



# EMPLOYMENT TRIBUNALS

**Claimant:**  
Mrs A Syed

v

**Respondents:**  
Surrey County Council (1)  
The Governing Body of Beauclerc Infant  
and Nursery School (2)

**Heard at:** Reading **On:** 21 February 2024

**Before:** Employment Judge Anstis (sitting alone)

**Appearances:**  
**For the Claimant:** In person  
**For the Respondent:** Mr P Doughty (counsel)

**JUDGMENT** having been sent to the parties on 11 March 2024 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

## INTRODUCTION

1. Does it appear to me that it likely that at a final hearing the tribunal will decide that the reason or principal reason for the claimant's dismissal is her having made protected disclosure(s)?
2. That is the question that is posed by s129(1) of the Employment Rights Act 1996. My decision is to be based on the impressions that I gain from the parties' arguments and the documents in the case. "Likely" is to be taken to mean having a "pretty good chance of success". As Mr Doughty points out, where it is not accepted that the claimant made protected disclosures in the first place, the assessment of what is "likely" must be made against the individual elements of the claim: were there protected disclosures and if so were they the reason or principal reason for the claimant's dismissal?
3. Nothing which follows in my decision binds a later tribunal to find one way or another.
4. The claimant's position is, in outline, was that she had no (or minimal) difficulties at work before making protected disclosures concerning safeguarding. Shortly after that she was dismissed supposedly for failing her probationary period in circumstances where no-one had ever mentioned a probationary period to her and where she had been given no indication at the time of her dismissal of what problems there were with her work.

5. A previous hearing to decide on interim relief was adjourned or postponed because of doubts about whether the claimant was claiming interim relief against the correct respondent. The claimant has since brought a second claim and while the point may have to be revisited in considering any detailed order if the claimant is successful in her application for interim relief, no point now arises as to the claims being against an incorrect respondent. The respondents accept that the claim for interim relief has been brought within the appropriate time limit.

#### THE ALLEGED PROTECTED DISCLOSURES

6. The claimant's claim is based on two alleged protected disclosures. Both are spoken rather than written. They can be seen at para 10 and 11 of the claimant's second claim (see also para 22).
7. Para 10 says "*On 21 September I approached [my manager] to express concerns over an incident that occurred during home-time the day before. She did not allow me to speak but instead raised her voice and informed me that she did not wish to discuss it. I was not given the opportunity to reply ...*". As Mr Doughty points out, that seems more a description of a failure to make a protected disclosure than a description of making a protected disclosure. The claimant had, at best, wanted to make a protected disclosure but been prevented from doing so.
8. Mr Doughty cautioned me against any attempt to take or rely on oral evidence during this hearing, but I considered it appropriate to ask the claimant if she could give a fuller explanation of what occurred in that conversation. The claimant somewhat filled out her explanation by saying that she had told her manager she wanted to talk about a safeguarding incident that occurred the previous day, and that it would have been obvious to the manager (but was not stated by the claimant) that that was in relation to what happened at home time the previous day. That seems to be contradicted in para 13 of her claim where she says that she was not intending to flag this as a safeguarding issue. It is the respondents' position that nothing untoward happened at home time, but regardless of this even with the claimant's fuller explanation this looks at most like a thwarted attempt to make a protected disclosure, not a protected disclosure. No information of any failing was conveyed.
9. The following day the claimant was called into a meeting by the headteacher. The claimant says this at para 11 of her claim form "*I explained that during home time on 20 September it became very chaotic ... [my manager] opened the gates and rushed through dispatching the children and I found myself overwhelmed ... one child in particular was in tears and needed my immediate attention.*" As Mr Doughty says in his written submissions, this seems to suggest simply a "*disorganised home time*" rather than anything that might fall into the category of a protected disclosure. In discussions about this the claimant went on to refer to a particular disclosure of concern relating to an individual child, but I have not considered this as I am addressing the claimant's claim as it presently is, not as it may become, and there is no

suggestion in her current claim that she made that individual disclosure about that individual child in this conversation.

10. Even if I were to add to this that the claimant considered it a safeguarding issue (which seems doubtful given para 13) I have considerable doubts about whether this can amount to a protected disclosure. There is no suggestion in what was said that anyone was in breach of any legal obligation, and if it is not about that it is not clear what it is about.

#### THE REASON FOR DISMISSAL

11. Beyond that there is the question of the reason for dismissal. It does appear that the dismissal came as an unwelcome surprise to the claimant, but the fact that it may have occurred without warning to her does not necessarily suggest that it was connected with any protected disclosures.
12. It is the respondent's case that significant concerns were raised about the claimant as early as 26 June 2023 (although these were not addressed with the claimant) and that the probationary period had been included in the second half of particulars of employment presented to the claimant on 1 September 2023. While this would have been late, the original offer letter always said that a contract of employment or particulars would follow, and the materials concerning the probationary period were in place before there was any suggestion that the claimant had made protected disclosures. The notes of the meeting suggest that the claimant was given reasons and examples of her behaviour at the time of her dismissal.
13. I do not know what the status of those documents will be (if they are in dispute) at the end of any final hearing, but this takes matters some distance away from the claimant's position that there were no previous issues with her conduct and that the probationary period had not been mentioned prior to her dismissal.

#### CONCLUSION

14. Bearing in mind the considerable difficulties the claimant appears to have with both demonstrating that she has made protected disclosures and that they were the reason or principal reason for her dismissal it does not appear to me to be likely that a tribunal at the final hearing will find that protected disclosures were the reason or principal reason for her dismissal. However, nothing I say in this decision can or should bind the tribunal at the final hearing of the case, and the case will continue to a final hearing at which the tribunal will make the definitive decision on the claimant's claims.

**Employment Judge Anstis  
28 March 2024**

Sent to the parties on:  
15 April 2024 .....

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For the Tribunal Office