



EMPLOYMENT TRIBUNALS

Claimant

Miss Colette Brown

v

Respondent

AB InBev (UK) Limited

Heard at: Norwich

On: 15 May 2023

Before: Employment Judge Postle

Appearances

For the Claimants: In person

For the Respondent: Mr Rajgopal, Counsel

JUDGMENT on INTERIM RELIEF APPLICATION

The Claimant's claim for Interim Relief does not succeed.

REASONS

1. This was an Application by the Claimant for Interim Relief in respect of her claim that she was automatically unfairly dismissed, under s.103A of the Employment Rights Act 1996 ("ERA") in respect of two alleged Public Interest Disclosures relating to Health and Safety matters, which are said to have taken place on 15 October 2021 and 11 November 2021.
2. In this Tribunal we have had the benefit of Witness Statements from: Mr P Kaur, People Business Partner; Mr Lapinski, the Claimant's Line Manager; Miss Walker, the Enfield Brewery Manager; and Mr Cameron, Tech Supply MES & PTS Manager Europe, who conducted the disciplinary. Naturally, as it is an Interim Relief Hearing those witnesses did not give oral evidence.
3. The Tribunal also had the benefit of a Bundle of documents consisting of 537 pages prepared by the Claimant, a further Bundle prepared on behalf of the Respondents consisting of 166 pages, the Respondent's Authorities numbering 17 and an extract from the IDS Handbook on whistle blowing.

4. Finally, the Tribunal had the benefit of Counsel's Skeleton Argument.
5. The Tribunal also heard oral submissions from the Claimant and the Respondent.
6. As it is an Interim Relief Hearing, what the Tribunal has to decide is whether it is likely that the Claimant will succeed at a Full Hearing of the unfair dismissal complaint, s.129(1) ERA 1996 and s.163(1) of the Trade Union and Labour Relations Consolidation Act 1992.
7. The statutory test is not whether the claim is ultimately likely to succeed, but whether it appears to the Tribunal that this is likely. A point emphasised by the Employment Appeals Tribunal in London City Airport Limited v Chacko [2013] IRLR610 EAT, in which it was stated,

"This requires the Tribunal to carry out an expeditious summary assessment as to how the matter appears on the material available, doing the best it can with the untested evidence advanced by each party."
8. This obviously involves a far less detailed scrutiny of the parties cases than would ultimately be undertaken at a Full Hearing.
9. It is worth pointing out that the statutory test does not require the Tribunal to make findings of fact, rather it must make a decision as to the likelihood of the Claimant's success at the Full Hearing of the unfair dismissal complaint based on the material before it. The basic task and function is to make a broad assessment on the material available to try and give the Tribunal a feel and to make prediction about what is likely to happen at the eventual Hearing before a Full Tribunal.
10. When considering the likelihood of the Claimant succeeding at a Tribunal, the correct test to be applied is whether he or she has a pretty good chance of success at the Full Hearing. The Employment Appeal Tribunal has said the burden of proof in an Interim Relief Application was intended to be greater than that at the Full Hearing where the Tribunal need only be satisfied on the balance of probability that the Claimant has made out his or her case, i.e. the 51% or better test.
11. The question at the heart of this case is, was the Claimant dismissed (she has less than two years' service) for the sole or principal reason she made alleged protected disclosures regarding Health and Safety, or was it because she had been given time to read various documents she had requested regarding her concerns in relation to Health and Safety and when asked to return to the Line by her Line Manager, she refused whereupon the Line Manager then suspended her. Thereafter it is said there were difficulties with the Claimant over her co-operation in respect of the investigation and arranging a Disciplinary Hearing.
12. Clearly, the Claimant has a number of difficult hurdles to overcome in convincing the Tribunal that she has a pretty good chance of success.

13. It is accepted, on 15 October 2021 and 11 November 2021, the Claimant had raised concerns about Health and Safety.
14. The question is, were they in the public interest or concern for others in the factory? Was there, in her belief, reasonable belief given the Health and Safety procedures in place at the Respondent's factory? The Claimant clearly has difficulty with causation in respect of the principal or sole reason for the dismissal. The Claimant may have a difficulty in establishing the protected disclosure was the reason for the dismissal because had the Claimant followed her Line Management's instruction to return to work on the Line, it is or would appear extremely unlikely the Claimant would ever have been dismissed.
15. In the circumstances I am not convinced that there is a pretty good chance and likelihood of the Claimant succeeding at a Full Hearing.

Employment Judge Postle

Date: 26 June 2023

Sent to the parties on: 12 July 2023

For the Tribunal Office.