



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms P Young

**Respondent:** United Response Limited

**Heard at:** Exeter (CVP) **On:** 10 October 2023

**Before:** Employment Judge A Matthews

**Representation:**

**Claimant:** In Person

**Respondent:** Mr J Boyd of Counsel

## JUDGMENT

The Claimant's application for interim relief is dismissed.

## REASONS

### Introduction

1. By a claim form lodged with the Bristol office of the Employment Tribunals on 27 September 2023, Ms Paula Young brought a claim against the Respondent. (The correct name of the Respondent is United Response Limited.) The claim is of unfair dismissal because Ms Young made a protected disclosure or disclosures, by reference to section 103A of the Employment Rights Act 1996 (the "ERA").
2. The purpose of this hearing is to determine Ms Young's application for interim relief set out in Ms Young's claim form. The parties agreed that the application is made under section 128(1)(a)(i) of the ERA by reference to section 103A of that Act.

3. No procedural points were taken by the Respondent as far as the application is concerned.
4. The Respondent provided an 89 page bundle of documentation. Ms Young had received this the afternoon before the hearing and had not had a chance to look at it. However, much of it consists of papers that Ms Young would have in any event. Where necessary I checked that Ms Young had access to papers I referred to.
5. Judgment having been given orally, Ms Young asked for written reasons.

### **Applicable Law**

6. In *Ministry of Justice v Sarfraz* [2011] IRLR 562, Mr Justice Underhill (as he then was) set out the relevant law as it applies in this case.
7. Mr Justice Underhill clarified the test set out in section 129(1) of the ERA in this way:

*“In this context “likely” does not mean simply “more likely than not” – that is at least 51% - but connotes a significantly higher degree of likelihood.”*

8. Mr Justice Underhill explained that in a case of alleged protected disclosures (such as Ms Young’s case) the Employment Judge’s job is this:

*“In making an order for interim relief under ss 128 and 129 of the 1996 Act, the judge has to decide that it was likely that the employment tribunal at the final hearing would find five things:*

- (i) *that the claimant had made a disclosure to his employer;*
- (ii) *that he believed that that disclosure tended to show one or more of the things itemised (a) – (f) under section 43B(1) of the 1996 Act;*
- (iii) *that that belief was reasonable;*
- (iv) *that the disclosure was made in good faith; and*
- (v) *that the disclosure was the principal reason for his dismissal.”*

9. In explaining the background law Mr Justice Underhill said this (the statutory references are updated):

*“I need not set out the whole of sections 128-129 of the Act. For present purposes the relevant provision is section 129(1) which reads:*

*“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 -*

*(a) That the reason (or, if more than one, the principal reason) for the dismissal is one of those specified in –*

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

10. Mr Justice Underhill continued:

*“In this case the relevant provision for the purposes of sub-paragraph (a)(i) is s. 103A. This reads [the statutory reference is updated]:*

*An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure.”*

*“Protected disclosure” is defined by section 43A as follows:*

*“In this Act a “protected disclosure” means a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H.”*

*“Qualifying disclosure” is defined by section 43B(1) as follows [the statutory reference is updated]:*

*“In this Part a “qualifying disclosure” means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following –*

*(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 fail to comply with any legal obligation to which he is subject,*

*(c) that a miscarriage of justice has occurred, is occurring or is likely to occur,*

*(d) that the health or safety of any individual has been, is being or is likely to be endangered,*

*(e) that the environment has been, is being or is likely to be damaged, or*

*(f) that information tending to show any matter falling within any of the preceding paragraphs has been or is likely to be deliberately concealed.”*

11. At this point I leave Mr Justice Underhill’s Judgment and return to the statute itself. Section 43C(1) of the ERA provides as follows:

*“A qualifying disclosure is made in accordance with this section if the worker makes the disclosure –*

*(a) to his employer,”*

## **Conclusions**

12. Having discussed with Ms Young both the factual background as shown in the bundle and the five tests set out in paragraph 8 above, in my judgment Ms Young has not satisfied the test set out in section 129(1) of the ERA.
13. I touch on each of the five tests in turn.
14. In response to an order, Ms Young has supplied some particulars of the alleged protected disclosures. They are, however, inadequate. Notwithstanding, it seems to me likely that, based on the information before me, the employment tribunal at the final hearing will find that disclosures were made.
15. Again, there is a lack of specific information from Ms Young as far as the requirements of section 43B of the ERA are concerned. Ms Young may be alleging that she believed that any disclosure or disclosures tended to show that a criminal offence was involved and/or that there was a failure to comply with a legal obligation and/or the health and safety of an individual was endangered and/or that concealment was involved. I cannot say, however, based on the information before me, that it is likely that the employment tribunal at the final hearing will find that any disclosure or disclosures fall within section 43B of the ERA.
16. Again, because of a lack of specific information, I cannot say, based on the information before me, that it is likely that the employment tribunal at the final hearing will find that Ms Young's belief was reasonable or in good faith or in the public interest.
17. Whatever doubt there may be in applying the first four tests, applying the fifth test produces a conclusive result. It does not seem to me, based on the information before me, that it is likely that the employment tribunal at the final hearing will find that any disclosure was the principal reason for the dismissal.
18. Accordingly, Ms Young's application for interim relief is dismissed.

**Case Number: 1405275/2023**

Employment Judge A Matthews  
Date: 10 October 2023

Judgment & Reasons sent to the Parties:  
26 October 2023

FOR THE TRIBUNAL OFFICE