EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
J Ahmed	v	Anglo Limited

Heard at: Watford by CVP **On**: 25 October 2024
Before: Employment Judge Anderson

Appearances
For the claimant: In person
For the respondent: R Pal (litigation consultant)

JUDGMENT

1. The claimant's application for interim relief is refused.

REASONS

Background

1. The claimant was employed by the respondent, an organisation providing residential summer schools to foreign students, as a workshop leader from 16 July 2024 on a temporary contract. She was dismissed on 17 July 2024. This claim was filed on 23 July 2024. It was exempt from being filed with an early conciliation certificate as a valid interim relief application was made.

2. The claimant claims that she was automatically unfairly dismissed because she made a protected disclosure (S103A Employment Rights Act 1996). Her claim is that on 30 June 2024, on a student trip, she told her manager that the students should have a number of short periods of free time rather than one lengthy period as this would be a safeguarding issue. She states that this is a protected disclosure, and she believed it raised a health and safety issue. The claimant was dismissed on 17 July 2024. The respondent says this was for capability issues. The claimant appealed. Her appeal was successful, and the respondent offered her reinstatement on 2 August 2024. On 9 August the claimant refused the offer of reinstatement. The bundle contained the ET3 but the respondent's grounds were not before me. Mr Pal said that the respondent denied that the claimant had made a protected disclosure, and its view was that she had resigned on 9 August 2024.

The Hearing

3. The respondent filed a bundle of documents running to 40 pages and a witness statement from Stephanie Partridge. The claimant filed a number of documents including payslips and emails between the claimant and the respondent.

4. I discussed with the claimant that she had been offered reinstatement and had been paid from the date of dismissal until she refused reinstatement and asked her whether she wished to pursue her application. She said she did as she wanted the tribunal to make a reinstatement decision. I asked the claimant why this would be different from the respondent offering reinstatement and said that I could do no more than it had already offered. The claimant's response was again that the tribunal should decide and that it had not been acknowledged by the respondent that its dismissal reasons were wrong. She said that she wanted money to pay for legal advice. I explained that as this was an interim relief hearing I would be making no findings about the respondent's actions. That was a matter for the final hearing. I noted also that I could not award compensation. The claimant said she wished to continue with her application, and I decided to proceed.

Submissions

5. The claimant said that on a trip to Cambridge on 6 July 2024 she had told her manager that she wanted to take the students on a tour with short breaks but the manager, Shelci, had told her not to do that. She was told the tour visits should all take place first and then the students could have a long break. On 16 July she was told she was being dismissed over a safeguarding and leadership issue. Dismissal took effect on 17 July 2024. It was clarified to her in a conversation on 22 July with Dean that her dismissal related in part to the trip on 6 July and that it was because she had wanted to give the students a long break, not Shelci. The claimant said that she believed that her disclosure on 6 July was argued against and ignored. If mistakes are made like this within a company such as Anglo there is a worry for students in the future. The claimant said that she clarified to Dean in the phone call of 22 July 2024 that she made a disclosure to Shelci, and she felt that it had been disregarded.

6. Mr Pal, for the respondent said that the respondent's position is that no protected disclosure was made by the claimant. What she has raised are grievances or internal complaints and that she was seeking clarification of the respondent's use of the word safeguarding. It was clarified to her that the respondent was making reference to safeguarding concerns about her work and duties and the other term used in the explanation for her dismissal was 'leading' which again related to her work generally. The claimant raised no health and safety concern in relation to students. The reason for the dismissal was capability and then, on review, she was reinstated. When she was initially dismissed, this was for the standard of her work. On all trips there are adults in attendance from the students' native countries. Children would not have been unsafe. The claimant was dismissed on grounds of capability and it was clear from the documents that the claimant's performance was being questioned by day 11 of her employment.

The Law

7. *S103A Employment Rights Act 1996 – Protected Disclosure*
   An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure.

8. *S43A Employment Rights Act 1996 – Meaning of 'protected disclosure'*
   In this act a protected disclosure means a qualifying disclosure as defined by section 43B which is made by a worker in accordance with any of sections 43C to 43H.

9. *S43B Employment Rights Act 1996 - Disclosures Qualifying for Protectio*n
   (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—
   …

   (d) that the health or safety of any individual has been, is being or is likely to be endangered,
   …

10. Pursuant to s43C a qualifying disclosure is made if the worker makes the disclosure to his employer.

11. *s128 Employment Rights Act 1996 — Interim relief pending determination of complaint.*
   (1) An employee who presents a complaint to an employment tribunal that he has been unfairly dismissed and—
   (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,
   …
   may apply to the tribunal for interim relief.
   …

Decision and Reasons

12. In a claim for interim relief that tribunal's task is to make '*a broad assessment on the material available to try to give the tribunal a feel and to make a prediction about what is likely to happen at the eventual hearing before a full tribunal'* [*Ryb v Nomura International plc ET Case No.3202174/09].* The tribunal does not make findings of fact when deciding an interim relief application but must make *'an expeditious summary assessment'* [*London City Airport Ltd v Chacko 2013 IRLR 610, EAT].*

13. The claimant's case is that she was dismissed for making a protected disclosure.

14. The claimant said in submissions that she made a disclosure to Shelci, her manager, on a trip to Cambridge on 6 July 2024. The evidence in the bundle from Shelci is that she was with the claimant on 30 June on a trip to Cambridge and did not attend the trip on 6 July 12024. In her grounds of claim the claimant refers to the disclosure being on 30 June 2024. I have assumed that the claimant claims the alleged disclosure was made on 30th June despite her oral submissions.

15. The documents before me included an email from Shelci setting out that the claimant wanted to start the trip with free time for the students and a group leader complained, so Shelci had to step in. The claimant says she planned to take students to five visits before lunch and five after lunch and was overruled. She was told to do all of the visits in the morning and allow the students free time in the afternoon. There were no documents before me relating to this exchange from the respondent, but it is clear that the claimant's dismissal was overturned at some point after she raised this with Dean on 22 July 2024, i.e. that it had been the claimant who was opposed to the long afternoon break. However, there is no documentary evidence either way from the parties as to whether this was an operative fact in the decision to uphold the appeal against dismissal.

16. On balance I accept, on the limited evidence before me, that the claimant may be able to show that there was a dispute about the way the tour should run, that she said that it should be in single visits followed by short free time breaks, she was overruled and then did as she was instructed to do by Shelci.

17. However, I am not convinced that the claimant is likely to succeed in showing that her statement on 30 June 2024 was a protected disclosure for the purposes of s43B of the Employment Rights Act 1996, i.e. that it was a disclosure of information which in the reasonable belief of the worker making the disclosure is made in the public interest and tends to show that the health or safety of any individual has been is being or is likely to be endangered.

18. From the grounds of claim it appears that the first time the claimant is alerted to the fact that the free time issue was potentially a safeguarding issue, was when Dean clarified the respondent's meaning of safeguarding in relation to her dismissal, during a telephone conversation on 22 July 2022.

19. At no point in the protracted email discussion concerning the claimant's dismissal and appeal has she said that she believed her dismissal was the result of making a protected disclosure. The exchange is about the claimant disputing that her work was not of the standard required. The first reference to whistleblowing is when she refuses the offer of re-instatement on 9 August 2024. Notably this, and the conversation referred to with Dean on 22 July 2022, took place after the claimant was dismissed. The claimant said in submissions today that it was a concern for the future for student safety if Anglo did not follow its policies, but that is not something that she appears to have raised with the respondent before her dismissal and although she may have disputed the format of the tour with Shelci it is not clear that she did so because she believed there was a health and safety concern. There is no

indication that she was raising the format of the tour to Shelci because she believed it was in the public interest to do so. The claimant confirmed that the disclosure was only to Shelci on that day in discussions about the Cambridge tour and not through any formal safeguarding procedure.

20. Furthermore, there are documents before me setting out the claimant's poor performance, which, the respondent says was the reason for her dismissal, and which indicate that the dismissal was for the reason of capability.

21. In accepting an application for interim relief the tribunal must be satisfied that the claimant has *'a pretty good chance of success'* at the final hearing [*Taplin v C Shippam Ltd 1978 ICR 1068, EAT]*. Because this is an interim relief hearing there is no evidence given on oath, and as disclosure has not yet taken place, the documentation in front of me is limited. Keeping that in mind, it is my view that, based on what I have read and heard today, that the likelihood of the claimant being successful in a claim of automatically unfair dismissal by reason of whistleblowing is much lower than 'pretty good'.

22. I find that it is unlikely that the claimant can show that any statement she made on 30 June was a protected disclosure, i.e. a disclosure of information for the purposes of s43B Employment Rights Act 1996.

23. I find that it is unlikely that, even if the disagreement on 30 June 2024 had some connection with the claimant's dismissal and reinstatement, the claimant will be able to show that the respondent believed that the claimant had made a protected disclosure, and this was the reason for her dismissal. She has simply not referred to that in any of her pre-dismissal communications.

24. For these reasons the application for interim relief is refused.

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Employment Judge W Anderson

Date: 30 October 2024

Sent to the parties on: 15/11/2024

For the Tribunal Office