



EMPLOYMENT TRIBUNALS

Claimant: Miss Naomi Watson Grant

Respondent: Affinity Renewables Ltd

**At an Interim Relief Hearing
at the Employment Tribunal**

Heard at: Lincoln

Heard on: 3 October 2024

Before: Employment Judge Hutchinson (sitting alone)

Appearances:

Claimant: Gemma Hunns, Partner

Respondents: Will Haines, Consultant

JUDGMENT

The Employment Judge gave Judgment as follows:

1. The application for interim relief fails and is dismissed.

REASONS

Background

1. The Claimant presented her claim on 17 September 2024. She had been employed by the Respondent as an HGV Driver from 9 April 2024 until her dismissal on 11 September 2024.
2. She claims unfair dismissal only under section 103A Employments Rights Act 1996 ("ERA"). She says that the reason or principal reason for the dismissal was that she made a protected disclosure in respect of the Respondent's breach of a legal obligation to pay her Tax, National Insurance, and pension.
3. She seeks interim relief under section 128 asking for the Tribunal to reinstate her or re-engage her.
4. She says that she is likely to succeed at the Final Hearing.

The Hearing Today

5. At the hearing today the Respondent's appeared via their representative Mr Haines. The Respondent disputes the Claimant's claim that she was dismissed because she made a protected disclosure. It is their case that the Claimant was dismissed for gross misconduct namely sending text messages whilst she was driving an HGV vehicle.
6. They oppose the application for interim relief and say that it is not likely that the Claimant will succeed.

The Matters Before Me

7. I had before me the following documents:
 - 7.1. The ET1 and particulars of claim.
 - 7.2. A file of papers sent by Miss Watson Grant on 29 September 2024.
 - 7.3. A bundle of documents from the Respondent.
 - 7.4. Witness statements of Trudi Hughes and Declan Round for the Respondents.
 - 7.5. Written submissions on behalf of the Respondents.
8. I also heard submissions from Miss Hunns and briefly from Mr Haine

9. The Law

10. The claim of unfair dismissal is made under section 103A ERA which provides:

"An employee who is dismissed shall be regarded for the purpose of this part as unfairly

dismissed if the reason or if more than one the principal reason of the dismissal is that the employee made a protected disclosure.”

11. The Claimant will have to satisfy the Tribunal that she made a qualifying disclosure which is defined in section 43B(1)(a)-(f) ERA:

“(1) In this part a “qualifying disclosure” means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following;

(b) That a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject.”

12. Mr Haines submits the Claimant’s own contractual concerns do not satisfy the second element of the of the five as set out in the EAT case of **Williams v Brown UKEAT/004/19**.

13. The application for interim relief is made under section 128 ERA which provides:

“(1) An employee who presents a complaint to an Employment Tribunal that he has been unfairly dismissed and;

(a) For the reason (or if more than one the principal reason) for the dismissal is one of those specified in:

(i) 103A.”

14. Section 129 provides:

(1) This section applies where, on hearing an employees 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) The reason (or if more than one the principal reason) for the dismissal is one of those specified in:

(i) 103A.”

15. I have to be satisfied that the Claimant is likely to succeed with her claim.

16. I referred myself 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 582**
- **Dandpat v University of Bath UKEAT/1408/09/LA**
- **Raja v Secretary of State for Justice UKEAT/1364/09/CEA**

17. 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.

- 18. I am not here to make any final decision on the issue of the reason or principal reason for dismissal but to look at the material before me and hear the submissions and decide whether the Claimant has established that it is likely the Tribunal will find the reason or principal reason for the dismissal was a prescribed reason.
- 19. I am reminded that interim relief is a draconian measure and runs contrary to the general principle there should be no compulsion in personal service. It is not a consequence that should be imposed lightly.

My Conclusions

- 20. I am satisfied in this case that the claim is hotly contested and will need to be determined at a full hearing on proper consideration of all the evidence.
- 21. The Respondents say that the Claimant’s concerns were part of a short-lived private workplace dispute and that there was no evidence of deliberate wrongdoing on behalf of the employer.
- 22. They also submit that there was no element of public interest to the Claimant’s disclosure so it could not qualify for protection.
- 23. In any event they say that the reason for the dismissal related to her conduct namely texting whilst driving an HGV vehicle and had nothing to do with the dispute.
- 24. Although there was no hearing in respect of her dismissal there was no requirement to do so because the Claimant only had short service with the employer.
- 25. As I have said interim relief is a draconian measure involving the continuation of the contract of employment and has a high burden of proof.
- 26. In this case I am not satisfied that the Claimant has overcome that burden and the application for interim relief therefore fails and is dismissed.

Employment Judge Hutchinson

Date: 28 October 2024

JUDGMENT SENT TO THE PARTIES ON

.....06 November 2024.....

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