



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms G North  
**Respondent:** Learning Space  
**Heard at:** South London (by video)  
**Before:** Employment Judge Evans

## WRITTEN REASONS PROVIDED FOLLOWING A REQUEST MADE PURSUANT TO RULE 62(3)

The Tribunal gave oral judgment with reasons in this claim on 6 September 2024. On 11 September 2024 the claimant made a request for written reasons pursuant to Rule 62(3) of the Employment Tribunal's Rules of procedure. Those written reasons are set out below.

The Tribunal's judgment given on 6 September 2024 was that: the claimant's application for interim relief pending the determination of their claim of unfair dismissal fails and is dismissed.

## REASONS

### Preamble

1. On 7 August 2024 the claimant presented a claim of unfair dismissal to the Tribunal following her dismissal with effect from 2 August 2024. Within that claim she included a claim for interim relief pursuant section 128(1) of the Employment Rights Act 1996 ("the 1996 Act") on the grounds that she was unfairly dismissed contrary to section 103A of the 1996 Act. That application was listed for hearing before me today.

### The hearing today, 6 September 2024

2. The respondent had produced a bundle running to 124 pages. In addition, I had the following documents before me provided after the bundle had been sent in: a "rebuttal of the respondent's comments" from Mr T Bullen dated 5 September 2024; a draft witness statement from Mr Nahajski, the chair of the trustees of the respondent; and a letter from the respondent to the claimant dated 19 June 2024. The parties confirmed that those were all the documents they relied on.

3. Having checked the documents with the parties, and having discussed the issues as set out below, I then heard submissions. I did not hear any oral evidence. The submissions were brief, and I adjourned at 11.40am to deliberate. I gave oral judgment at 12.20pm.

### **The issues for the Tribunal to decide today**

4. There was a brief discussion at the beginning of the hearing in which I outlined what I considered to be the relevant law (as set out below) and identified what appeared to me to be the relevant issues. The parties did not disagree with my identification of the relevant issues.
5. The claimant contends that the reason for her dismissal given by the respondent – gross misconduct – was not in fact the real reason. The real reason, she says, was that she made protected disclosures (with the result that her dismissal was automatically unfair under section 103A of the 1996 Act).
6. As such, what I had to consider was whether it was “likely” that on determining the claimant’s unfair dismissal claim the Tribunal would find that the reason (or if more than one the principal reason) for the dismissal was that the claimant had made one or more protected disclosures (with the result that the dismissal was unfair under section 103A of the 1996 Act).

### **The law**

7. An interim relief hearing is a hearing at which the Judge must make an “expeditious summary assessment” (London City Airport Ltd v Chacko [2013] IRLR 610). This is reflected in Rule 95 of the Tribunal’s Rules of Procedure which provides that at such a hearing “...the Tribunal shall not hear oral evidence unless it directs otherwise”.
8. Section 129(1) of the 1996 Act sets out the relevant test on an application for interim relief. It provides where relevant that:

*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(d), 102(1), 103 or 103A, or*

9. The meaning of “likely” in this context has been considered in a number of authorities. The oldest of these is perhaps Taplin v C Shippam Ltd [1978] IRLR 450, in which Slynn J held, at [23], that “likely” means does the claimant have a “pretty good” chance of success?
10. More recently, in Ministry of Justice v Sarfraz [2011] IRLR 562, it was interpreted by the then President of the EAT, now Lord Justice Underhill, as meaning “a significantly higher degree of likelihood” than just more likely than not. This is a fairly high bar, and the reason for it

being a fairly high bar was explained, again by the then President, in Dandpat v University of Bath [2009] UKEAT/0408/09/LA. He explained the rationale for keeping it high (at [20]): if interim relief is granted, “*the respondent is irretrievably prejudiced because he is obliged to treat the contract as continuing, and pay the claimant, until the conclusion of proceedings: that is not [a] consequence that should be imposed lightly.*”

11. Further, in order to succeed the claimant must show that it is “likely” that all the necessary component parts of the relevant claim will be proved. So, in the context of a claim that the reason or principal reason was that the claimant had made a protected disclosure, the claimant would need to show this in relation to matters including:
  - 11.1. that she made a disclosure of information;
  - 11.2. that she believed that the disclosure tended to show one of the types of wrongdoing identified in section 43B(1) of the 1996 Act;
  - 11.3. that such belief was reasonable;
  - 11.4. that she believed that the disclosure was in the public interest;
  - 11.5. that such belief was reasonable;
  - 11.6. that the reason or principal reason for the dismissal was the fact that she had made a protected disclosure.

### **The parties’ respective cases & the documents provided**

12. The factual background to the events leading to the claimant’s dismissal as set out in her “disciplinary hearing statement” (page 66 of the bundle) and as shown by other documents in the bundle included the following:
  - 12.1. Her longstanding involvement with the respondent, a charity the claimant says she founded 27 years ago;
  - 12.2. The appointment of Mr Nahajski to join the board of the respondent in late 2023, with the initial approval of the claimant, and Mr Nahajski becoming Chair, also in late 2023;
  - 12.3. Conflict between the claimant and Mr Nahajski from a fairly early point in his tenure;
  - 12.4. The respondent facing substantial financial difficulties as a result of the loss or potential loss of a contract or contracts representing the bulk of its income;
  - 12.5. Serious concerns on the part of Mr Nahajski reflected in a serious incident report he made to the Charity Commission on 31 January 2024 which covered the loss of the contract(s), reputational damage and lack of appropriate governance.
13. Against this background, the claimant says she made protected disclosures as follows (the grounds of claim (“GOC”) began at p15 of the bundle):

- 13.1. **By an email of 20 February 2024:** in which she says she expressed concerns that potential harm was being done to the charity by dysfunctional relationships.
  - 13.2. **By an email of 21 February 2024:** in which she says she expressed concerns about poor management of the charity and personnel by the new chair.
  - 13.3. **By an email of 22 February 2024:** in which she says she referred to what she regarded as the new chair's chaotic decision-making processes.
  - 13.4. **By an email of 26 February 2024:** in which she says she complained the chair had exceeded his authority and exposed the charity to unnecessary commercial risk as well as not acting in good faith to promote the best interests of the charity.
  - 13.5. **In a meeting on 11 March 2024 with Trustee Lesley Pitt:** in which the claimant says she made comments about the chair's "command and control management style", the growing disquiet among staff, and the chair's previous unilateral action without full board approval.
  - 13.6. **By an email exchange of 15 March 2024:** in which the claimant says she raised concerns with the chair following his presentation for payment of an unitemised invoice from a firm of solicitors.
  - 13.7. **By an email of 6 April 2024 to the Trustees:** in which the claimant says she expressed concern regarding safeguarding risks to service delivery and potential harm to children, young people and families in the context of what she says she described as unprecedented levels of staff sickness, absenteeism and burnout.
14. In fact, however, the only alleged protected disclosures referred to by the claimant during the interim relief hearing were those of 26 February, 11 March, 15 March and 6 April 2024.
15. The respondent levelled the following disciplinary allegations at the claimant by letter of 19 June 2024 (page 53 of the bundle):

*On or about Monday the 25th of March 2024, you allegedly appointed your husband to a paid position within the organisation, without following due and proper recruitment processes, resulting in financial gain and / or conflict of interest.*

*On 20 February 2024 you allegedly reported to the Board that following discussion with the Learning Space finance manager you would not be implementing any of the interim finance measures as requested by the Board. It is alleged that your actions put Learning Space at risk of non-compliance with its legal responsibility in regard to financial management and governance.*

*Failure to follow a reasonable management instruction by breaching the terms of your suspension and making contact with members of the senior leadership team at Learning Space and more latterly the majority of staff at Learning Space when specifically instructed not to.*

16. The respondent had in fact suspended the claimant on 8 April 2024 (page 43 of the bundle) on informing her that the first two of the allegations listed above would be investigated. There was then an investigation meeting in relation to the first two charges. The meeting was chaired by an external consultant. On 11 June 2024 the respondent wrote to the claimant, setting out its view of the evidence given by the claimant during the investigation meeting (page 45 of the bundle). The respondent said in that letter that it would invite the claimant to a disciplinary hearing to consider three disciplinary allegations, which it subsequently did by its letter of 19 June 2024 referred to above.
17. The claimant addressed these allegations in great detail in her “disciplinary hearing statement” which ran to over 20 pages (page 66 of the bundle). It is worth noting that the claimant’s response to each of these allegations was nuanced – that is to say she did not completely deny the facts underpinning any of the three allegations. I do not seek to set it out in full, but her response included the following points:
- 17.1. **The appointment of her husband:** she accepted she had appointed her husband to a paid role, but argued, in summary, that “it would be hard to justify the time and cost of any formal recruitment process” given the job was only 3 hours per week.
- 17.2. **Would not implement interim finance measures:** she argued that there was no meeting of the board on the date cited and so the board could not have made any requests. However, she goes on to state: “I required that the Board produce a properly constructed policy document on the financial arrangements that they wanted implemented. This could then be formally adopted as an instrument of the charity. Trustees failed to do that”. This strongly implies that there was some disagreement between the claimant and at least some of the trustees about the implementation of interim finance measures.
- 17.3. **Failure to follow a reasonable management instruction:** the claimant argued that the instruction was not reasonable but did not deny at least some of the contact alleged.
18. The decision to dismiss the claimant was communicated to her following a disciplinary hearing on 29 July 2024 by a letter dated 1 August 2024 (there was a copy of the letter with the claimant’s comments in relation to it at page 115 of the bundle). The letter considers each of the allegations, summarises the claimant’s response to them and gives detailed reasons for upholding each of the allegations.

## **Conclusions**

19. It does not appear to me to be “likely” that the Tribunal deciding the claimant’s claim of unfair dismissal will conclude that the reason or principal reason for her dismissal was that she had made one or more protected disclosures. That is to say it does not appear to me to be “likely” that the Tribunal will conclude that the claimant’s dismissal was automatically unfair under section 103A of the 1996 Act.
20. I have assumed for the purpose of this decision only that the claimant will be able to persuade the Tribunal that she made protected disclosures as claimed. I have made this assumption in the interests of dealing with the application within the time allotted because, even having

made this assumption, it does not appear to me “likely” that the reason or principal reason was that she had made one or more protected disclosures. This is for the following reasons:

- 20.1. The serious incident report of 31 January 2024 is consistent with the respondent’s case that the new chair had serious concerns before any of the alleged protected disclosure were made and that these concerns involved the claimant to some extent.
- 20.2. Further and separately, the dismissal followed an investigation process involving external consultants which appears to have focused in some detail on the allegations for which the respondent says the claimant was ultimately dismissed. The process does not appear to have been superficial or obviously contrived.
- 20.3. Further and separately, the allegations were allegations of a kind that many employers would have taken seriously and for which, if proven, they might have dismissed an employee. In particular, perhaps, the allegation that the claimant had employed her husband without due process contemporaneously to there being a dispute about whether he should be a trustee was an allegation that, in my view, most employers would have taken seriously.
- 20.4. Further and separately, the claimant did not deny the allegations outright, i.e. deny that the relevant factual conduct had not occurred at all. Her response was more nuanced as set out above.
- 20.5. Further and separately, the dismissal letter gives detailed reasons for the decision to dismiss by reference to evidence the respondent says it obtained. Again, it does not appear to me to be a superficial or obviously contrived document.
- 20.6. Further and separately, there is no evidence that has been brought to my attention that points clearly to the actual reason for dismissal being the alleged protected disclosures. Indeed, the claimant herself accepted this when she said in her statement in support of her interim relief claim (page 109 of the bundle):

*For clarity, I must stress no single protected disclosure that I had previously made represents a “smoking gun” in my dismissal from Learning Space. However, I do believe that it is possible to track a direct causal link between my increasing concerns for the welfare and integrity of the charity, its staff and, above all, the children and young people it serves with the increasing fabrication of evidence by Trustees to support their unfounded charges of gross misconduct.*

- 20.7. The evidence which the claimant thought pointed most clearly in this direction was the emails at page 114 of the bundle in which Mr Nahajski refers to possible disciplinary action against the claimant. However, the emails post-date the serious incident report and, taken at face value, that is a document which suggests or at the very least implies that Mr Nahajski had by the end of January concerns about the claimant’s management of the respondent. They also post-date the comments the claimant is alleged to have made in February as set out above about implementing interim finance measures. The emails are not as such as strongly supportive of her claim as the claimant suggests.

21. However, I should of course remind the parties that the task before me today was not the task of the Tribunal at the final hearing. In particular, given the summary nature of the assessment today, I have not had the benefit of hearing the oral evidence of witnesses. Consequently, it is of course the case that at the final hearing the Tribunal may conclude that the reason or if more than one the principal reason for the claimant's dismissal was indeed that she made protected disclosures – but it does not appear to me “likely” that it will do so.

22. The claimant's application for interim relief therefore fails and is dismissed.

Employment Judge Evans

Date written reasons signed: 17 September 2024

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