



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr Andrew Ward

**Respondent:** DHL International (UK) Ltd

## Record of an attended Preliminary Hearing at the Employment Tribunal

**Heard at:** Nottingham

**Heard on:** 31 July 2024

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

### Appearances:

**Claimant:** David Warwick, Union Representative

**Respondents:** Kirsten Barry, Counsel

# JUDGMENT

The Employment Judge gave Judgment as follows:

The application for interim relief fails and is dismissed.

# REASONS

1. The Claimant presented his claim to the Tribunal on 5 July 2024. He had been employed by the Respondent as a Driver from 2 June 2010 until his dismissal on 2 July 2024. His claim is of unfair dismissal only.

2. The claims of unfair dismissal are made under:
  - 2.1. Section 94 Employment Rights Act 1996 (“ERA”) of ordinary unfair dismissal.
  - 2.2. Section 152 Trade Union and Labour Relations (Consolidation) Act 1992 of dismissal for taking part or proposing to take part in the activities of any independent trade union.
  - 2.3. Section 100 ERA – automatic unfair dismissal for trade union activities and as a health and safety representative.
3. The claims are listed for hearing on 11 November 2024.
4. The grounds of his complaint are contained in paragraph 8.2 of his claim form. The details are brief.
5. He says that he had completed his trade union representative training and was actively recruiting members and assisting in representing them at disciplinary and grievance hearings.
6. He referred to an incident that had occurred when he says he was confronted by a manager and told to attend a meeting. This was in May 2024, but no details are provided, and it is simply an assertion by him.
7. He said that although the Company had cited as the reason for the dismissal being a breakdown of trust and confidence that he believed that the real reason the Company wanted to remove him was because he was a trade union activist. He said that the Company had refused to recognise the union prior to these events.
8. There was no mention in that section of his claim form of health and safety reasons at all. That is only referred to briefly in his interim relief application.
9. In the letter that accompanied the application he did not refer to any health and safety issues. His union representative said that the allegation was that he had been dismissed for taking part in the activities of an independent trade union i.e. the GMB at an appropriate time.
10. His claim was accepted and served on the Respondent and the notice of this hearing was sent out on 22 July 2024. The case is listed for a final hearing in November and directions have been made.
11. On 25 July 2024 the Respondent prepared a draft ET3 and have served this on the Tribunal and on the Claimant. Despite the lack of time to prepare this ET3 they have provided considerable detail about the circumstances which, they say, led to the dismissal of the Claimant. They assert that the reason for his dismissal was an irretrievable breakdown of mutual trust and confidence, and that he was fairly and lawfully dismissed.
12. They assert that it had nothing to do with his trade union activities or health and

safety.

13. They do not dispute that he is a member of the GMB, but he has never been a health and safety representative. They acknowledge that he had accompanied colleagues but not as a trade union representative.
14. They cite three events which they say caused trust and confidence to break down. The three matters are as follows:
  - 14.1. The Claimant had elected to bring a personal claim for liable against the manager involved in a disciplinary hearing which led to him receiving a final written warning. That claim was struck out by the County Court on 23 November 2023 on the grounds that it had no reasonable prospects. The Claimant was ordered to pay the Respondent's £8,000 in costs. The proceedings had been distressing for the manager and his wife. It should be noted that the proceedings were not issued against the Company but against the manager personally and although the Claimant had been invited on several occasions to withdraw those allegations he had refused to do so.
  - 14.2. In January 2024 he had made a holiday request which had been declined because of business reasons. The Claimant had responded by sending an email to a junior employee entitled "without prejudice". It was felt by the Respondents that the email to the junior employee was inappropriate and intimidating to that individual.
  - 14.3. On or about 23 May 2024 an incident occurred following a complaint raised by a colleague against the Claimant. A manager sought to carry out an informal investigation into the complaint and the Claimant refused to engage in the investigation and demanded that he was accompanied to the meeting by a colleague. The Claimant refused to engage in that meeting, and it had to be rearranged for the following day with a more senior manager and at that meeting the Claimant was prepared to engage without being accompanied. There is no right to be accompanied in an informal investigation. The Respondent contends that this was another example of the Claimant being needlessly disrespectful to a less senior manager who was simply trying to carry out a management task. The Respondents investigated this incident and the junior manager felt that the Claimant had shown him a total lack of respect and threatened him with a separate liable action to sue him personally. He also said that when he had tried to speak to the Claimant, he had simply asked him to speak to him after his break and had not sought to disrupt his break at all.

### **The Hearing Today**

15. I have heard from the Claimant's representative Mr Warwick and from Miss Barry for the Respondents. There is a bundle of documents that has been produced for me and I have been referred to:
  - 15.1. The email exchanges between the Claimant and his colleague at pages 28-46

and pages 48-63.

- 15.2. The notes of the meeting held with the Claimant on 1 July 2024 at pages 84 to 96.
  - 15.3. The letter confirming his dismissal on 4 July 2024 at pages 104-105.
  - 15.4. The letter of appeal dated 5 July 2024 at pages 106-107.
  - 15.5. The notes of the appeal hearing on 24 July 2024 at pages 110-114.
  - 15.6. The outcome of the appeal hearing on 24 July at pages 115-116.
16. Whilst I have not heard any evidence, I have seen the witness statements of:
- 16.1. The Claimant at page 127-128.
  - 16.2. Mark O'Docherty, the Dismissing Officer at page 119-123.
  - 16.3. Ben Hiles, the Appeal Officer at page 124-126.

### **The Law**

17. I am reminded that my task is not to judge the case but to apply the provisions in the ERA relating to interim relief at section 128-129.
18. Section 128 ERA gives a right of interim relief. It does not apply to claims under section 94 ERA. It does apply to claims under section 100 ERA and paragraph 161(2) of Schedule A1 to the TULR (C)A 1992 in respect of trade union activities.
19. Section 129 ERA provides:
- “(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 100(1)(a) and (b), 101A(1)(d), 102(1), 103 or 103A, or*
  - (ii) paragraph 161(2) of Schedule A1 to the Trade Union and Labour Relations (Consolidation) Act 1992”*
20. Section 152 TULR (C)A provides as follows:

*“(1) For purposes of Part X of the Employment Rights Act 1996 (unfair dismissal) the dismissal of an employee shall be regarded as unfair if the reason for it (or, if more than one, the principal reason) was that the employee—*

*(a) was, or proposed to become, a member of an independent trade union, . . .*

*(b) had taken part, or proposed to take part, in the activities of an independent trade union at an appropriate time, . . .”*

21. As Miss Barry asserts the Tribunal can make an interim relief order where it is satisfied it is “likely” that the Tribunal at the final hearing will find the reason the Claimant was dismissed was the asserted prescribed and qualifying reason.

22. She referred me to several cases which give guidance about what “likely” means namely:

- **Taplin v Shippam Limited [1978] IRLR 450**
- **Ministry of Justice v Sarfraz [2011] IRLR 562**
- **Dandpat v University of Bath UK EAT/1408/09/LA**
- **Raja v Secretary of State for Justice UK EAT/1364/09/CEA**

23. The burden of proof in establishing that it is likely that the Tribunal at the final hearing will determine that the reason or the principal reason for the dismissal was the asserted qualifying reason is on the employee.

24. I am not here to make any final decision on the issue of the reason or principal reason for the dismissal but to look at the material before me and hear the submissions and decide whether the Claimant has established that it is likely that the Tribunal will find that the reason or principal reason for the dismissal was a prescribed reason.

25. I am reminded that interim relief is a draconian measure and runs contrary to the general principle that there should be no compulsion in personal service. It is not a consequence that should be imposed lightly.

### **My Conclusions**

26. I am satisfied that the details provided by the Claimant in support of his application are “scant”.

27. He asserts that he is a trade union member and has been dismissed but does not set out what the trade union activities were that led to his dismissal and what is the link between his dismissal and his trade union activities. The only incident referred to in his claim form took place in May 2024 and on the face of it had nothing to do with any trade during activities, but related to him being asked to discuss an allegation that had been made by a work colleague against him.

28. He has provided no details of how the reason or principal reason related to him acting as a health and safety representative and produced no evidence that he was a health and safety representative and when his union representative made the application for interim relief, he did not refer to him being a health and safety representative.
29. The Respondents have provided a detailed explanation as to why he was dismissed which I have discussed above. That:
- 29.1. He had commenced an unfounded action in the County Court for liable against a manager personally.
- 29.2. That he had behaved inappropriately to a junior colleague on making a request for annual leave by referring to his correspondence being without prejudice.
- 29.3. In May 2024 he had refused to engage with his manager and threatened him with legal action.
30. I have also seen the notes of the meeting on 1 July and the outcome letter on 4 July. On the face of it the reason for the dismissal had nothing to do with his trade union activities but was in relation to his behaviour towards managers which was inappropriate.
31. I am satisfied in this case that having considered all the papers and all that the parties have said that the claimant has not established that it is likely that he will succeed at a final hearing with his contention that the reason for his dismissal related to trade union activities or any other prescribed activities.
32. For these reasons the application for interim relief fails and is dismissed.

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Employment Judge Hutchinson

Date: 4 September 2024

JUDGMENT SENT TO THE PARTIES ON

.....06 September 2024.....

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FOR THE TRIBUNAL OFFICE

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