



EMPLOYMENT TRIBUNALS

Claimant: Mr A Wells

Respondents: (1) Serco plc
(2) Keven Llewellyn
(3) Paul Weaver

Heard on: 14 November 2023 by video

Before: Employment Judge Pritchard

Representation
Claimant: In person
Respondent: Mr B Aduje, counsel

JUDGMENT

The Claimant's application for interim relief is refused.

REASONS

1. The Claimant claims he was constructively dismissed by the First Respondent, the treatment of him after he made protected disclosures amounting to a breach of his employment contract. He asserts that the reason the First Respondent breached his contract was because he had made two protected disclosures. If he is right, he will have been automatically unfairly dismissed under section 103A of the Employment Rights Act 1996.
2. The Claimant applies for interim relief. The issue for determination is whether it appears it is likely that on determining the complaint at the final hearing the Tribunal will find that the reason, or if more than one the principal reason, is that specified in section 103A ERA 1996, namely because the Claimant made a protected disclosure.
3. The first disclosure the Claimant relies on is his complaint of 31 January 2023 to Vanessa Horlock of First Respondent's human resources department and a compliance board member (the Claimant having first raised the matter with the Second Respondent the day before). He says he disclosed information that the Second Respondent had instructed a colleague to use percentage rates in a public sector tender which was contrary to both the Public Contracts

Regulations 2015 and the ethos of the First Respondent's own framework agreement with a purchasing consortium.

4. The second disclosure upon which the Claimant relies is the information he says he disclosed relating to those same matters he raised in his first disclosure, together with the way he had been treated since making his first disclosure. This second disclosure, he says, was made by way of the Japanese parent company's whistleblowing policy on 24 August 2023.
5. The Claimant's allegations of conduct on the First Respondent's part, which he asserts was because he made the protected disclosures, are wide-ranging. Among other things, he says he was subjected to a hostile campaign of isolation, ostracization, threats, malicious bullying, victimisation, suppression of evidence, engineering a sham investigation, a sham settlement, a plot to concoct a sham redundancy, sham misconduct allegations, micromanagement, manipulation of bonus payments, failure to comply with his SAR requests, and sabotage of his projects. Responsibility for this detrimental treatment is ascribed to various individuals. The Claimant says there was what amounted to a conspiracy against him after he made the protected disclosures.
6. The ET1 claims are yet to be served on the Respondents by the Tribunal and therefore the First Respondent's defence, which will be contained in its ET3 grounds of resistance to be presented to the Tribunal in due course, is at present unknown.
7. In preparation for this hearing, I managed to read the substance of the Claimant's Particulars of Claim which runs to over 70 pages. I checked with the Claimant that I had correctly understood his case and he confirmed that I had. I also read his skeleton argument which ran to 239 paragraphs contained in over 60 pages. In the course of his submissions in support of his application, the Claimant referred to a number of documents in the bundle he prepared for this hearing, the bundle itself exceeding 1,500 pages. The application was opposed by counsel for the First Respondent.
8. Section 129 of the ERA 1996 provides that interim relief will be granted where it appears 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, is (among others) that specified in s 103A ERA 1996.
9. The tribunal is required 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; London City Airport Ltd v Chacko 2013 IRLR 610. When considering the likelihood of the Claimant succeeding at tribunal, the correct test to be applied is whether he has a "pretty good chance of success" at the full hearing; Taplin v C Shippam Ltd 1978 ICR 1068.
10. In this case, I am unable to conclude, based on the submissions and documents referred to me, that the Claimant has a pretty good chance of success at the final hearing.
11. It appears likely, as submitted by the Respondent, that there will be significant factual disputes as to what took place and, in particular, why.

12. In paragraph 229 of his skeleton argument, the Claimant states that after the first two stages the burden shifts to the Respondent. That is incorrect. In this case, the Claimant did not have two years continuous employment in order to claim ordinary unfair dismissal. The burden will therefore remain on the Claimant to show the reason for the dismissal/treatment causing breach of contract was because he made the protected disclosures; see Smith v Hayle Town Council 1978 ICR 996 CA; and Ross v Eddie Stobart Ltd EAT 0068/13.

13. Without making any determination on the questions, but even if could be concluded that:

13.1. the Claimant made protected disclosures falling within section 43B of the ERA 1996,

13.2. he believed that that disclosure tended to show one or more protected disclosures falling under section 43B;

13.3. that that belief was reasonable; and

13.4. that the disclosures were made in the public interest;

there was insufficient untested evidence before me to suggest that the Claimant has a pretty good chance he will be able to show the reason or the principal reason for the alleged (as yet unproven) treatment of him was because he had made the protected disclosures.

14. Further, the Claimant will have to show that the First Respondent's conduct, if established, amounted to a fundamental breach of contract such that he was constructively and unfairly dismissed and that is not an outcome that can be predicted as considered pretty likely.

15. The Claimant's application for Interim Relief is accordingly refused.

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Employment Judge Pritchard

Date: 14 November 2023