



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr Yixuan Lu

**Respondent:** China Mobile International UK Limited (1) and  
Mr James Yu (2)

## REASONS

### Following request from Claimant after written promulgation of the Tribunal's Judgment

1. The Claimant was employed by the First Respondent as a Graduate Trainee from 2 August 2021 to 19 August 2022. The Respondent says that the Claimant was dismissed due to failing to satisfactorily complete his extended probationary period of employment.
2. On 26 August 2022 the Claimant submitted an ET1 which included a claim that he had been unfairly dismissed for making protected disclosures on 1 September 2021 and 30 May 2022. He has submitted a claim for Interim Relief pursuant to ss.128 and 129 Employment Rights Act 1996 ("ERA").
3. At the hearing of the Interim Relief application on 3 October 2022 the Tribunal dismissed the Claimant's application and provided the parties with ex tempore Reasons for that Judgment. Following promulgation of the Judgment the Claimant requested the Tribunal to provide written Reasons for it.
4. The Tribunal was provided with the following documentation at the hearing:
  - a. The Claimant's Bundle of Documents comprising 114 pages (Exhibit C1);
  - b. The Respondents' Bundle of Documents comprising 29 pages (Exhibit R1); and
  - c. A Skeleton Argument submitted by Miss Jervis, who represented the Respondents (Exhibit R2).
5. The Claimant was assisted by an interpreter provided by the Tribunal. It was agreed that the interpreter could translate correspondence on which the Claimant relied from Mandarin into English. The Tribunal received extensive representations from the Claimant and Miss Jervis referring the Tribunal to documents in the bundles and responding to questions raised by me.

6. The Claimant did not have two years' continuity of service and so, in these proceedings the burden is on him to show jurisdiction and, therefore, to prove that the reason, or if more than one, the principal reason for his dismissal was that he had made the protected disclosure / disclosures.
7. The test I have to apply involves me carrying out an expeditious summary assessment as to the strength of the Claimant's claim based on the information made available to the Tribunal before and during the hearing. I have to do the best I can with the untested evidence advanced by each party. This involves far less detailed scrutiny than will be applied at a full hearing. I am not required to make findings of fact and have not done so. I have undertaken a broad assessment on the material available to enable me to consider whether the Claimant has a pretty good chance of success.
8. The statutory test as to whether a claim is likely to succeed is not whether the claim is more likely than not to succeed. I must conclude that there is a much higher degree of likely success. This has been described as something nearer to certainty than mere probability. I set out the narrative that has been provided to me as agreed between the parties, or stated by each of the parties, to have occurred.
9. The Claimant's contract of employment with the First Respondent ("CM") was subject to his successful completion of a six month probationary period. CM was contractually entitled to extend the Claimant's probationary period if it considered it was necessary to do so. The Second Respondent (Mr Yu) was the Claimant's Line Manager. On or around 1 September 2021, Mr Yu, while on holiday, instructed the Claimant to send an email to a contractor to sign-off completion of work carried out for CM.
10. The Claimant was concerned that this work had not been completed. In Mr Yu's absence he referred his concern to Mr Yu's Line Manager, who advised him to withdraw the email so that the matter could be referred back to Mr Yu. The Claimant followed this advice. He sent an email to the contractor explaining the position and copied Mr Yu into this email. This resolved the issue which the Claimant had raised.
11. The Claimant was assigned to work in Hong Kong from 1 November 2021 to 1 March 2022. Mr Yu remained his Line Manager during this assignment. On or around 28 January 2022 the Claimant was informed that CM was extending his probationary period of employment from 11 February 2022 to 1 May 2022. The Claimant was informed on 27 April 2022 that CM was extending his probationary period again until 1 July 2022.
12. CM's documents indicate that it had concluded that some improvement was required in the Claimant's work if he was to satisfactorily complete his probationary period. The Claimant maintains that documentation prepared by the Respondent recording the meeting at which he was informed of this decision has been fabricated. This is one of a number of matters which are the subject of substantial disputes of fact between the parties.
13. On 30 May 2022 the Claimant wrote to CM's Compliance Officer to inform CM's Compliance Team that Mr Yu had not followed CM's published

procurement procedures because he had granted one of three suppliers who were in competitive bidding to secure a contract from CM with an extension of time to submit its bid but had not extended time for the other two suppliers. He also referred the Compliance Team to the email which Mr Yu had instructed him to send to a contractor on or around 1 September 2021 which has already been referred to above.

14. Mr Yu's case is that the actions of Mr Yu which he reported to the Compliance Team on 30 May 2022 demonstrated that either criminal activity had been committed by Mr Yu or was going to be committed by him.
15. CM's case is that its Procurement Department did not have to be involved in the later situation referred to by the Claimant. However, the Claimant asserts that it concluded after its investigation of his complaint that Mr Yu had been in breach of the Respondent's relevant procurement procedures. This is a further matter in which there will be a substantial dispute of fact between the Claimant and the Respondents.
16. The Claimant lodged three grievances in respect of the second extension of his probationary period. He submitted written representations in respect of these grievances on 1 June 2022. CM completed the grievance procedure on 5 August 2022. I received no representations, and was referred to no documentation that suggested that the alleged protected disclosures on which the Claimant relies were either referred to, or the subject of, the Claimant's grievances.
17. On 19 August 2022 CM's Head of Human Resources contacted the Claimant to inform him that he was being dismissed with immediate effect. He told the Claimant that this was because he had not satisfactorily completed his extended probationary period. The Claimant was not required to work his notice and was paid in lieu of notice in accordance with the terms of his contract of employment.
18. The Claimant did not dispute Miss Jervis' representation that the Head of Human Resources had no knowledge of the matters which had been raised by the Claimant with Mr Yu's Line Manager in or around September 2021 or with CM's Compliance Team on 30 May 2022. My understanding, from the documentation placed before me is that the allegation that the alleged protected disclosures were the reason for the Claimant's dismissal was first raised in the Claimant's letter of appeal against the decision to dismiss him.
19. I have given careful consideration to the documents referred to me and the parties' representations. I have concluded the Claimant does not have a pretty good chance of persuading the Tribunal that his conversation with Mr Yu's Line Manager on or about 1 September 2021 was a qualifying disclosure within the statutory definition set out at s.43 ERA. He raised a concern openly and transparently. Mr Yu was kept informed of what had been done. Furthermore the concern which the Claimant raised does not indicate to me that there had been any actual, or potential, criminal activity by Mr Yu. There is also no information before me to indicate that the Claimant suffered any detriment for raising this concern and resolving it in the way that

he did. I note that the Claimant has made no claim that this conversation played any part in CM's decision to extend his probationary period in January 2022 when he was in Hong Kong.

20. I can form no view as to the status of the second alleged disclosure because of the substantial dispute of fact between the parties on this issue. This means I can form no view as to the Claimant's prospects of success. The issues on this claim which will have to be tested and adjudicated by the Tribunal at the final hearing include the outcome of CM's compliance investigation into the allegation made by the Claimant, the terms of CM's procurement procedures and whether the Claimant's concerns were justified, and full consideration of CM's contractual and legal obligations to the suppliers who were involved in the bidding procedure. There is also the further issue as to whether what was alleged against Mr Yu could reasonably be seen as a criminal act which is the position relied upon by the Claimant. It will only be a Tribunal which has received all relevant evidence and representation from the parties that will be able to determine these issues. These uncertainties as to the status of the alleged disclosures mean that the Claimant's application for Interim Relief cannot succeed.
21. The same situation prevents itself as to whether, even if the Claimant establishes that he made a protected disclosure / disclosures, he can establish that they were the reason for his dismissal. There are, again, disputes of fact which prevent me from being able to conclude that the Claimant's claim has a pretty good chance of success. I briefly summarise these as follows. The lack of proximity between when the concerns were raised and the Claimant's dismissal, in circumstances where the Respondent's Head of HR had no knowledge of the alleged disclosures. The history of the Claimant's employment which indicates that the Respondents had continuing concerns as to the Claimant's performance which resulted in extensions to his probationary period of employment which potentially supports the plausible reason for the Claimant's dismissal on which the Respondent relies.
22. I have applied the statutory test after giving careful consideration to all matters placed before me by the parties. I have concluded, for the Reasons I set out above, that the Claimant does not have a pretty good chance of success. Therefore, his application for interim relief is refused and dismissed.

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Employment Judge Craft

Date 12 December 2022

REASONS SENT TO THE PARTIES ON

24/12/2022.

N Gotecha  
FOR THE TRIBUNAL OFFICE