



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr D Hamill

v

Carbon Rewind Limited

Heard at:

Watford

On:

7 June 2024

Before:

Employment Judge S Matthews

Appearances

For the Claimant: In Person

For the Respondent: Mr. Munro (Counsel)

JUDGMENT ON APPLICATION FOR INTERIM RELIEF

1. The claimant's application for interim relief under s.128 of the Employment Rights Act 1996 does not succeed.

REASONS

Background

1. The claimant was employed by the respondent from 13 February 2024 to either 19 March 2024 or 26 March 2024 (the date is not agreed by the parties). He was employed as a Surveyor and his role required him to carry out surveys relating to energy efficiency at domestic properties. The hearing before me today was to decide the claimant's application for interim relief made under s.128 of the Employment Rights Act (ERA) 1996.
2. The claimant claims that he was dismissed contrary to s.103A of ERA 1996. He claims he was dismissed because, or principally because, he made a protected disclosure, or disclosures, within the meaning of s.43B of the Employment Rights Act 1996.
3. I did not hear any evidence today and made no finding of fact. The summary set out in paragraphs 4 to 6 below is taken from the documents and the information given to me by the parties at the hearing and is not intended to bind a future tribunal.

4. The first alleged protected disclosure took place on 13 or 14 March 2024 (the exact date is not material for this application) and relates to an incident on 13 March 2024. The claimant reported that he was attacked by a dog at a property he visited. He also had concerns about a child at the property locked in a car with the dog. He raised what he termed 'safety concerns' regarding the workload, stating that he could not see how it was possible to do the work in the allocated time. He referred to 'environmental issues with failed appointments.'
5. Two further alleged protected disclosures took place on 25 March 2024 and 7 May 2024. These related to concerns about his training and compliance.
6. The respondent disputes the claim but has not yet filed Grounds of Response. Accordingly, the respondent's case regarding matters such as the date of termination, whether there was a dismissal and the reason for termination is not formally before the tribunal.
7. I had before me a bundle of documents prepared by the claimant. It was divided into 30 sections and an accompanying excel spreadsheet described the content of each section.

The law

Interim Relief application

8. Section 129 (1) ERA 1996 sets out the test for the tribunal when considering an application under s.128 ERA 1996 (emphasis added):

'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 100(1)(a) and (b), 101A(1)(d), 102(1), 103 or 103A, or
.....'

9. An application under s. 128 ERA 1996 requires the tribunal to consider whether it is likely that the tribunal will find that the automatically unfair reason for dismissal is established. The task of the tribunal is to carry out an expeditious summary assessment on the material available to it, doing the best it can with untested evidence.
10. The case of Taplin v Shipman [1979] IRLR 450 provides that the claimant needs to show that he has 'a pretty good chance' of succeeding in proving that the sole, or principal, reason for his dismissal was that he had made one or more protected disclosures. The Employment Appeal Tribunal (EAT) stated that the bar is higher than 'a real possibility' or 'reasonable prospect' or '51 per cent or better chance of success'.
11. The burden of proof in an interim relief application is intended to be greater than that at the full hearing where the tribunal need only be satisfied on the

balance of probabilities. The test is not ‘more likely than not’ but something nearer to certainty than mere probability.

12. In cases where the tribunal is faced with a conflicting account of key facts and issues it may conclude that the conflict cannot be resolved at an interim relief hearing. In Parsons v Airplus International Limited EAT 0023/16, an Employment Judge refused the claimant’s interim relief application noting that, while some of the disclosures were likely to be found to be protected disclosures, resolution on whether these formed the reason for dismissal was less clear cut. The EAT agreed with that approach on appeal.
13. Similarly, in Meredith v Hako Machines Limited, ET Case No. 3400491/2016, an Employment Judge refused to grant interim relief because the claimant had not overcome the high hurdle of establishing that it was sufficiently likely his dismissal would be found to have been caused by the making of the protected disclosures.

Dismissal for a protected disclosure

14. An employee who is dismissed because of a protected disclosure shall be regarded as unfairly dismissed if that is the reason (or, if more than one, the principal reason) for dismissal (s.103A ERA 1996).
15. A claimant bringing a claim under s.103A ERA 1996 needs to show that the disclosures they allege qualify for protection under the Act. The definition of a qualifying disclosure is set out in s.43B of the ERA 1996:

‘(1) 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 one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.’

16. A tribunal must address whether one or more of the elements set out at s. 43B (1) (a) to (f) required for the disclosures to constitute qualifying disclosures are present. If they constitute qualifying disclosures did the claimant make the disclosures in the reasonable belief that they were in the public interest? Even if that is found by the tribunal to be the case were the disclosures the sole or principal reason for the claimant’s dismissal?

Submissions

17. I heard oral submissions from both parties.
18. The respondent’s case is that termination of the claimant’s employment took place on 19 March 2024. The claimant’s case is that termination did not take place until 26 March 2024 because he was given one week’s notice.

19. The date of termination is important because only the first disclosure was made before the date the respondent alleges the employment was terminated. It is open to the respondent to argue that it cannot have been influenced by disclosures that took place after the termination or after the decision to dismiss was made.
20. Counsel for the respondent further submitted that the disclosures did not tend to show any of the factors set out in s.43B ERA 1996 and moreover that they were not in the public interest.

Conclusions

21. I decided to start by considering whether the claimant is 'very likely' to persuade the tribunal at the final hearing that one or more of the alleged protected disclosures materially influenced the decision to dismiss.
22. The alleged disclosure on 13 or 14 March 2024 took place before the termination of the claimant's employment and there is at least a possibility that the claimant will be able to show that it influenced the respondent's decision to dismiss (if indeed there was a dismissal).
23. The alleged disclosure on 25 March 2024 potentially took place after the termination date and/ or the decision to dismiss. The effective date of termination is an issue for the tribunal to resolve upon hearing the evidence.
24. The alleged disclosure on 7 May 2024 took place after the termination date and the claimant has not explained how he considers it could have influenced any decision to dismiss.
25. I have therefore decided that the claimant is not 'very likely' to succeed in his claim that the disclosures on 25 March 2024 and 7 May 2024 were the sole or principal reason for his dismissal.
26. Regarding the alleged disclosure on 13 or 14 March 2024, the respondent may argue that it had an alternative reason for dismissal, namely performance issues. The claimant was still on probation. It is premature for me to make findings in that regard; it will be a matter for the tribunal to decide after hearing evidence.
27. I have considered whether the 13 or 14 March disclosure is likely to be found by the tribunal at the final hearing to be a protected disclosure. The content of the disclosure relates to the claimant being almost bitten by a dog and a child being left in the car with the dog. He refers to safety concerns related to his workload and concerns about missed appointments. It is not clear at this stage, and without hearing his evidence, whether the claimant will be able to establish that he reasonably believed that disclosure was in the public interest. That will have to be decided at the final hearing.
28. The claimant has not set out which of the factors in s.43B (1) (a) to (f) he is relying on. He has not specifically set out, for example, what legal obligation he considers to have been breached or what criminal offence has been

committed. These are matters that need to be clarified in a list of issues that will be discussed at the forthcoming Case Management hearing. It is not sufficiently clear now for me to decide that he has a high likelihood of succeeding in his final claim.

29. Accordingly, I was unable to conclude that the claimant's claim that he had been dismissed for making a protected disclosure or disclosures, had a pretty good chance of success. For that reason, the application for interim relief fails.

Employment Judge Matthews

Date: 26 June 2024

Sent to the parties on: 31/07/2024

For the Tribunal Office

Recording and Transcription

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