



EMPLOYMENT TRIBUNALS

Claimant: Mr B Stokes

Respondent: Speedy Asset Services Ltd

Heard at: Manchester (by CVP)

On: 14 August 2024

Before: Employment Judge Phil Allen

REPRESENTATION:

Claimant: Mr A Carter, counsel

Respondent: Mr P Keith, counsel

INTERIM RELIEF JUDGMENT

The judgment of the Tribunal is that:

1. The application for interim relief is refused. The claimant has not established what is required under section 129 of the Employment Rights Act 1996.

REASONS

Procedure

1. This was an application for interim relief.
2. Both parties were represented by counsel.
3. The hearing was conducted by CVP remote video technology.
4. A joint agreed bundle of documents was provided.
5. Witness statements were provided from the claimant and (for the respondent) Mr Matt Seaman (Business Development Director UK and Ireland) and Ms Beverley Sharpe (Mobilisation and Customer Service Director). In accordance with rule 95 I did not hear oral evidence (but I read the statements provided).

6. In advance of the hearing each counsel provided a well written and detailed skeleton argument. I read both before the start of the hearing. Each of the representatives made oral submissions which expanded upon their skeleton argument and addressed the points raised by the other counsel.

7. After an adjournment, I informed the parties of my decision and the reasons for it. As the respondent requested written reasons, these written reasons have been provided.

Facts

8. I will not endeavour to recap all of the key facts; I will only reproduce those which were relevant to my decision.

9. The claimant was employed by the respondent as operations director from 8 April 2024 until 8 July 2024.

10. The claimant alleges that in a telephone conversation on 27 May 2024 he made a protected disclosure to Mr Seaman. At the time, Mr Seaman was his line manager. In broad terms (the claimant not having specifically evidenced exactly what was said) the claimant said he informed Mr Seaman that he had overheard colleagues speaking about inflating profit margins on a particular contract and he said that he was concerned that this may be fraudulent and illegal, a breach of contractual obligations, and unethical. Mr Seaman denies that the conversation (or any similar conversation) took place.

11. The 27 May was a bank holiday Monday. On 28 May Mr Seaman and the claimant exchanged emails which made no reference to having had a conversation the previous day. Indeed, my current view would be that what was said in the emails was inconsistent with there having been a conversation the previous day.

12. In his witness statement, the claimant also said that in a Teams meeting on 12 June with Mr Seaman he again raised the same concerns.

13. The claimant's line manager was changed to instead be Ms Sharpe from Monday 1 July.

14. In her witness statement, Ms Sharpe says that she made the decision to dismiss. She acknowledged that she spoke to Mr Seaman about it. She denied any knowledge of the alleged disclosure.

15. There had been a number of occasions during the short period of the claimant's employment when things had not proceeded as expected. The respondent's counsel listed these in his skeleton argument. I will not recap them all, but in a twelve or thirteen week period they included the claimant missing meetings or working time due to: his mother being admitted to hospital; being admitted to hospital himself due to chest pain; having his tyres slashed; contracting Covid; having mental health issues related to a break up; missing a meeting due to awaiting a delivery; IT issues; and cancelling the introductory call with the significant client with whom he was due to be working, because his dog had emergency surgery.

16. The claimant relied upon the respondent being broadly understanding in its responses to those issues as showing that they were not the real reason for dismissal. Ms Sharpe relied upon the latter of those as being the last straw for dismissal, something which was referred to in the conversation in which the claimant was dismissed, at least as recorded in the respondent's note.

17. The claimant was dismissed by Ms Sharpe with immediate effect on 8 July in a virtual meeting. Her witness statement contained an explanation of why she said she made the decision to dismiss, and she had also explained it in that meeting. The claimant was, understandably, unhappy with the decision to dismiss. He made clear and strong statements about his dismissal in that meeting. The claimant did not allege in that meeting that a reason for his dismissal was that he had made a public interest disclosure (albeit he did in an email sent later that day).

18. A letter was sent confirming the dismissal, but with Mr Seaman as the writer in error. That was corrected on 16 July with a letter from Ms Sharpe. That letter included an entirely incorrect statement which was not true. The untrue statement included in the letter said the following:

"Following our discussions, I have assessed your performance, conduct, attendance, and overall suitability against our expected standards and unfortunately you have failed to make the required improvements, despite having been given a full and fair opportunity to do so"

19. The claimant placed emphasis upon that incorrect statement.

20. An appeal and/or grievance hearing was conducted on 23 July in which the claimant described the crux of the reason for dismissal as being disability discrimination, before going on to allege both that the dismissal was discriminatory and due to him having made a public interest disclosure.

21. The claimant asserts that he has complex PTSD and extreme anxiety, and, in his claim form, he alleged disability discrimination as well as bringing the claim being considered under section 103A of the Employment Rights Act 1996.

The Law

22. Under section 129 of the Employment Rights Act 1996 the test is whether it appears to me that it is likely that that the claimant's claim will succeed. Here the relevant claim is that of automatic unfair dismissal due to having made a protected disclosure under section 103A of the Employment Rights Act 1996.

23. The test is whether it is likely that, when determining the complaint, the Tribunal will find that the principal reason for the dismissal of the claimant was that the claimant had made a protected disclosure.

24. In considering whether a claimant is likely to succeed, consideration must be given to all elements of the requisite test. To succeed in such a claim, the claimant must establish that it is likely to be found that he made a protected disclosure, and it is likely to be found that was the principal reason for the dismissal. In his skeleton argument, the respondent's representative also highlighted all the elements which

must be established when contending that a disclosure made was a protected disclosure.

25. The test for interim relief requires me to carry out an expeditious summary assessment as to how the matter appears on the material available, doing the best I can with the untested evidence advanced by each party. This necessarily involves a far less detailed scrutiny of the parties' cases than will ultimately be undertaken at the final hearing. I am not required to make findings of fact; I must make a decision on the likelihood of success based upon a broad assessment on the material available. The claimant's representative cited **Al Qasimi v Robinson** EAT/0282/17 and said I must engage in an impressionistic assessment of the merits of the claim.

26. Likely to succeed, has been said to mean considering whether the claimant has a pretty good chance of success at the full hearing (**Taplin v C Shippam Ltd** 1978 IRLR 450). Both representatives referred to **Ministry of Justice v Sarfraz** UKEAT/0578/10, with the claimant's counsel summarising that the degree of satisfaction required was described as a pretty good chance of success, connoting something a degree nearer to certainty than a mere probability. The burden of proof is on the employee (**Bombardier Aerospace v McConnell** 2008 IRLR 51). The respondent's counsel also referred to a number of authorities on protected disclosures, which it is not necessary for me to reproduce.

Conclusions – applying the Law to the Facts

27. My decision was straightforward. I did not find it to be the case that on determination of the claim it is likely that the claimant will be found to have been dismissed for the principal reason of having made a protected disclosure. My main reasons for so determining were:

- a. There is a dispute about whether the disclosure relied upon was made at all, which will need to be determined on the evidence. Based upon my impressionistic assessment of the evidence, I was unpersuaded that the claimant made the disclosure relied upon on the first date he alleged at all;
- b. There is a dispute about whether the disclosure was a protected disclosure. That will require greater consideration of the evidence and will be subject to detailed legal argument which has been prefaced at this hearing. It might be established that there were one or two protected disclosures, but that is far from certain;
- c. There is a dispute about whether any disclosure was the principal reason for the dismissal. Ms Sharpe takes ownership of the decision and denies knowledge of the alleged disclosure. That evidence will need to be explored and considered; and
- d. I do not agree with the claimant's counsel's submission that the reasons given by the respondent for the dismissal are not credible. For an employee of his seniority with the history he had in a short period of employment, I accept that the explanation given was entirely credible or inherently plausible. When a Tribunal hears all the evidence, the

respondent's reasons may ultimately not be accepted for the reasons outlined today, and the inferences sought may be drawn. Those reasons may include that: Ms Sharpe was only the claimant's manager for a week; the letter sent was patently incorrect in some of its content; and the claimant's purported failings were not discussed with him before he was dismissed. An employee on a wage of the size paid to the claimant, is still usually entitled to a fair process. However, the issues raised were insufficient in my view to show that the claimant is likely to succeed in his claim.

28. As I explained, by its nature an interim relief Judgment is a brief one based upon limited scrutiny of evidence which has not been tested. The Tribunal who conducts the final hearing will undertake a far more detailed consideration of the evidence. My decision does not mean that the claimant will not succeed in this claim, but applying the test required of me he has not succeeded in his interim relief application.

Employment Judge Phil Allen

14 August 2024

RESERVED JUDGMENT AND REASONS
SENT TO THE PARTIES ON
19 August 2024

FOR THE TRIBUNAL OFFICE

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