



EMPLOYMENT TRIBUNALS

Claimant: Ms L Oakes

Respondent: Bolton Metropolitan Borough Council

HELD AT: Manchester hybrid via CVP **ON:** 12 July 2024

BEFORE: Employment Judge Johnson
(attending remotely, by CVP)

REPRESENTATION:

Claimant: In person, (attending, in person)

Respondent: Mr R Lassey (counsel, by CVP)
Ms A Bridge (instructing solicitor, by CVP)

JUDGMENT

(1) The application for interim relief does not succeed.

REASONS

Introduction

1. This is the second claim presented by the claimant against the respondent, (the first claim was issued under case number 2409671/2023 but which was dismissed upon withdrawal by the claimant on 17 April 2024).
2. The second claim was presented on 16 June 2024 and in this case the claimant brought complaints of automatic unfair dismissal because of making a protected disclosure contrary to section 103A Employment Rights Act 1996 (ERA); 'ordinary' unfair dismissal and an application for interim relief. There was a complaint of disability discrimination, but that was struck out by the Tribunal on 28 June 2024, because no early conciliation number had been provided not being a Part X ERA complaint, it could not rely upon the interim relief application 'exemption.'

3. The application for interim relief hearing was accepted by the Tribunal and listed for today.
4. The respondent is yet to present a response and I made a case management order for one to be provided by no later than 9 August 2024.
5. The claimant produced a hearing bundle of some 291 pages, but she also provided additional documents as part of separate attachments to other emails. They were somewhat confusing and she accepted that they were disorganised which she attributed to the short notice given for today's hearing. They consisted of many emails and other documents, but ultimately, we did not need to refer to them during the hearing today.
6. The respondent produced a hearing bundle which included the proceedings but additionally, a great deal of documentation of some 316 pages in length which focused upon the disciplinary investigation and decision to dismiss following the claimant's suspension in July 2022.
7. Mr Lassey also provided a revised skeleton argument this morning which was helpful as it summarised the law and articulated how and why the respondent challenged the claimant's application for interim relief.
8. I observed that the claimant was a litigant in person. I applied the principles outlined within the overriding objective under Rule 2 of the Tribunals Rules of Procedure and the relevant chapter of the Equal Treatment Bench Book relating to unrepresented parties.
9. I reminded the parties that my task at this hearing was not to hear any live evidence or to make any findings of fact. It was to consider the relevant written documents and what parties told me in oral submission (by which I mean he told me why he believed his claim of automatic unfair dismissal would succeed) and then to decide whether the claimant had established that it was likely that at the final hearing the Tribunal would find in his favour on the automatic unfair dismissal complaints under section 103A of the ERA.

The claimant's case.

10. The claimant referred to two allegations of protected disclosures made to the respondent's manager Teresa O'Neill in their Finance Team. This concerned an invoice that a service user had received unexpectedly from the Council for £7,000.
11. In addition to her role with the Council, the claimant supported this service user and was employed by them as their PA. She was therefore employed by the Council and separately by this service user, who received money from the Council. The claimant complained to the Council on behalf of the service user about the unexpected invoice and which she believed arose from poor communication by the Council and a failure to follow requirements to regularly audit. The alleged disclosures were:
 - a) 30 March 2022 – the initial telephone call complaint to Teresa O'Neill

- b) 1 April 2022 – the email that the claimant says Ms O'Neill asked her to provide and which confirmed in writing what was disclosed in the previous call of 30 March 2022.
12. The claimant understandably wanted to explain the detailed and complicated treatment she received from the respondent, but I reminded her that what I could consider was limited to the determination of the interim relief application.
13. However, I noted that the claimant was employed by the Council from 4 July 1993 and latterly as a Community Assessment Officer. She was dismissed by reason of conduct on 14 June 2024 following a lengthy period suspension from July 2022. During the later period of her employment, she had also worked outside of the Council as a PA for a service user as described above and who was a vulnerable adult receiving funding from them.
14. The alleged protected disclosures were made when she contacted the Council in her role as a PA on behalf of the service user. It was at this point that concerns arose on the part of the Council that there was a conflict between the claimant's role as a Community Assessment Officer and her role as a PA supporting a service user who accessed local authority funding from the Council.
15. The claimant believes that by making the alleged protected disclosures she was seen as a trouble maker by the Council. However, she believed that her complaints revealed failures if legal obligations by the Council in terms of auditing requirements and duties to service users. Within these disclosures, no reference was made to what these legal obligations and failures were with any precision.
16. The claimant believes the subsequent disciplinary process was a sham, engineered to attack her because of the disclosures, deliberately prolonged and the reasons for dismissal were principally for these disclosures and not her alleged conduct.

The respondent's case

17. Mr Lassey confirmed that the respondent dismissed the claimant for her blurring the roles that she held and it involved her fundamental failure to distinguish between them.
18. First, he argued that although the ET1 referred to an application for interim relief in section 2.3 and in section 8.1, the reference to complaints of unfair dismissal and whistleblowing were not adequately supported by background information in section 8.2. this was because she failed to assert that the dismissal decision was reached because of the protected disclosures alleged.
19. He then went on to say that even if there is an arguable s103A ERA claim within the ET1 as currently drafted, it is difficult to see how the claimant has made out a protected disclosure within the meaning of s43B ERA. Mr Lassey explained that no information was actually disclosed and at their highest they complaints made by the claimant concerned vague and unfounded allegations of financial mismanagement.

20. Moreover, he argued that there was insufficient evidence to support the claimant's contention that disclosures were made in the public interest and that they did not tend to show one of reasons under s43B(1) such as failure of an employer to comply with legal obligations.
21. Thirdly, he said, the alleged protected disclosures were made on 30 March 2022 and/or 1 April 2022 and the claimant was not dismissed until 14 June 2022. It was therefore difficult to see how the decision to dismiss was in relation to protected disclosures as asserted.
22. Fourthly, Mr Lassey submitted that there was an abundance of evidence before me which revealed that the claimant was dismissed for her misuse of the Council's data and that she had not previously told the Council that she was acting as a service user for a service user accessing Council monies. He provided numerous references to the respondent bundle and witness statements including the dismissing officer Ms Bruce. He added that the claimant admitted that she shouldn't have done what she was being investigated for. The suspension he acknowledged, was lengthy but this was because of external events beyond the investigating officer's control including safeguarding matters being raised and the claimant's grievance.
23. While he noted that the claimant alleged that there was a 'cover up' on the part of the Council and that the disciplinary process was described by her as being 'a sham', this was something that could not be found by a Tribunal based upon the available evidence today and a final hearing was required to carefully unpick the extensive evidence that would be produced.

Relevant Legal Framework

The law relating to interim relief generally

24. The application for interim relief was brought under section 128 of the ERA. The test for whether it succeeds or not appears in section 129(1) as follows:

'(1) 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...103A...

25. In assessing the prospects of success, I had regard to the legal framework which applies to the substantive complaints of automatic unfair dismissal and as provided by the guidance given in Hancock v Ter-Berg & anor UKEAT/0138/19/BA.
26. Moreover, I noted the guidance given in Taplin v C. Shippam Limited [1978] ICR 1068 and that when making an order for interim relief, a Tribunal should be satisfied that the relevant complaint has a '*...pretty good chance of succeeding*'. This was revisited by Eady HHJ (as she then was), and who helpfully provided a

summary explaining the challenges which a Judge is confronted by in an application for interim relief and what is expected from the decision maker. Accordingly, I was reminded that:

- a) my decision today was a summary one,
- b) that I must do the best I can based upon the available materials and the short notice involved,
- c) avoid findings that will bind the hands of the Tribunal at a future hearing,
- d) adopt what can be described as an *'impressionistic'* approach based upon how the matter looked to me,
- e) consider whether the claimant has a *'pretty good chance of succeeding'*,
- f) explain my conclusion in a way that provides the 'gist' and which is *'not overly formulaic'*.

Dismissal because of making a protected disclosure

27. Parts IVA of the ERA defines a protected disclosure within section 43B with subsequent sections dealing with relevant persons to whom the protected disclosure can be made.

28. The key requirements are that the claimant must have made a disclosure of information rather than a bare allegation, that he must reasonably have believed that the information tended to show one of the matters set out in section 43B(1), and that he reasonably believed that his disclosure was made in the public interest. If those requirements are met, a disclosure to an employer will qualify for protection.

29. If a protected disclosure has been made, the complaint will succeed only if the reason or principal reason for dismissal is that the employee made a protected disclosure. Where the decision is that of one person it is the sole or principal reason in her mind which matters. It is not enough for any protected disclosure to have had a material influence if it is neither the sole nor the main reason for dismissal. However, this is subject to the decision of the Supreme Court in *Royal Mail Ltd v Jhuti* [2020] 3 All E.R. 257 where at paragraph 62, it says that

'... if a person in the hierarchy of responsibility above the employee determines that she (or he) should be dismissed for a reason but hides it behind an invented reason which the decision-maker adopts, the reason for the dismissal is the hidden reason rather than the invented reason.'

30. Conclusions

31. Based upon the claim form, grounds of complaint, the witness statements and all of the documentary evidence available to me and what the claimant and Mr Lasseby told me, I drew the following conclusions:

Dismissal because of making a protected disclosure

32. I was not satisfied that it is likely; in the sense of there being 'a pretty good chance of success' that the claimant would succeed with his claim of dismissal because of making a public interest disclosure.
33. The claimant may ultimately be able to demonstrate that some of the alleged protected disclosures satisfied the requirements of section 43B, but for the purposes of the application seeking interim relief, I am not satisfied that they provided more than bare allegations. It may be that a full consideration of the evidence at a final hearing will on balance persuade a Tribunal that there were protected disclosures under section 43B, but that will require the provision of relevant witness evidence and documents by the parties and a full consideration of that evidence.
34. Additionally, in relation to the dismissal, I was concerned that while in terms of chronology and proximity to the alleged disclosures, the decision to suspend, investigate and dismiss the claimant may be sufficiently connected to satisfy the requirements of section 103A, the respondent has a good arguable case that there were other reasons for the dismissal. A lengthy and detailed disciplinary process took place and while delays may be an issue, based upon evidence today, that appears to be a matter of potential procedural unfairness rather than a substantive complaint of dismissal arising principally from protected disclosure.
35. The Tribunal may conclude at the final hearing that there were valid protected disclosures and that the principal reason for the dismissal was the making of those disclosures, but that will require a detailed consideration of evidence and that can only take place at a final hearing. This is not an unequivocal case and uncertainties as to the real reason for the dismissal remain. Accordingly, this is a matter to be considered at a final hearing once all relevant documentation has been disclosed and witness evidence has been exchanged.
36. Accordingly, while I am not satisfied that all elements of a complaint of automatic unfair dismissal under section 103A are likely to succeed, this is not to say that there is not an arguable case. It is a matter which requires further case management and the provision of oral evidence.

Employment Judge Johnson

Date: 12 July 2024

JUDGMENT AND REASONS SENT TO THE PARTIES ON

15 July 2024

FOR THE TRIBUNAL OFFICE