EMPLOYMENT TRIBUNALS

Claimant: Mr J Heys

Respondent: Atic Group Ltd

HELD AT: Manchester via CVP **ON:** 8th August 2023

BEFORE: Employment Judge Howard
(sitting alone)

REPRESENTATION:

Claimant: In person
Respondent: Not in attendance

JUDGMENT

1. The application for interim relief succeeds.

Continuation of Employment Order

2. The Claimant's contract of employment shall continue in force for the purposes of pay and any other benefit derived from the employment, seniority, pension rights and other similar matters, and for the purposes of determining for any purpose the period for which the employee has been continuously employed pursuant to S130 Employment Rights Act 1996.

a) In accordance with (2), the Respondent shall pay to the Claimant; forthwith; the sum of **£3,786.24** in respect of salary between 15th June 2023 and 8th August 2023;
b) The sum of **£1,135.87** in respect of salary between 8th August 2023 and 25th August 2023 (the normal pay date for that period);
c) Thereafter, the sum of **£2,050.90** on or before the normal pay date; being the last Friday of each month until determination or settlement of the complaint.

3. Further, in accordance with (2), the Respondent shall arrange for the Claimant to be re-enrolled into its pension scheme and shall make employer's contributions as per the Claimant's contractual entitlement together with back payment of all employer's contributions accrued since dismissal.

4. All sums under this order are subject to deduction of tax, national insurance and other normal payroll deductions.

REASONS

Introduction

1. By a claim form presented on 22nd June 2023, Mr Heys brought claims of automatically unfair dismissal because of making a protected disclosure (S103A ERA 1996); automatically unfair dismissal for health and safety reasons (S100 ERA 1996), breach of contract (termination of employment in breach of contractual entitlement to 4 weeks' notice) and for outstanding accrued holiday.

2. By email of 22nd June 2023, Mr Heys sought to amend his claim form to include an application for interim relief. The amendment was granted by REJ Franey on 20th July 2023 and an interim relief hearing was listed for today.

3. The substantive hearing was originally listed for 3 days in January 2025. I consider that 1 day is sufficient to determine the claim and, given the Continuation Order that I have made, I expedited the final hearing to the earliest available date, which will be held on **20th November 2023** in the Manchester Employment Tribunal. I have also listed the case for a preliminary hearing to identify the issues and give case management orders on **11th September 2023** at 2.15pm for 2 hours to be held via CVP. Further details about both of those hearings will be sent to the parties separately.

4. The Respondent was not in attendance today. I was satisfied that all correspondence had been sent to the respondent at the address provided by Mr Heys which was the Respondent's listed office on the Companies House website.

5. Mr Heys is a litigant in person; he confirmed that his application for interim relief arose from his claims of automatic unfair dismissal (PID and Health & Safety) and understood that I was not concerned with his claims of breach of contract and for holiday pay today.

6. My task at this hearing was not to hear any live evidence or to make any findings of fact. It was to consider the relevant written documents and what Mr Heys told me in oral submission (by which I mean he told me why he believed his claims of unfair dismissal would succeed) and then to decide whether Mr Heys had established that it was likely that at the final hearing the Tribunal would find in his favour on either or both the automatic unfair dismissal complaints under sections 100 and 103A of the Act.

7. No Response to the claim form has yet been received; the deadline is 21st August 2023 and the Respondent has not sent any information, documents or written submission to the Tribunal for me to take into consideration at this hearing. Mr Heys had screen shots of text communications, emails and the letter of dismissal on his phone. We took a 45-minute break to allow him to compile those documents and send them to the Tribunal for me to consider. Mr Heys summarised what he intends to say in evidence, which was consistent with the

contents of his claim form, but nothing in this judgment should be taken as making any finding of fact.

8. Mr Heys informed me that he was paid £15 per hour for 40 hours per week. He was paid monthly on the last Friday. He was paid a total of £7099.28 (gross) for the 15 weeks when he worked for the respondent. His employer made contributions to a company pension scheme on his behalf, but he did not know how much.

9. Based on that information, I calculated his gross weekly pay as £473.28; £2050.90 per month.

Mr Hey's Case is as follows:

10. Mr Heys was employed as a Furniture Installer by the Respondent from 28th February to 15th June 2023. The Respondent is a small company with 2 Directors; Tom Haslope and Adrian Coverdale and approximately 8-10 employees. Mr Heys understands that the respondent does not have an acknowledged or elected Health and Safety Representative or safety committee. If one exists, he was never told about it.

11. Mr Heys undertook installations and repairs for the respondent around the country. He drove a company van. On 15th June 2023, he was tasked with travelling from the company premises in Rossendale, Lancashire, to Glasgow to undertake some repairs ('a snagging list').

12. When Mr Heys arrived at work he realised that he did not have his charging lead with him and his phone was low on charge. The van was not equipped with a SatNav. Mr Heys called Mr Haslope to tell him that would need to buy a charging lead and a phone holder as the van did not have either. Mr Heys told Mr Haslope that he needed his phone to navigate to the Glasgow location and a phone holder so that he could drive safely and legally. Mr Haslope became angry, insisting that Mr Heys should return home for his charging lead and stating (wrongly) that there was a holder fitted in the van. Mr Heys told Mr Haslope that he was not prepared to add a further hour to his travelling time by returning home and it was the company's responsibility to provide a phone holder so that he could navigate his way safely and legally to the Glasgow site.

13. Mr Heys sent Mr Haslope a text at 09.55 as follows:

'Was loading up at Riverside. I'll get today out of the way then we need to chat don't we. You're making out like I'm whinging. End of the day Tom, you should provide a satnav. You don't. So I HAVE to use my phone. Which I'm OK with before you get fly. Its illegal to use your phone for any purposes while driving if its not in a phone mount. But you won't provide one of them either. So basically I'm being made to fee like a cunt because I won't take risks to get your work done. That's how I feel. Now I've got 7 hours minimum driving. A snag list to work through. And none of it will get done if there's any more conflict so I'll go buy what I need. And get my job done. Whether I'm reimbursed or not is something else to discuss.'

14. Mr Haslope then called Mr Heys, shouting down the phone that he was fired and to drive the van to the depot and hand his keys in. Mr Heys was given his P45. The following day he received a letter of dismissal stating that he was dismissed for a number of incidents of misconduct and providing a non-exhaustive list of allegations, including; **'Refusing to attend site unless you were provided with a phone holder and charger. It was explained to you at the time that there was already a phone holder in the van and it is not company policy to provide employees with phone accessories of any kind, including chargers.'**

15. Mr Heys states that at no point during his employment were any of the allegations contained in the letter raised with him and he disputes that they have any merit or contributed to any extent to his dismissal. He believes that these allegations have been created to justify his dismissal, post facto. Mr Heys submitted an appeal against his dismissal but received no response.

16. In his claim form Mr Heys stated; **'on the 15/06/23, a conversation took place between myself and Tom Haslope, regarding an issue relating to health and safety. It was brought to the attention of Mr Tom Haslope, that I, jack Heys, needed to procure a phone mount for use in company vehicle, as a satellite navigation device is not provided. A charging wire was also requested in order to complete the tasks allocated to me on such date in a safe and timely manner. I offered to purchase these items, verbally and via text message, as I felt in necessary for me to be able to complete my tasks safely. I expressed that I would like reimbursement for these items. A phone call between myself and Tom Haslope took place shortly after. The conversation escalated quickly, resulting in my dismissal…'.**

Relevant Legal Framework

17. The application for interim relief was brought under section 128 of the Act. The test for whether it succeeds or not appears in section 129(1) as follows:

    "This section applies where, on hearing an employee's application for interim relief, it appears to the Tribunal that it is likely that on determining the complaint to which the application relates the Tribunal will find…that the reason (or if more than one the principal reason) for the dismissal is [the reason] specified in…section 103A…"

18. In this context "likely" means that there is "a pretty good chance of success": **Taplin v C Shippam Ltd [1978] IRLR 450**. In **Ministry of Justice v Sarfraz [2011] IRLR 562** the Employment Appeal Tribunal said that this means "something nearer to certainty than mere probability". It is not enough if the Tribunal thinks the claimant has a better than evens chance of success.

19. In assessing the prospects of success, I had to have regard to the legal framework which applies to the substantive complaints of automatic unfair dismissal.

Dismissal because of making a protected disclosure

20. Parts IVA of the Act defines a protected disclosure. The key requirements are that the claimant must have made a disclosure of information rather than a bare allegation, that he must reasonably have believed that the information tended to show one of the matters set out in section 43B(1), and that he reasonably believed that his disclosure was made in the public interest. If those requirements are met, a disclosure to an employer will qualify for protection.

21. Mr Heys stated that he disclosed the information that the van did not have a phone mount and charging lead and using his phone as a SatNav without a phone mount was a safety risk and illegal.

22. He stated that this disclosure of information qualified for protection under S43B(1)(b)(the legal requirement not to use the phone as a SatNav whilst driving without it being securely mounted) and (d)(his health and safety was likely to be endangered if he did not have access to a phone mount).

23. If a protected disclosure has been made, the complaint will succeed only if the reason or principal reason for dismissal is that the employee made a protected disclosure. Where the decision is that of one person it is the sole or principal reason in her mind which matters: **Royal Mail Ltd v Jhuti [2017] EWCA Civ 1632**. It is not enough for any protected disclosure to have had a material influence if it is neither the sole nor the main reason for dismissal.

Dismissal for health and safety reasons

24. S100(1)(c)(i)&(ii) ERA 1996 provides that an employee shall be regarded as unfairly dismissed if the reason (or principal reason) for dismissal is 'being an employee at a place where there is no such representative or safety committee, or there was such a representative or safety committee but it was not reasonably practicable for the employee to raise the matter by those means, he brought to his employer's attention, by reasonable means, circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health and safety'.

25. In **Balfour Kilpatrick Ltd v Acheson and ors 2003 IRLR 683, EAT,** the EAT identified three requirements that need to be satisfied for a claim under S.100(1)(c) to be made out. (1) It must be established that: it was not reasonably practicable for the employee to raise the health and safety matters through the safety representative or safety committee (if such exists); (2) the employee must have brought to the employer's attention by reasonable means the circumstances that he or she reasonably believes are harmful or potentially harmful to health or safety, and (3) the reason, or principal reason, for the dismissal must be the fact that the employee was exercising his or her rights.

26. Mr Heys stated that he had reasonably pointed out to his employer that requiring him to drive to Glasgow using his phone to navigate in the absence of a SatNav, phone mount and charging lead was harmful to his health and safety.

Conclusions

27. Based upon all the claim form, the documentary evidence available to me and what Mr Heys told me, I drew the following conclusions:

Dismissal because of making a protected disclosure

28. I was not satisfied that it is likely; in the sense of there being 'a pretty good chance of success' that Mr Heys would succeed with his claim of dismissal because of making a public interest disclosure.

29. Whilst I considered it likely that Mr Heys could satisfy the Tribunal that he had disclosed information that qualified for protection under S43B(1)(b)&(d), there was no evidence available to suggest his disclosure had been made in the public interest. Mr Heys concern appears to have been focused on the risk to his own safety of driving in those circumstances rather than the risk to other road users; serving his personal rather than a wider public interest.

Dismissal for health and safety reasons

30. I considered that it was likely that Mr Heys could satisfy the Tribunal that (1) there was no health and safety representative or committee and if one existed, it was not reasonably practicable for him to raise the issue with that representative or committee because (a) he was about to commence a lengthy day of driving and repairs (b) he was not aware of that person or committee's existence; (2) contacting Mr Haslope to tell him directly about the problem was a reasonable means of bringing the issue to his employer's attention (3) he was dismissed in direct response to raising that issue with Mr Haslope.

31. The evidence available to me overwhelmingly supported a direct causal link between Mr Haslope raising his concern over safety and being dismissed as a result; even the respondent's post facto dismissal letter included the incident as a contributing factor. There was no evidence available to me to substantiate the vague allegations of misconduct contained in that letter to suggest otherwise.

32. For those reasons, Mr Heys' application for interim relief succeeds.

33. As the respondent was not in attendance; S129(()(a) ERA 1996 applies; where the employer fails to attend the hearing of an application for interim relief which succeeds, the Tribunal shall make an Order for the continuation of the employee's contract of employment.

Employment Judge

8th August 2023

JUDGMENT AND REASONS SENT TO THE PARTIES ON
9 August 2023

FOR THE TRIBUNAL OFFICE

NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number: **2406953/2023**

Mr J Heys v Atic Group Ltd

The Employment Tribunals (Interest) Order 1990 provides that sums of money payable as a result of a judgment of an Employment Tribunal (excluding sums representing costs or expenses), shall carry interest where the full amount is not paid within 14 days after the day that the document containing the tribunal's written judgment is recorded as having been sent to parties. That day is known as "*the relevant decision day*". The date from which interest starts to accrue is called "*the calculation day*" and is the day immediately following the relevant decision day.

The rate of interest payable is that specified in section 17 of the Judgments Act 1838 on the relevant decision day. This is known as "the stipulated rate of interest" and the rate applicable in your case is set out below.

The following information in respect of this case is provided by the Secretary of the Tribunals in accordance with the requirements of Article 12 of the Order:-

"the relevant decision day" is: 9 August 2023

"the calculation day" is: 10 August 2023

"the stipulated rate of interest" is: **8%**

Mr P Guilfoyle
For the Employment Tribunal Office

INTEREST ON TRIBUNAL AWARDS

GUIDANCE NOTE

1. This guidance note should be read in conjunction with the booklet, 'The Judgment' which can be found on our website at www.gov.uk/government/collections/employment-tribunal-forms

If you do not have access to the internet, paper copies can be obtained by telephoning the tribunal office dealing with the claim.

2. The Employment Tribunals (Interest) Order 1990 provides for interest to be paid on employment tribunal awards (excluding sums representing costs or expenses) if they remain wholly or partly unpaid more than 14 days after the date on which the Tribunal's judgment is recorded as having been sent to the parties, which is known as "the relevant decision day".

3. The date from which interest starts to accrue is the day immediately following the relevant decision day and is called "the calculation day". The dates of both the relevant decision day and the calculation day that apply in your case are recorded on the Notice attached to the judgment. If you have received a judgment and subsequently request reasons (see 'The Judgment' booklet) the date of the relevant judgment day will remain unchanged.

4. "Interest" means simple interest accruing from day to day on such part of the sum of money awarded by the tribunal for the time being remaining unpaid. Interest does not accrue on deductions such as Tax and/or National Insurance Contributions that are to be paid to the appropriate authorities. Neither does interest accrue on any sums which the Secretary of State has claimed in a recoupment notice (see 'The Judgment' booklet).

5. Where the sum awarded is varied upon a review of the judgment by the Employment Tribunal or upon appeal to the Employment Appeal Tribunal or a higher appellate court, then interest will accrue in the same way (from "the calculation day"), but on the award as varied by the higher court and not on the sum originally awarded by the Tribunal.

6. 'The Judgment' booklet explains how employment tribunal awards are enforced. The interest element of an award is enforced in the same way.