



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr A Ujah

v

Department of Work and Pensions

Heard at: Southampton

On: 4 August 2022

Before: Employment Judge Rayner

Appearances

For the Claimant: in person (with assistance of Miss B Pawlicka)

For the Respondent: Mr C Khan, Counsel

Determination of Application for Interim Relief

1. The Claimant's application for interim relief under section 128(1)a(i) Employment Rights act 1996 is refused.
2. The claim will now be listed for a telephone case management hearing.

Reasons

3. Following a request for written reasons for the Claimant the following reasons are provided.
4. The claims that Mr Ujah brings to the employment tribunal are of race and disability discrimination as well as a claim automatic unfair dismissal for having made protected disclosures.
5. Mr Ujah was employed by the Respondent for 18 months.
6. He has also made an application for interim relief under section 128 of the Employment Rights Act 1996.



7. It is this application that I am deciding today.
8. I have heard helpful submissions both from Mr Ujah on his own behalf and from Mr. Khan of counsel on behalf of the Respondent.
9. Mr Ujah he relies upon two alleged protected disclosures: one made internally on the 6 June 2022 and one made externally to the Equality and Human Rights Commission on 10 June 2022.
10. Mr Ujah was dismissed with effect from 18 June 2022.
11. The Respondent asserts that the reason for the Claimant's dismissal was that he had not met the requisite standards of performance and/ or capability.
12. The Respondent refers to an internal performance scoring which was carried out by two managers, Rahima Begum and Melanie Cramer, on the 31 May 2022 and which on the face of it, indicates poor scoring against a number of matters.
13. The Respondent says that only reason for dismissing the Claimant was his failure to score at the required level at the review.
14. The Respondent also points out that the process of scoring the Claimant predate him making what he alleges were protected disclosures.
15. The Claimant asserts that the real reason why he was dismissed was that he had made or intended to make the protected disclosures, and that the Respondents knew that he intended to make protected disclosures, because he had told them previously what he intended to do.
16. He has made reference to a number of matters which arose in the 18 months of his employment and refers in particular to work that he did on diversity and inclusion issues and matters that he raised throughout the course of his



employment about alleged racism; diversity and inclusion failures by the Respondent at his place of work.

17. Interim relief can only be awarded where a Claimant brings certain types of claim. One of those claims is a claim of having been dismissed for having made protected disclosure, which is one of the claims made by the Claimant.
18. The Claimants other claims and in particular his claims of race discrimination which may include claims of victimisation, for having done protected acts of making complaints about racism, are not relevant to my determination today , except as insofar as they may form part of, or be the subject matter of, any alleged protected disclosure.
19. In considering whether or not interim relief should be granted, I must consider whether it appears to me that it is likely that on determining the complaint the tribunal will find that the reason or the principal reason for the dismissal was that the Claimant had made the two disclosures which he relies upon.
20. I have been provided with a significant amount of documentation and analysis of that documentation by the Claimant as well as a short and focused submission from the Respondent. I am grateful to both of them.
21. If anything, the wealth of information underlines that this is a case in which there will need to be significant findings was a fact made in order to determine the outcome and that at this interim stage it is not possible for me to consider not the Claimant has a pretty good chance of succeeding on the relevant claim.
22. This will require the Claimant to prove first, that the information he disclosed was in the nature of a protected disclosure and second, to prove that the disclosures were the principal reason for his dismissal.



23. For the purposes of today, based on the information I have before me, I accept that the Claimant has a pretty good chance of proving that he made two protected disclosures, one on 6 June 2022 and one on the 10 June 2022.

24. However, it does not appear to me that he has a **pretty good chance** of proving that the reason or principle reason for his dismissal was that he had made those two disclosures. This is a higher hurdle than balance of probabilities,

25. The reason is that there is at the heart of this case, a fundamental dispute between the parties about what **caused** the managers to score the Claimant as they did, and what caused the Claimant to be dismissed. The Claimant does not dispute that he was scored by two managers, or that this was the stated reason for his dismissal.

26. The Claimant's argument is that the process of scoring itself was flawed in that those who carried out the scoring, scored him lower than was justified, and that they did so deliberately.

27. The Claimant says that he has significant evidence which will show that he was achieving his targets and that his performance was at least sufficient. He will say that the evidence looked at together, suggests that the managers who scored him in May 2022 deliberately scored him low or badly because they wanted to get rid of him and that this was because they knew he was going to make protected disclosures.

28. This will require a consideration of the evidence that the Claimant says shows his performance was acceptable, as well as the evidence and considerations of the managers who say that his performance was not at an acceptable level. The ET will have to determine firstly, whether or not there is evidence that the Claimant's scores were lower than could have been expected, and then, if there is, what the reason for that is.



29. It will not be enough for the Claimant to show that his performance was not as bad as suggested by the scores allocated. To succeed, the ET will have to determine that both that the managers who scored him did not believe that the Claimant's performance was poor, or as at least as poor as suggested, and that the low scoring was deliberate and that the reason for it was that both those scoring the Claimant, knew that he was going to make a protected disclosure, and scored him as they did because of that knowledge.
30. At this stage in the process, I cannot say more than that there is clearly an issue to be tried, and that both the Respondent and the Claimant have evidence which they say supports their respective cases.
31. It is also an implicit part of the Claimant's case that he considers that the reason for his dismissal was not simply the two protected disclosures made in June, but also all that had happened previously. Much of what he complains about having taken place before his disclosures, is nothing to do with protected disclosures. If those facts and matters were a significant part of the reason for him being dismissed, as a matter of logic he will not be able to show that the reason or principal reason was that he had made disclosures.
32. In any event, Mr Khan, Counsel for the Respondent, raises a question about the chronology of events, and the question about whether or not the Claimant had made a disclosure or intended to make a disclosure.
33. Mr. Khan states that in order to succeed on his claim for automatic unfair dismissal, the Claimant will have to prove, on balance of probabilities that the reason or principle reason for his dismissal, was that the scores given by the managers were camouflage for a true reason, and that the reason was that the Claimant had made or was going to make two public interest disclosures. Neither disclosure had been made at the point of the scoring.



34. Mr. Khan makes the point that the wording of the provisions of ERA 1996 in respect of public interest disclosures refer to protections for a worker who has made a public interest disclosure and not one who intends to make a public interest disclosure . The provisions are unlike those for victimisation under section 27 of the Equality Act 2010 for example. I accept that this is a potential stumbling block for Mr Ujah, but it is not the reason why I reject his application.
35. Whilst Mr Ujah may well be able to satisfy the tribunal that he has been victimised or discriminated against on grounds of race and or disability , it seems to me that he will face significant hurdles in establishing that the reason for his dismissal was that the two managers who scored him, deliberately reduced his scores because of the two protected disclosures he relies on . Both postdate the scoring and even if the decision to dismiss was taken subsequently to the scoring, the Claimant would have to prove that the manager making that decision to dismiss, based on those scores, also did so, not because of the poor scores, but because the Claimant had made public interest disclosure. The Claimant does not provide any reason why the person who made the decision to dismiss, was so motivated. I have no information before me today, other than the Claimants analysis of the case and his assertions, to support the Claimants argument that he has a pretty good chance of establishing his claim.

Employment Judge Rayner

Date: 2 September 2022

Reasons sent to the parties: 12 September 2022

For the Tribunal Office

Note: Reasons for the decision having been given orally at the hearing, written reasons will not be provided unless a written request is received from either party within 14 days of the sending of this record of the decision.

