



EMPLOYMENT TRIBUNALS

Claimant: Mr J Gow

Respondent: 7 Leisure Limited

31 May 2022

Before: Employment Judge Shepherd

Appearances:

For the Claimant: In person

For the Respondent: Mr Flanagan

JUDGMENT ON THE CLAIMANT'S APPLICATION FOR INTERIM RELIEF

The claimant's application for interim relief is refused.

REASONS

1. The claimant represented himself and the respondent was represented by Mr Flanagan.
2. I was provided with a bundle of documents consisting of 132 pages. I considered those documents to which I was referred by the parties.
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 making a qualifying disclosure pursuant to section 43B(1) of the Employment Rights Act 1996.
4. By virtue of Section 103A an employee will be deemed to bring unfairly dismissed if the reason or principal reason for dismissal is that he made a protected disclosure.
5. Section 43B(1) stipulates that a 'disclosure of information which, in the reasonable belief of the worker making the disclosure, tends to show... That a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject' qualifies as a protected disclosure for these purposes. The scope of Section 43B(1)(b)

is broad and can potentially cover any disclosure relating to a breach by the employer of employee's contract of employment: there is no basis for distinguishing between a legal obligation arising from an employment contract and any other form of legal obligation.

6. However, in order to come within the terms of S.43B(1)(b), it is not sufficient for an employee to show that there had been a breach of contract. It is necessary for three other conditions to be satisfied, namely that (i) the breach of the employment contract be shown to be a breach of a legal obligation under that contract; (ii) there be a reasonable belief on the part of the employee that such a breach has happened, is happening or is likely to happen; and (iii) the disclosure of the breach be the reason for the dismissal.

7. Employment Rights Act 1996

128.— Interim relief pending determination of complaint.

- (1) An employee who presents a complaint to an employment tribunal—
 - (a) that he has been unfairly dismissed by his employer, and
 - (b) that the reason (or, if more than one, the principal reason) for the dismissal is one of those specified in section 103A .

- (2) The tribunal shall not entertain an **application** for **interim relief** unless it is presented to the tribunal before the end of the period of seven days immediately following the effective date of termination (whether before, on or after that date).

- (3) The tribunal shall determine the **application** for **interim relief** as soon as practicable after receiving the **application**.

- (4) The tribunal shall give to the employer not later than seven days before the date of the hearing a copy of the **application** together with notice of the date, time and place of the hearing.

- (5) The tribunal shall not exercise any power it has of postponing the hearing of an **application** for **interim relief** except where it is satisfied that special circumstances exist which justify it in doing so.

8. 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.

9. The claimant referred the case of **Ministry of Justice v Sarfraz UKEAT/0578/10/ZT** in which it was indicated that “likely” did not mean “more than not” but connoted a sufficiently higher degree of likelihood.

10. The claimant presented a complaint to Tribunal on 4 May 22. He brought a claim of unfair dismissal by reason of making a protected disclosure and applied for interim relief pursuant to section 128 of the Employment Rights Act 1996.

11. He was employed by the respondent from 22 April 2022 to 1 May 2022. He was employed as a second chef. He worked 4 shifts. He raised issues with regard to theft, legal obligations towards food safety and the interests of public health. He says that he believes that stop any trouble coming the claimant way for failing to provide for the public health.

12. The respondent defends the claim and says claimant was dismissed by reason of the claimant’s conduct which was aggressive and irrational. The respondent also does not accept the claimant made protected disclosures.

13. 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 that the claimant made a protected disclosure

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.

12. Mr Flanagan, on behalf of the respondent submitted that the claimant was insufficiently pleaded. There were two apparent disclosures but further information is requested from the claimant.

13. There are clear factual disputes that need to be determined before it could be concluded that the claimant had made protected disclosures and that they were the reason for dismissal.

14. The claimant may believe that his dismissal was for the reason or the principal reason of his alleged protected disclosures. He may succeed at the substantive hearing but there is nothing within the material available to me that would enable me to conclude that it is pretty likely that the claim of dismissal by reason or principal reason of his protected disclosures will succeed. There are a number of disputes about factual issues that will need to be determined by the Tribunal at the full hearing.

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

Employment Judge Shepherd

31 May 2022