



# EMPLOYMENT TRIBUNALS

**Heard at:** Croydon (by video) **On:** 23 July 2024

**Claimant:** Mr Sorin Radu

**Respondents:** (1) London Borough of Hounslow  
(2) Mr Jefferson Nwokeoma  
(3) Mr Will Simpson

**Before:** Employment Judge Fowell

**Representation:**

**Claimant** In Person

**Respondent** Simon Harding of counsel

## JUDGMENT ON A PRELIMINARY ISSUE

The application for interim relief is refused.

## REASONS

### Background

1. By way of background, Mr Radu worked for the London Borough of Hounslow as an Information Communication Technology Security Officer / Cybersecurity Analyst. For the most part he was working at home. The Council say that he was dismissed on grounds of misconduct, because they believed he had been working from an overseas location, and from a country on their banned list. He

says that he was dismissed because of whistleblowing allegations he had made, i.e. protected disclosures, which he had made from September 2023 onwards

2. These written reasons are provided at the request of Mr Radu. As usual, some editing has taken place to avoid repetition or unnecessary detail and these written reasons stand as the final version.

### **The appropriate test and approach**

3. In **Al Qasimi v Robinson** EAT 0283/17 the correct approach to such applications was described by Her Honour Judge Eady QC as follows:

‘By its nature, the application had to be determined expeditiously and on a summary basis. The [tribunal] had to do the best it could with such material as the parties had been able to deploy at short notice and to make as good an assessment as it felt able. The employment judge also had to be careful to avoid making findings that might tie the hands of the [tribunal] ultimately charged with the final determination of the merits of the points raised. His task was thus **very much an impressionistic one**: to form a view as to how the matter looked, as to whether the claimant had a pretty good chance and was likely to make out her case, and to explain the conclusion reached on that basis; not in an over-formulistic way but giving the essential gist of his reasoning, sufficient to let the parties know why the application had succeeded or failed given the issues raised and the test that had to be applied.’  
[Emphasis added]

4. This test of a ‘pretty good chance’ derives from **Taplin v C, Shippam Limited** [1978] ICR 1068. It has been considered more recently by the Employment Appeal Tribunal in **Ministry of Justice v Sarfraz** 2011 IRLR 562, EAT. There, Mr Justice Underhill (as he then was) commented that this form of words was not very obviously distinguishable from the formula ‘a reasonable chance of success’, which was rejected in that case. In his view, the message to be taken from **Taplin** was that ‘likely’ does not mean simply ‘more likely than not’ but connotes a significantly higher degree of likelihood, i.e. ‘something nearer to certainty than mere probability’.
5. I emphasise that because the thrust of Mr Radu’s submissions today is that it was for the respondent to prove its case at his disciplinary hearing and to do so beyond reasonable doubt. That is not the appropriate test, and it is certainly not

the appropriate test today, when the burden is on him to show this 'pretty good chance' of success overall.

### **The evidence presented**

6. I was supplied with a bundle of documents from the respondent of 192 pages and one from Mr Radu of 92 pages, and I have the tribunal files on what appears to be four separate and very similar claims submitted by Mr Radu. The main claim, and the one I am dealing with today (6002757/2024) was submitted on 20 May 2024.

### **The essential facts**

7. The essential facts are these. In August 2023 Mr Radu made a request to work abroad, in Southeast Asia, for 6 weeks. That request was refused.
8. The following month, on or about 27 September 2023, he raised a number of concerns. The first of these was about his line manager Mr Oni who had asked him to prepare a report on the state of the Council's IT infrastructure and their 'patching schedule'. He described this in more detail in one of his subsequent claim forms i.e. that he had been told to conduct a 'a Patch Audit Scan using only the plugins that addressed issues identified in an external audit conducted 11 months prior, disregarding current concerns.' His view was that this would create a misleading report for the Cabinet Office and was unethical and amounted to 'a fabrication of evidence'.
9. He also told Mr Simpson - the third respondent and Head of Digital Strategy – about his concerns. There are some online messages between the two of them [R/150] in which Mr Radu says that he did not want to generate reports in the way he was asked to, that it was 'beyond borderline legal' and described it as a felony. Mr Simpson responded that  

'Talk of felony is a very poor reflection of your state of mind at the moment. We three will speak tomorrow.'
10. That does at least show that Mr Radu was making an allegation, rightly or wrongly, that what he was being asked to do was unlawful.
11. He also mentions another development that day. Ms Kim Steady, Head of Quality Assurance and Development, made a request to work remotely from

- Dubai in order to carry out recruitment of care workers there. That request was approved, although he says that working from Dubai was in breach of GDPR regulations. No doubt he felt that there were some double standards in allowing her request, but he does not appear to have raised any concern about that at the time.
12. The final alleged disclosure was shortly before his dismissal. On 10 May 2024 he sent a letter to the Council's Chief Executive setting out or re-stating those earlier concerns.
  13. Mr Harding, for the respondent, submitted that these various allegations did not meet the test for a protected disclosure and were not made in the public interest, but that requires a more detailed examination than can be achieved at a short hearing of this sort, so I will proceed on the basis that those concerns were protected, and revealed some breach of a legal obligation by the Council, or at least that Mr Radu believed that they did.
  14. For completeness, in his most recent claim form, though not this one, Mr Radu mentioned another protected disclosure, on or about 11 November 2023, when he says that he mentioned to Mr Simpson and Mr Oni his concern about Ms Steady working in Dubai.
  15. Mr Radu explained that in late 2023 his mother in Romania became seriously ill and there was no other member of the family to look after her. So, in January 2024 he asked to be able to work from Romania so he could go and make arrangements for her care. This time his request was granted. It is not clear how long he was in Romania or when he returned.
  16. However, during February, it appears from their email exchanges that Mr Oni began to have concerns about where that Mr Radu was, or at least about how much work he was doing. By then, he should have been back in the UK. Mr Oni emailed on Monday 26 February [R/38] to say that Mr Radu had not given any response about his whereabouts the previous Friday and told him to book a half-day's leave to cover his absence. Mr Radu replied to defend himself from these criticisms. Mr Oni then emailed to say that from that week they would be having weekly 1-2-1 meetings. So, a Teams meeting was arranged for the next day.

17. On the respondent's case, when Mr Radu logged in to that meeting, he showed up as an 'unauthorised guest', something which indicated that he was out of the country. Shortly afterwards, on 4 March, he was suspended, for 'working remotely overseas when not approved and from a country on the banned list.'
18. Mr Radu then attended an investigation meeting on 14 March, held by Ms Steady. With her was a representative from HR and a technical adviser, for understandable reasons.
19. She subsequently prepared an investigation report [R/77]. According to this, Mr Radu last accessed his laptop on the Council's network on 9 February 2024, after which he had been using a virtual private network (VPN), something often used to conceal the user's location. There was then a failure of the VPN on 19 February, which indicated that Mr Radu was abroad. He was also believed to have been abroad on 28 February, when he showed up as an unauthorised guest, until on 4 March 2024 he came into Hounslow House for the investigation meeting.
20. On 10 May 2024 Mr Radu sent his email to the Chief Executive [R/97]. In it, he complained about Ms Steady being given permission to work from Dubai, even though Dubai was on the banned list, whereas his own request had been refused. He went on to criticise the evidence presented against him in the investigation report, describing it, for example, as speculative and unprofessional. He did not, however, suggest that it had been manufactured, as he did at this hearing, let alone that this had been done because of his earlier disclosures.
21. That was also the day of the disciplinary hearing, which was held with the second respondent, Mr Jefferson Nwokeoma (Assistant Director, Transport & Parking). The minutes show that he gave Mr Radu every opportunity to explain his whereabouts during the period in question and suggested that one way of clearing the matter up would be for Mr Radu to provide a copy of his passport. Mr Radu feels that whatever he provided would have led to further requests but that is rather speculative, and as Mr Harding points out, bank statements would normally show where someone was at the relevant time. Mr Nwokeoma was quite happy to accept a passport, on the basis that if it did not contain any stamps in the relevant period, they would accept that he was in the UK at the time.

22. The minutes are revealing and show that Mr Nwokeoma made repeated efforts to persuade Mr Radu, stating at one point:

This is a disciplinary hearing; this is not a game. This is a very, very serious matter. If you provide the required evidence to show that you were not abroad on the dates in question, the story ends.

23. Then later:

“We cannot prove conclusively beyond reasonable doubt that you were working in another country. At the same time, you’re unable to provide evidence that you didn’t visit these countries or that you were in the UK during the dates in question. Why would you withhold this evidence if you have it?”

24. Mr Radu’s response each time was that the evidence presented by the Council was not sufficient to prove the allegation, so why should he have to provide evidence? He was not to be moved on the point, saying several times that he would save the evidence for a court or tribunal.

25. But the fact is that he has still not provided any such evidence.

26. Mr Harding makes the point that if the Council were intent on dismissing Mr Radu over his whistleblowing allegations, why would they give him these opportunities to clear things up?

27. Those points appear to me very persuasive. In addition, there is no suggestion in those minutes from Mr Radu that the evidence was fabricated, or that they related to those earlier allegations of wrongdoing.

28. That is also the case with the appeal, which was lodged on the day of the dismissal, 16 May 2024. In Mr Radu’s bundle, he includes a series of exchanges over his grounds of appeal. He submitted them and (unusually) received a typed commentary on those points [C/30 onwards]. It is not clear from who. His grounds of appeal include that the investigation was biased, that the Council was placing the burden of proving things on him, that the claims were unfounded, and that the policy in question had not been published. He also makes the point (Ground 6) [C/33] that his email to the CEO was whistleblowing.

29. In giving my oral reasons I had overlooked the reference to whistleblowing in this document, but still there is no suggestion there that the disciplinary allegations had been raised because of any disclosure, and of course they were sent on the

same day as the disciplinary hearing. Overall, this is a very belated mention of whistleblowing.

30. In all those circumstances I can see no real basis to infer any connection between the disciplinary action and the earlier disclosures, and the points made about the conduct of the disciplinary hearing strongly reinforce that view. Indeed, the fact that Mr Radu could easily have disproved the allegations, if untrue, and was given the opportunity to do so, seriously undermines his case, so much so that I have thought it appropriate to make a deposit order.
31. In doing so I am mindful of the guidance given to Tribunals about exercising caution in such cases, and that whistleblowing claims are similar to discrimination cases in usually requiring a full consideration of all the facts, but it is difficult to understand how it can be said that the Council dismissed him over whistleblowing concerns in these circumstances, and by extension why they would have subjected him to any other detriment.
32. The fairness or otherwise of the disciplinary process, and of the decision reached to dismiss, are not affected by that order.
33. A further case management hearing will be arranged in due course.

Employment Judge Fowell

Date 23 July 2024