EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case No: 8001075/2024 Interim Relief Hearing at Edinburgh on 9 August 2024

Employment Judge: M A Macleod

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Alastair Logan	**Claimant** **In Person**
Centrica PLC	**Respondent** **Represented by** **Ms H Hogben** **Barrister**

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DECISION OF THE EMPLOYMENT TRIBUNAL

The Decision of the Employment Tribunal is that the claimant's application for Interim Relief is refused.

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REASONS

1. This case called for a Hearing at 10am on 9 August 2024 on an application by the claimant for interim relief under section 128 of the Employment Rights Act 1996.

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2. The 2 claims made by the claimant in his ET1 claim form to which this application relates are:

(1) A claim of automatically unfair dismissal under section 103A of the Employment Rights Act 1996 ("ERA"), on the grounds that he had made protected disclosures; and

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(2) A claim of automatically unfair dismissal under section 104F(1) of ERA, on the grounds that he had been blacklisted contrary to Regulation 3 of the Employment Relations Act 1999 (Blacklists) Regulations 2010 ("the 2010 Regulations").

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3. In accordance with Rule 95 of the Employment Tribunals Rules of Procedure 2013, the Tribunal confirmed at the outset that no oral evidence would be heard from the parties, and that a decision would be made on the basis of submissions and documents presented by the parties. The parties helpfully provided separate bundles of productions, and skeleton arguments, to which they both spoke.

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4. The claimant provided two separate documents, one contained within his bundle entitled "Skeleton of application to provide focus to key evidence within the bundle", and the other entitled "Skeleton argument". When he finished summarising the first of these documents, it was clear he anticipated that the respondent would then deliver their submission, whereupon he would be given the opportunity to speak to his second document. I clarified that I expected the claimant to make his full argument, and to go through the second document at the same time as making his submission on the first. I advised him that I would then hear the respondent's submission, and thereafter give him the opportunity to respond to any matters raised in their submission which he wished to take up at that point.

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5. The claimant responded that he was content to proceed in this way and that he did not consider any disadvantage to arise to him from this.

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6. Accordingly, I heard from the claimant first, then from Ms Hogben, and finally the claimant made a further submission in response thereto.

7. Having heard submissions, I adjourned at approximately 1.30pm, and resumed the Hearing at 3pm in order to deliver the following oral decision.

8. In order to succeed with his application for interim relief, the claimant must demonstrate, in accordance with section 129 of ERA, that it is likely that in

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determining his claim, the Tribunal will find that the reason or principal reason for his dismissal was that he made a protected disclosure or protected disclosures, and/or that he was blacklisted contrary to section 104F(1) of ERA.

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9. Both parties referred me to **Taplin v C Shippam Ltd [1978] IRLR 450**, in which the EAT defined likely as meaning "a pretty good chance of success". Further, Mr Justice Underhill, in **Ministry of Justice v Sarfraz [2011] IRLR 562, EAT,** observed that the test of a pretty good chance does not simply mean "more likely than not" but connotes a significantly higher degree of likelihood, "something nearer to certainty than mere probability."

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10. Dealing first with the claim of automatically unfair dismissal for having made protected disclosures, it is noted that the claimant seeks to rely, in his ET1, on 3 protected disclosures. In order to assess the interim relief application, it is necessary to consider the terms of the claims pled by the claimant, and not to take into account any other matters to which the claimant may wish to draw attention.

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11. That means looking to the disclosures currently alleged in the ET1 paper apart. It is noted that the claimant referred in his submission to **Chesterton Global & Anor v Nurmohamed & Anor (Rev 1) [2017] EWCA Civ 979** (as did the respondent), in reliance on the proposition that his disclosures should be considered to have been made in the public interest.

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12. Ms Hogben also referred to **Cavendish Munro Professional Risks Management Ltd v Geduld 2010 ICR 325**, which set out the principle that a worker's disclosure should disclose facts, and not merely amount to allegations.

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13. I accept that multiple points may comprise a disclosure, as a series of disclosures.

14. Accordingly, in this case, the claimant sets out 3 alleged disclosures. I do not wish to make any findings in fact which may be said to bind any future Tribunal dealing with this claim, nor do I consider it to be my task in this

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application to determine whether or not these claims have any reasonable prospect of success, in the language of Rule 37.

15. The first disclosure or disclosures is set out in paragraph 9 of the ET1 paper apart (R18), the claimant asserts that he raised protected disclosures between 1 July 2022 and 1 May 2024 about, broadly, data issues. He does not set out in his claim any detail about the individual disclosures on which he seeks to rely, when they were made, to whom and how; nor how they could be said to be in the public interest. On that basis, I cannot find that the claimant has a pretty good chance of succeeding with his claim in relation to these alleged disclosures as he has not clearly specified what those disclosures were, and under what specific sub-section of section 43B of ERA they fell.

16. The second disclosure was said, at paragraph 15 (R19), to have comprised disclosures which he made on 24 March 2023 in a detailed Avoidance of Harassment and Bullying in the Workplace complaint. He set out five categories of conduct about which he was complaining. Again, there is some difficulty in identifying what specific disclosures of information the claimant made in this document, as he simply outlines the headings of his complaints. The respondent submits that these were not disclosures of information but merely allegations. Without reaching any definitive conclusion at this stage, I tend at this stage to agree with that submission. The lack of detail, and how these matters are said to be specifically related to the sub-sections of section 43B, means that while the claimant may persuade a Tribunal that these were in fact disclosures of information following the hearing of evidence, I am unable to find that there is a pretty good chance that the Tribunal would make such a finding, nor that the allegation have a pretty good chance of success in these circumstances.

17. The third disclosure was said, at paragraph 27 (R23), to have been contained in multiple concerns raised with Jana Siber on 11 April 2024, but does not say in his pleadings what those concerns were, nor how they could be said to meet the definitions within section 43B of ERA. In these

circumstances, it cannot be said that the claimant has a pretty good chance of succeeding with this aspect of the claim.

18. It is important to note that I must review the terms of the claim form as setting out the claimant's claim, and not take into account any additional material which the claimant has introduced or referred to in his submissions before me. This process requires an assessment of the claim as pled, not of the claim as it might have been pled. Further, a reference to a document which the respondent has seen, such as a grievance or a complaint document submitted as part of its internal processes, does not form part of the claimant's claim. The respondent, and the Tribunal, can only address the claim as it has been presented to the Tribunal. If the grievance or complaint documents set out clear details about a complaint or concern, that does not affect the terms of the claim before the Tribunal.

19. In assessing this matter, therefore, I have restricted myself to a review of the claimant's pleadings as they currently stand.

20. On top of this, I have been directed to other documents, including the witness statement of Andrew Swanson and to the dismissal letter which he sent to the claimant. It is unnecessary for me to go into detail as to the content of these documents, beyond observing that it is clear that there is a significant factual dispute between the parties as to the meaning of the letter of dismissal, and whether Mr Swanson was honest in saying that the protected disclosures, and his knowledge or lack thereof of the details of the disclosures, played any part in his decision to dismiss the claimant.

21. The claimant made a strong submission that it is effectively self-evident that there can be no innocent explanation for the dismissal in light of what he considers to be flaws in the process, and dishonesty on the part of the respondent's witnesses. I cannot sustain that submission, since in my judgment it is impossible to reach any safe conclusion on this matter without hearing evidence from the relevant parties and witnesses.

22. I have therefore come to the conclusion that the claim of automatically unfair dismissal set out under section 103A of ERA is not one which can be said to have a pretty good chance, to be likely, of succeeding.

23. The second claim made by the claimant is that the reason for dismissal was that the claimant was blacklisted by the respondent, contrary to section 104F(1) of ERA, by reference to Regulation 3 of the 2010 Regulations.

24. It is very difficult to disentangle the precise basis of the claimant's claim here. He has made regular reference to his treatment over a period of years by a number of employers. He submitted that the source of the blacklisting was his treatment at Sellafield, where he said that he had been assaulted. In order to succeed with his claim, the claimant will require to prove wrongdoing on the part of the respondent, and not of any previous employer. He must show that they blacklisted him in terms of Regulation 3.

25. Regulation 3(1) provides that *"no person shall compile, use, sell or supply a prohibited list."*

26. Regulation 3(2) defines a prohibited list as a list which:

(a) "contains details of persons who are or have been members of trade unions or persons who are taking part or have taken part in the activities of trade unions, and

(b) Is complied with a view to being used by employers, or employment agencies, for the purposes of discrimination in relation to recruitment or in relation to the treatment of workers."

27. The claimant has not clearly set out that either of these situations are likely to be demonstrated by the evidence in this case. There is no doubt that the claimant is convinced that there is an industry-wide blacklisting to which he has been subjected, and that the respondent is responsible for perpetuating the conduct of others. If I may say so, there is a degree of sophistry in the claimant's language here; he is seeking, subtly, to make the respondent responsible for a campaign of blacklisting while denying that he is saying that. It is unclear what basis he has for a claim under section 104F or the

2010 Regulations, or that that claim will be made out. Accordingly, I am not satisfied that he has demonstrated that he has a pretty good chance of success with this claim.

28. I noted that the claimant made regular references to procedural failings and unfairnesses inherent in the dismissal process. Caution must be exercised in these circumstances not to stray into the area of “ordinary” unfair dismissal. The issue is not whether the claimant was fairly dismissed in the general sense, but whether he was dismissed for either or the reasons which the claimant asserts were the real reasons for his dismissal. It is therefore my conclusion that the claimant is not likely to succeed in his claim under this heading.

29. It is therefore my judgment that the application for interim relief should be refused.

30. I observe that my task in this hearing was to determine this application alone. My decision has no bearing on any final Judgment which may be reached in this case by the Tribunal which shall have the benefit of oral testimony, refined by cross-examination, and consideration of all relevant documentary evidence.

Employment Judge:	**M A Macleod**
Date of Judgment:	**12 August 2024**
Entered in register:	**19 August 2024**
and copied to parties	

I confirm that this is my Decision in the case of Logan v Centrica PLC and that I have signed the Decision by electronic means.