



EMPLOYMENT TRIBUNALS

Claimant: Mr L Chapman

Respondent: Leicestershire Partnership NHS Trust

Heard at: Leicester Hearing Centre, 5a New Walk, Leicester, LE1 6TE
By video link

On: 26 June 2024

Before: Employment Judge Adkinson sitting alone

Appearances

For the claimant: In person

For the respondent: Mrs H Winstone, Counsel

JUDGMENT

UPON hearing from the Claimant in person and from Counsel for the respondent AND for the reasons set out below, the claimant's application for interim relief is DISMISSED.

REASONS

1. The claimant ("Mr Chapman") seeks interim relief. The respondent ("NHS Trust") opposes that application. Mr Chapman relies on a claim of automatic unfair dismissal for making a protected disclosure for the purposes of this application.
2. The hearing proceeded by video link. Mr Chapman represented himself. The respondent was represented by Mrs Hilary Winston, Counsel. I am grateful to both of them for their help.
3. The NHS Trust submitted a single bundle of documents. Mr Chapman also submitted a large number of documents. I asked the parties to take me to the documents they wanted to rely on. The parties have done this. I have taken those into account.
4. I did not hear oral evidence. Each party made oral submissions. In addition each party made written submissions in support. I am grateful to both for these submissions. I can confirm I have taken them into account.

5. The effective date of termination was 23 May 2024. Mr Chapman presented his claim on 30 May 2024. Though the respondent did not argue otherwise, I am satisfied the application is in time.
6. The hearing took place by video link. There were no technical difficulties I consider to be of note. During the hearing we took breaks every hour or so. In addition Mr Chapman was reclined while he took part in the hearing as a reasonable adjustment. No party suggested the hearing was unfair. I am satisfied it was a fair hearing.
7. I begin by setting out what I understand to be the law that I must apply in this case.
 - 7.1. The **Employment Rights Act 1996 sections 128 to 132** set out the test for interim relief.
 - 7.2. If the application is in time, then I must carry out a predictive exercise required by the **Employment Rights Act 1996 section 129**. This provides that interim relief is available if it appears to the tribunal that it is **likely** [my emphasis] that on determining the complaint to which the application relates the tribunal will find (in this case) that the reason (or if more than one the principal reason) for the dismissal is dismissal for making a protected disclosure.
 - 7.3. The key word is “likely”. The cases emphasize the high threshold a claimant must satisfy for showing that the Tribunal is likely to find the sole or principal reason for the dismissal was because she made a protected disclosure. It has been described as
 - 7.3.1. A pretty good chance of succeeding: **Taplin v C Shippam Ltd [1978] IRLR 450 EAT**
 - 7.3.2. A significantly higher degree of likelihood than more likely than not i.e. “something nearer to certainty than mere possibility”: **Ministry of Justice v Sarfaz [2011] IRLR 562 EAT**.
 - 7.4. What is required of me is “an expeditious summary assessment ... as to how the matter looks to him on the material [available to the Tribunal. It must of necessity involve a far less detailed scrutiny of the respective cases of each of the parties and their evidence than will be ultimately undertaken at the full hearing of the claim.”: **London City Airport Limited v Chacko [2013] IRLR 610 EAT**. It depends therefore on the Tribunal’s impression of what is presented: **Taplin**.
 - 7.5. In undertaking that exercise, I have avoided making determinations of factual issues. Nothing that I say in this judgment is a finding of fact that is binding on the Tribunal at the final hearing and the outcome does not put any party in a better or worse position in the case generally.
 - 7.6. To succeed, the claimant must show the necessary level of chance in relation to each essential element of the claim, here the **Employment Rights Act 1996 section 103A** because that

provides the for claim of automatic unfair dismissal for making a protected disclosure: **Simply Smile Manor House Ltd and ors v Ter-Berg [2020] ICR 570 EAT**. Therefore the claimant must show

- 7.6.1. He disclosed information;
- 7.6.2. He believed that it or they tended to show one or more of the matters itemised in the **Employment Rights Act 1996 section 43B(1)**;
- 7.6.3. the belief in that was reasonable;
- 7.6.4. he believed that the disclosure was in the public interest;
- 7.6.5. the belief in that was reasonable (see **Chesterton Global Ltd v Nurmohamed [2018] ICR 731 CA**);
- 7.6.6. the disclosure(s) was the sole or principal reason for dismissal.

7.7. The following points are of note in relation to protected disclosures:.

- 7.7.1. The disclosure must be a disclosure of information, of facts rather than opinion or allegation (although it may disclose both information and opinions/allegations): **Cavendish Munro Professional Risk Management v Geldud [2010] ICR [24] – [25]; Kilraine v LB Wandsworth [2016] IRLR 422**.
- 7.7.2. The disclosure must, considered in context, be sufficient to indicate the legal obligation in relation to which the Claimant believes that there has been or is likely to be non-compliance: **Fincham v HM Prison Service, 19 December 2002**.
- 7.7.3. The test for “reasonable belief” is the objective assessment of a subjective belief. The Tribunal should consider whether the belief was reasonable for the claimant in their circumstances: **Korashi v Abertawe Bro Morgannwg University Local Health Board [2012] IRLR 4 at 62**.
- 7.7.4. In determining whether the reason for the Claimant’s dismissal was an alleged disclosure, it is not sufficient for the disclosure to be “in the employer’s mind” or for it to have influenced the employer. The Tribunal must consider whether that disclosure was the “sole or principal reason” for her dismissal: **Eiger Securities LLP v Korshunova [2017] IRLR 115**.

8. With the above in mind, I turn to consider Mr Chapman’s claim. I start by analysing the alleged protected disclosures. Firstly I note that there is no suggestion the alleged disclosures were not made to his employer. Therefore I conclude that it is likely Mr Chapman will succeed on that point.

9. The background is detailed but in my view can be summarised for today's purposes as follows:
 - 9.1. Someone working in the NHS made allegations against Mr Chapman relating to communications they said he had sent to them being harassing and abusive. He denies this allegation.
 - 9.2. Thus there began a police investigation. The NHS provided information to the police. While the police did arrest Mr Chapman and charge him, in the end the charges were discontinued and there has been no further police action.
 - 9.3. The NHS Trust then began its own investigation into this and other matters. The outcome ultimately was summary dismissal. This is the reason for the claim to the Tribunal.
10. In his details of claim accompanying and so part of his ET1, Mr Chapman wrote:

“One of these disclosures in relation to information sharing and data protection was initially made in writing to Ian Wakeford in December 2021.”

This is the first alleged disclosure. This pleaded case does not set out the information disclosed, which sub-section of **section 43B** he thought it fell within, or that he thought it was in the public interest. In my view that would be enough to say it is not likely that he would show this was a protected disclosure because the essential elements are not pleaded. Pleadings (i.e. the ET1 and ET3) are the essential because they set out the issues – the claim and response are judged accordingly. They are not simply to get the case going: **Chandhok v Tirkey UKEAT/0190/14**.
11. However, we did look at the alleged protected disclosure itself: an email dated 22 December 2022 22:38. Mr Chapman drew attention to what he avers are the relevant paragraphs (though I have read the whole document and taken it into account). These paragraphs are:

“I am also concerned as to what these 'audits' are that the Police have asked for. Can you give further details? If it concerns are raised about system access then employment law is very clear I should be informed of these. The Trust will be aware from any audits that it has carried out that I do not access systems, snooping on patient records as per the protocol at UHL - If this is what is being inferred in terms of audit?

“I am deeply concerned in regards to the Trust's handling of DPA/GDPR and believe that this would also affect the public (public interest). Also any wrongdoing under these acts would be a criminal offence and may be being covered up. I would therefore like to enact the departments grievance procedure and ensure I am protected under the whistleblowing policy. Please treat this as disclosure.”
12. Reading the above paragraphs in the context of the whole email, I am not persuaded that the Tribunal will likely conclude this was a protected disclosure because I am not persuaded it is likely the Tribunal will conclude that:

- 12.1. it conveys information – the wording appears rather to suggest Mr Chapman is conveying concerns only. It does not appear he has set out any actual allegation;
 - 12.2. it conveys information that shows an alleged breach of the criminal law (which Mr Chapman relies on as the gateway). While it mentions the **Data Protection Act 2008** and **GDPR**, it does not appear to set out an allegation or any link to criminal conduction; or that
 - 12.3. it was reasonable to believe it were in the public interest to raise this. The matter appears to relate to him alone and it also appears to be in the context of a criminal investigation into his conduct, which a reasonable person might think rather is in the public interest to disclose to the police.
13. The second protected disclosure to which Mr Chapman referred me was a document of 10 July 2022. It is not cited in the ET1 and I consider that failure is enough to take it no further. However completeness I have considered it because the parties have dealt with it. Mr Chapman cited the following as the disclosure:

“My concerns relate to issues I have become aware of within Leicestershire Partnership NHS Trust which include.

 - “• A complete failure by the Data Privacy Team to adhere to statutory legislation (UK GDPR 2018) and criminal offences in relation to illegally with holding such information.
 - “• A failure of the Data Privacy Team to acknowledge or investigate such complaints under legislation (UK GDPR 2018).
 - “• Agents who act on behalf of LPT, holding unofficial meetings, not in accordance with any LPT policy, NHS policy, or statutory legislation.”

In my view the above does persuade me it is likely that Mr Chapman will succeed in showing this is a protected disclosure. The reason is that it reads only as allegations of criminal offences rather than as information. In other words, it appears to set out the opinion there has been wrongdoing but does not appear to set out what the actual alleged wrongful acts are.
14. Finally in his claim Mr Chapman wrote:

“Furthermore I made protected disclosures to the employer in writing in regards to the conduct of senior managers in relation to an incident involving [SJ] and another NHS employees in regards to sexual harassment outside of the workplace and a failure to report this to the Trust. Following the incident a number of senior managers at the Trust.”

There is no information about these alleged protected disclosures, such as date, information conveyed, what breach at the time he believed they tended to show or whether he believed at the time it was in the public interest. Mr Chapman did not take me to documents setting out these disclosures. In the circumstances there is nothing here to show the Tribunal is likely to conclude there are other protected disclosures.

15. In the circumstances, I conclude that it is not likely a Tribunal will conclude Mr Chapman has made protected disclosures. That is enough therefore to dismiss the application.
16. For the sake of completeness and because both sides dealt with it, I will deal briefly with the reason for the dismissal. For the purposes of this exercise, I am assuming I concluded otherwise, i.e. that I had concluded it was likely that Mr Chapman would prove in due course that he made protected disclosures.
17. The NHS undertook 2 investigations into allegations about the claimant's behaviour.
18. One investigation investigated 3 matters and concluded:
"The investigating team found that there was no evidence to support the allegation that:
"• That Lester Chapman has used LPT data system(s) inappropriately to access the personal details of a person external to LPT
"The findings and conclusions found that on the balance of probability there was evidence to support the allegations that:
"• That Lester Chapman has behaved unprofessionally in relation to his use of social media
"• That Lester Chapman initially failed to advise his line manager on 16 March 2021 that he had been arrested by the police on 15 March 2021."
It would be disproportionate to quote the investigation at length. However in my view it appears to be thorough, detailed and fair. I accept that the fact one allegation is not taken forward does not mean that the process is fair, however in my opinion that tends to support the suggestion of fairness rather than unfairness or some ulterior motive.
19. The second concluded:
"There is a case to answer that:
"• Lester Chapman has breached the Trust's Data Protection and Information Sharing Policy Lester Chapman has failed to follow a management request to not contact [SJ]. In a return-to-work meeting on 21 June 2023, Lester Chapman did not meet the expected standards set out in the LPT values and behaviours within the Trust's Disciplinary Policy and Procedure. This includes his language about ... and his actions talking over"
Likewise, this report appears to be thorough, detailed and fair. There was nothing drawn to my attention that suggested that there was any ulterior motive involved. In addition I have not been shown anything to suggest this report was influenced by the first report or vice versa.
20. Finally I have been referred to the disciplinary outcome letter that confirmed the NHS Trust was dismissing him summarily for gross misconduct. It records that the NHS Trust conducted the hearing over 3 days. It also confirms that a trade union official represented the claimant. I was not

shown anything that tended to suggest that official complained the hearing or process was unfair.

21. The letter is 8 pages long. I have read the whole letter. It comes across as being thorough, considered, detailed and well-reasoned. I can detect in it nothing that suggests that the reason for dismissal was anything other than conduct. In fact the policy had changed and the decision had applied an old policy. The NHS Trust decision makers reviewed their decision in light of the new policy. I have seen that reviewed decision. I can see nothing that supports Mr Chapman's case in it. The application of the old policy and subsequent review may make the process unfair – that is not for me to decide – but I cannot see anything that shows that the alleged protected disclosure were the real motivation for what happened.
22. Finally Mr Chapman points to a difference in treatment. He cites another employee, CB, whom he says breached policies and whose conduct was not investigated, but rather covered up. I accept this could in principle provide evidence that shows the sole or principal reason for dismissal was the protected disclosure, though I reflect that the reverse burden of proof found in **Equality Act 2010**-claims does not apply here. However the documentation shows that the NHS Trust did conduct an investigation into Mr Chapman's allegations about CB. The report again appears to be thorough, detailed and appropriate. There is nothing shown to me to suggest cover up.
23. In the circumstances I would have concluded that it was not likely that Mr Chapman would succeed in his claim that the sole or principal reason for dismissal were the alleged protected disclosures.. Therefore even at this second stage, his application would have failed.
24. Therefore I dismiss his application.

Employment Judge Adkinson

Date: 26 June 2024

JUDGMENT SENT TO THE PARTIES ON

....28 June 2024.....

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FOR THE TRIBUNAL OFFICE

Notes

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