



EMPLOYMENT TRIBUNALS

Claimant: Kathleen Priestley

Respondent: Tex Tech Ltd

PUBLIC PRELIMINARY HEARING

Heard at: Leeds (by CVP video link)

On: 9 June 2022

Before: Employment Judge Shepherd

Appearances

For the claimant: Ms Martin

For the respondent: Ms Platt

JUDGMENT

The respondent's applications to strike out the claims of detriment on dismissal by reason of making a protected disclosure are refused.

REASONS

1. This Preliminary Hearing was listed to determine whether to grant the respondent's application to strike out on the grounds that parts of the claim have a no reasonable prospect of success, alternatively to order a deposit as a condition of the claimant continuing with those obligations if considered to have little reasonable prospect of success.
2. The claimant presented claims for unfair dismissal, unfair dismissal by reason of making a protected disclosure pursuant to section 103A of the Employment Rights Act 1996 and detriment for making a protected disclosure pursuant to section 47B.
3. I make no substantive findings of fact and take the claimant's case at its highest.
4. The claimant raised a grievance on 3 May 2021 which was reiterated in the grievance meeting on 25 May 2021 and the grievance appeal meeting on 6 July 2021.
5. The alleged disclosure was the provision of information with regard to misuse of the further furlough scheme. The claimant indicated that the respondent had claimed payments for a period in which the claimant was working.

6. The respondent submits the claimant did not make a qualifying protected disclosure as the subject matter did not fall within the categories of wrongdoing in the section 43B(1) of the Employment Rights Act 1996 and that the claimant had expressed her opinion in respect of her personal situation and had not raised matters that could reasonably be said to be in the public interest.

7. I was referred to a number of cases including the case of **Cavendish Munro Professional Risks Management Limited v Gelgud UKEAT/0195/09, Williams v Michelle Brown UKEAT/0044/19** in respect to disclosure of information and **Chesteron Global v Nurmohadmed EWCA Civ 979** with regard to the public interest test.

8. I am satisfied that the claims raise an arguable case that there was a disclosure that a criminal offence had been committed or that there was a failure to comply with a legal obligation. The alleged disclosure did relate to the claimant's personal interests but may have been made in the public interest. It relating to the misuse of public funds and with regard to other employees of the respondent. I heard submissions with regard to the claimant's belief that the disclosure was in the public interest. I find that this could only be determined by consideration of the evidence by the Tribunal.

9. I accept that there are arguments both ways but I am not satisfied that there has been established that are no or little reasonable prospect of success. The claims are to be determined by the Tribunal at the substantive after hearing evidence.

10. The respondent's application to strike out the claims in respect of the protected disclosure detriment and dismissal or to order a deposit as a condition of the claimant continuing with those allegations is refused.

11. The case is listed for a four day final hearing commencing 18 July 2022 and I have provided further case management orders.

Employment Judge Shepherd
9 June 2022

Sent to the parties on:
15 June 2022