



EMPLOYMENT TRIBUNALS

Claimant: Mr J Heys

Respondent: Atic Group Ltd

JUDGMENT UPON RECONSIDERATION

1. The application for interim relief fails and no Continuation of Employment Order is made.

REASONS

1. I agree with the respondent's contention that my Judgment contained an error of law. The claimant's case is such that he falls outside the remit of S128 Employment Rights Act 1996. An application for interim relief can only be made by an employee who presents a complaint which falls within that section. As such I do not have jurisdiction to determine the application and/or make a Continuation of Employment Order.

In respect of health and safety dismissals, S128 ERA 1996 specifically extends to claims brought under S100(1)(a)&(b) ERA 1996; where the employee has been designated by the employer to carry out activities in connection with preventing or reducing risks to health and safety at work, or is a representative of workers on matters of health and safety or is a member of a safety committee. The claimant does not pursue his claim for dismissal for health and safety reasons under those provisions. He relies upon S100(1)(c); that, being an employee at a place where there was no such committee or representative, he brought to his employer's attention, circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health or safety. As S100(c) falls outside of the remit of S128, and accordingly my Judgment and Order must be revoked.

2. I determined the application in the absence of the respondent and without sight of a Response to the claim form, on the understanding that no Response had, as yet, been submitted. It transpires that a Response form had been submitted to the Employment Tribunal on 1st August 2023, but this was not

before me when I conducted the hearing to determine the application for interim relief. I agree with the respondent's contention that the failure to consider the respondent's Response at the interim relief hearing is materially unfair to the respondent

Employment Judge Howard
6th September 2023

JUDGMENT AND REASONS SENT TO THE PARTIES ON
7 September 2023

FOR THE TRIBUNAL OFFICE