



**EMPLOYMENT TRIBUNALS (SCOTLAND)**

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**Case No: 4105373/2023**

**Held at Aberdeen on 29 September 2023**

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**Employment Judge J M Hendry**

**Mr M Radcliffe**

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**Claimant  
Represented by  
Ms S Shiels,  
Solicitor**

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**CHC Scotia Limited**

**Respondent  
No Appearance**

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**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

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On an application for interim relief:

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1. The Tribunal granted the claimant's application for interim relief;
2. The Tribunal ordered the continuation of the claimant's contract of employment as an Aircraft Commander and Captain from the date of termination of employment on the 31 August 2023 until the termination or settlement of the complaint;
3. The respondents are ordered to pay the claimant the salary and pension payments to which the claimant was entitled prior to his dismissal and to continue to do so until final determination or settlement of the complaint.

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**E.T. Z4 (WR)**

**REASONS**

1. The claimant makes an application for interim relief pursuant to section 128(1)(a)(i) of the Employment Rights Act 1996 (the “ERA”) alleging his dismissal as automatically unfair in terms of section 103A of the ERA. The claimant in such an application must satisfy the Tribunal that it is likely that on determining the complaint the Employment Tribunal will find that the reason or principal reason for the claimant’s dismissal was his protected qualifying disclosures.
2. The respondent company was not represented at the Interim Relief hearing on 29 September although the proceedings had been intimated on them. I was addressed by in some detail with the claimant explaining some technical aspects. I considered the application and the documents lodged in support of the application which seemed to give a comprehensive and chronological history.

**Protected disclosures**

3. In this case the Tribunal has to be satisfied that the claimant has “disclosed” information. I noted from the papers there is a long history of interactions between the claimant and his employers which ultimately give the employers a full picture of the claimant’s position in relation to the health and safety breaches he believes have occurred and are still occurring in relation to apparent excessive vibrations in the Sikorsky S-92 helicopter operated by the respondent. There are a number of apparent disclosures all around the same subject matter. The helicopter is widely used in the North Sea. He made numerous and repeated disclosures on several occasions to various different people and this is documented. He argued that the cumulative impact of the disclosures was the reason for the dismissal.
4. The information disclosed tend to show in terms of S43(1)-

- (a) that a criminal offence has been committed, is being committed or is likely to be committed,
- (b) that a person has failed, is failing or is likely to comply with any legal obligation to which he is subject,
- 5 (d) that the health and safety of any individual has been, is being or is likely to be endangered,
- (f) that information tending to show any matter falling within any one of the preceding paragraphs has been, or is likely to be deliberately concealed.

10 5. Further it was alleged that it is a criminal offence in terms of s33 of the *Health and Safety at Work Act 1974* to fail to discharge the general duty owed to employees and to contravene any health and safety regulations, including *The Control of Vibration at Work Regulations 2005*. The respondent has a legal obligation to ensure so far as is reasonably practicable, the health,  
15 safety and welfare of the claimant and others who fly on the S-92. The health and safety of the claimant and likely others is or has, likely been endangered by the S-92 vibrations. The respondent has not followed the recommendations of the grievance to instruct an analysis of whole body vibrations in the cockpit of the S-92 or permitted an OH assessment to take  
20 place. It has not produced the vibration data related to the maintenance defects either. The respondent has failed to produce any risk assessment or conduct any health monitoring on Whole Body Vibrations as per its own health surveillance (and well-being) standard.

### Background

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- 6. I set out my understanding of the background advanced by the claimant and supported by the productions. I take account of the fact that these are not findings in fact and the respondent's have had no opportunity to respond.
- 7. The claimant is a senior commercial pilot rated to fly the Sikorsky S-92  
30 Helicopter which he does servicing the oilfields in the North of Scotland. The claimant was dismissed from his contract when he was demoted to co-pilot

with a concomitant reduction in his seniority status and salary on 31 August 2023. He was re-engaged as a co-pilot.

8. Since 2021 the claimant experienced ongoing back pain which resulted in an extended period of medical leave from December 2022 to April 2023 temporarily suspended by the respondent's Aviation Medical Examiner (AME) and was referred to Albyn Hospital for investigations into his back condition. He was diagnosed with having degenerative back disease and told by his consultant that his occupation was a potential causal or worsening factor in that condition. His consultant recommended an Occupational Health Specialist being engaged to conduct an investigation report on the working environment.
9. The respondents engaged Occupational Health Physician Dr. Hyder on 22 March 2023. He provided them with an interim report in March. He advised that the claimant remain off work until the investigation report was concluded. He undertook to investigate the MRI results, the claimant's medical history as well as data collected from observing the wearing of PPE at work, the seating position, the cockpit environment and routine exposure to whole body vibrations ("WBV") whilst flying helicopter before advising on a return to work. Dr. Hyder contacted the respondent to request access to the helicopter and information in relation to the WBV.
10. The claimant was aware that the Sikorski S-92 helicopter was known to have high vibration levels and asked at this point if he could move to another helicopter with lower vibration levels. This involved retraining and a cost to the respondent company. That request was not acted upon.
11. On 25 April 2023 the claimant e-mailed the claimant's HR Director, Paula Leslie indicating that after completing a period of refresher training on S92 Simulator he was convinced that the S92 was causing his degenerative back disease. He further disclosed that the Occupational Health's Dr. Hyder had

requested access to the S-92 along with the vibration data which required to be kept.

- 5 12. On 26 April 2023 the claimant e-mailed Peter Lagradi, Manager of Flight Operations regarding a return to work following the AME certifying his fitness to resume flying duties. He disclosed that Occupational Health were concerned about his returning to the S-92 without further adjustments or mitigations which could cause further back problems and had requested vibration data for both aircraft and the H175. The doctor also requested  
10 access to the cockpits. The claimant was concerned that the position in which he was required to fly was “cramped”.
13. On 27 April 2023 the claimant wrote to HBOS the UK Operational Director to disclose his concerns about the risk to his health when operating the S-92.  
15 Specifically he disclosed his degenerative back disease was likely to have been caused or made worse with the whole body vibrations in the S-92 helicopter but continuing to fly the aircraft could end his career. He requested the date once more and on 28 April 2023 the claimant disclosed to Chief Pilot Marco Massarini and others that a thorough assessment of his working  
20 environment was being requested by his consultant including access to the whole body vibrations. The claimant disclosed that the respondent had failed to comply with Dr. Hyder’s request to share vibration data. On 1 May 2023 the claimant wrote to MFO, Peter Lagradi to disclose that the respondents were in his view blocking Dr. Hyder from investigating the cause of his back  
25 pain.
14. On 24 May 2023 the claimant used his mobile phone to make a video recording of part of a routine flight. On 27 May the claimant was suspended along with the co-pilot who was flying the helicopter. On 9 June 2023 the  
30 claimant raised a grievance complaining about the respondent’s refusal to give access to Dr. Hyder to conduct OH investigation. He had been reinstated to work by AME but his understanding was that this was on the basis that the Occupational Health Report would be completed. HR had in the meantime written to Dr. Hyder to discontinue his services.

15. On 9 June 2023 the claimant wrote to MFO, Peter Lagradi and Chief Pilot Marco Massarini informing them of his grievance explaining matters relating to the disciplinary allegation and disclosed that members of management had liked his videos on social media and yet no one had raised a concern. He disclosed that a number of people had either liked or supported his social media posts. He made reference to others making similar videos and posts. He explained that his phone was at all times on flight safe mode and was unaware of any policy or regulation preventing filming in the cockpit. On 16 June Dr. Hyder wrote to the respondents stating that he had been unable to complete his report because he had not been given access to the workplace or received the vibration levels.
16. The claimant attended a disciplinary hearing on 22 June and explained that he had searched for legislation preventing video recording and had been unable to find any. He explained that the video posts had occurred regularly. He explained that his camera was rolling passively during the duration of the flight in safe flight mode. In his view the “sterile cockpit” requirement had not been breached. He had also asked his co-pilot for permission to record. He explained to the investigator the background including the request for access to the aircraft and vibration data.
17. On 13 July the disciplinary investigation outcome report indicated that he should be disciplined. At this point the claimant disclosed that other Captains had taken photographs and videos of which the company management was aware and yet no action had been taken against them. The investigation report concluded the claimant had disregarded company procedure OMA 1.4.2. and by doing so fallen short of fulfilling his responsibilities as a Commander. They also found that he had also breached a rule against not stowing away portable electronic devices which the claimant argues was an outdated rule that applied to passengers.

18. On 28 June the grievance lodged by the claimant was dealt with along with the disciplinary matter. The grievance related to the claimant's belief that the respondents were blocking a proper OH assessment. The claimant disclosed that the vibration in the S-92 had been an issue at other companies and one company "Bristows" had produced a report which he believes senior management in his company were aware of. He asked for the OH report to be completed because of the impact on his health. The grievance was not upheld. The claimant was invited to attend a disciplinary hearing which eventually took place on 14 August. He pointed out that there were several days between the posting of the video on 19 May and action had been taken against him on 26. The claimant received the disciplinary outcome of 24 August. He was demoted to co-pilot. Conditions were put on him regaining his command as a Captain. The claimant appealed the decision and lodged an unfair dismissal claim seeking Interim Relief.

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### Decision

18. The application is made in terms of section 128(1)(a)(i). The procedure is set out in Section 129(1) as follows: "... 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—

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*(a) that the reason (or if more than one the principal reason) for the dismissal is one of those specified in—*

*(i) section 100(1)(a) and (b), 101A(1)(d), 102(1), 103 or 103A, or*

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*(ii) paragraph 161(2) of Schedule A1 to the Trade Union and Labour Relations (Consolidation) Act 1992, or*

*(b) that the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was the one specified in the opening words of section 104F(1) and the condition in paragraph (a) or (b) of that subsection was met."*

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19. I remind myself that the word “likely” within this context does not mean simply “more likely than not” but connotes a significantly higher degree of likelihood (*Ministry of Justice v. Sarfraz* [2011] IRLR 562). The question for the Tribunal is whether the applicant has established that he has a “pretty good” chance of succeeding (*Taplin v. CC Shippam Ltd* [1978] ICR 1068). In making the Order the Tribunal recognises that interim relief is a serious measure which could cause irretrievable prejudice to the respondent not one that should be taken lightly. The test that is to be applied to all issues is the assessment of the section 103A claim.
20. In my view the claimant has met the test. The conjunction of events namely the raising of whistleblowing concerns, pushing for answers and then being severely disciplined and effectively dismissed for what seemed to be a condoned practice are all persuasive factors suggesting an unfair dismissal.
21. The background circumstances show that the claimant has repeatedly raised the possible effect on his back condition of vibrations cause by the aircraft. The correspondence seems to show a marked reluctance to provide the Occupational Health physician, instructed by the respondent, with either access to the vibration data or the actual cabin layout. The report was then cancelled although it is apparent that the issues that it was to address remain unanswered. Connected to this was the claimant passively taking a video of his working environment and being dismissed from his post as a consequence against a seeming background of managers being tolerant of the taking of photographs and videos in other circumstances. At this stage I do not need to consider the detailed formulation of the PIDs. That will no doubt happen once the pleadings have crystallised but at present there is ample material before me to conclude that there were disclosures and they appear to be clearly Protected Interest Disclosures made by the claimant both on his own behalf but also on behalf of other employees who fly this helicopter and whose health may be impacted by the working environment a particularly the vibrations experienced in the aircraft. Weighing these disclosures against the reasons given for the disciplinary action and the context in which it occurred



my conclusion was that the claim is likely to succeed. There was no appearance by the respondent company and accordingly I will make an order continuing the claimant's contract.

- 5 **Employment Judge: J M Hendry**  
**Date of Judgement: 19 October 2023**  
**Date sent to Parties: 19 October 2023**