to succeed and I will grant him Interim Relief.
26. In respect of the wording of my decision, the parties agreed that the tax position appeared to be that tax and National Insurance should not be deducted, but both are happy with the wording of my Judgment, because it refers to such tax and National Insurance as may properly be due.

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Employment Judge M Warren

Date: 18 May 2022

Sent to the parties on: 19 May 2022

For the Tribunal Office