



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr T Astle

**Respondent:** ABIRD Limited

**Heard at:** Manchester (in private; by CVP)

**On:** 15 February 2024

**Before:** Employment Judge K M Ross (sitting alone)

## Representatives

For the claimant: In person

For the respondent: Mr A Webster, Counsel

## JUDGMENT

- (1) The claimant's application for interim relief pursuant to Section 128(1)(a)(i) of the Employment Rights Act 1996 is not well founded and fails.

## REASONS

1. The claimant brings a claim that he was automatically unfairly dismissed for making protected disclosures pursuant to 103A Employment Rights Act 1996. He does not have sufficient service to bring a claim for "ordinary unfair dismissal" pursuant to Section 95 and Section 98 Employment Rights Act 1996.
2. The claimant says he relies on the following disclosures of information:
  - (i) On 20/12/2023, when he spoke to Karen Clifford he raised health and safety concerns regarding the toxic management culture and harassment of co-workers and the impact it was having on mental health. He stated he was given excessive workloads and unreasonable targets and was not given any assistance from supervisor Matthew Harrop.
  - (ii) Also on 20/12/2023 the claimant sent an email to Karen Clifford regarding health and safety concerns regarding the toxic management culture and harassment of co-workers.

- (iii) On 20/12/2023, when he spoke to Chris Shipley he raised health and safety concerns regarding the toxic management culture and harassment of co-workers and the impact it was having on mental health. He stated he was given excessive workloads and unreasonable targets and was not given any assistance from supervisor Matthew Harrop.
  - (iv) On 4/1/2024 the claimant raised the same health and safety concerns with manager Matthew Cheetham. He discussed “the lack of support, the unreasonable targets and expectations and the excessive workload”.
- 3. In order to succeed in an interim relief application the claimant must establish pursuant to Section 129(1)(a)(i) that it is “likely” that his claim for automatically unfair dismissal will succeed.
- 4. The old case of Taplin -v- C Shippam from 1978 which predates the whistleblowing legislation reminds Tribunals that a claim for interim relief must show that the claimant’s claim has a “pretty good chance of success”.
- 5. Mr Webster drew my attention to Ministry of Justice -v- Sarfraz 2011 IRLR 562 which reminds me that in this context “likely” does not mean simply “more likely than not” or is at least 51%, but connotes a significantly higher degree of likelihood.
- 6. The decision goes on to say that likely “connotes something nearer to certainty than mere probability”.
- 7. In a claim for public interest disclosure automatic unfair dismissal the claimant must establish that the disclosures he relies upon are protected and qualifying within the meaning of the Employment Rights Act 1996 and if he can overcome that hurdle he must be able to suggest that the real reason for his dismissal was that he made the protected disclosures i.e. causation.
- 8. The first problem for the claimant in this case is that there is a dispute that the disclosures are protected and qualifying within the meaning of the Employment Rights Act 1996.
- 9. The respondent will say that the email to Karen Clifford does not disclose information.
- 10. The respondent will rely on the evidence from Karen Clifford to say that “he knew that he did not have enough employment service, and that his probation was going to fail, and so he needed to make reference to health and safety issues”. The respondent rely on this evidence to suggest that the claimant was not making the disclosures in the public interest and did not have a reasonable belief that health and safety was being endangered.
- 11. The respondent is also going to rely on the evidence of Karen Clifford that she did not speak to anyone about her discussion with Mr Astle prior to the

- termination of his employment. The respondent will also rely on her evidence that at least two others were dismissed in similar circumstances to the claimant.
12. Even if the claimant can establish that his disclosures to Ms Clifford and Mr Cheetham were protected and qualifying within the meaning of the Act, there will be a real dispute on causation.
  13. The claimant will say the reason for his dismissal was that he made public interest disclosures. He will rely on the timeline, namely that the disclosures he made to Ms Clifford and Mr Cheetham were very close to the termination of his employment. He may rely on the fact that his probation was extended on 9 November 2023 for three months but he was dismissed on 5 February 2024, well within the three-month period.
  14. However, the key problem from the claimant's perspective is that it is not disputed the respondent was raising concerns about the claimant's performance well *before* he raised his disclosures on 20 December 2023.
  15. It is undisputed that the claimant attended a meeting on 9 December 2023 when his employment probationary period was extended by a period of three months. Furthermore, there are emails in the bundle which show that his manager was raising concerns about his performance. The claimant sought to say that these were "to the lads" rather than to the claimant in person but he conceded that "the lads" were a team of two and that it appears clear that the email was directed to him and the one other person in the team. It is therefore undisputed that concerns were being raised with the claimant about his performance within the extension of his probationary period and before he raised any disclosures of information.
  16. A further problem with causation is if the Tribunal accepts the evidence of Karen Clifford from HR that she did not discuss the concerns raised by Mr Astle with anyone prior to his dismissal then the claimant will not be able to establish that there was any causal connection between the complaints raised with her and his dismissal.
  17. So far as the evidence of Matthew Cheetham is concerned his witness statement shows there is a clear factual dispute between him and the claimant as to the real reason for his dismissal.
  18. I turn back to the law. It is a high hurdle for the claimant to overcome for me to grant an application for interim relief. I must be satisfied that at the final hearing the Tribunal will find the reason or principal reason for the claimant's dismissal will be the making of a protected disclosure.
  19. I must have regard to the information I have before me now at the summary assessment.
  20. There is a real doubt whether the claimant will be able to show firstly whether he made disclosures of information to the respondent which were in the public

interest and which in the reasonable belief of the claimant showed that health and safety was endangered.

21. There also appears to be a factual dispute between the claimant and Mrs Clifford about what exactly was said in that conversation.
22. Even if the claimant can show that the disclosures are protected and qualifying within the meaning of the Act there is a clear factual dispute about the real reason for dismissal. This can only be determined by the Tribunal hearing all of the evidence. The Tribunal will have to determine whether it prefers the evidence of Mrs Clifford and Mrs Cheetham in particular to that of the claimant.
23. The claimant certainly has not satisfied me that it is likely the Tribunal will find the final hearing a reason or principal reason for his dismissal was the making of the protected disclosures as outlined at the start of this document.

Employment Judge Ross  
23 February 2024

JUDGMENT SENT TO THE PARTIES ON  
5 March 2024

FOR THE TRIBUNAL OFFICE

**(1) Any person who without reasonable excuse fails to comply with an Order to which section 7(4) of the Employment Tribunals Act 1996 applies shall be liable on summary conviction to a fine of £1,000.00.**

**(2) Under rule 6, if this Order is not complied with, the Tribunal may take such action as it considers just which may include (a) waiving or varying the requirement; (b) striking out the claim or the response, in whole or in part, in accordance with rule 37; (c) barring or restricting a party's participation in the proceedings; and/or (d) awarding costs in accordance with rules 74-84.**

**(3) You may apply under rule 29 for this Order to be varied, suspended or set aside.**