EMPLOYMENT TRIBUNALS

Claimant: **Ms M Urbaityte**

Respondent: **Collection Pot Limited**

Heard at: London South by video **On: 2 October 2024**

Before: Employment Judge Corrigan

Representation
Claimant: In person
Respondent: Ms L Badham, Counsel

JUDGMENT

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

REASONS

Provided at the claimant's oral request.

2. The claimant brings a complaint of automatic unfair dismissal because she made a public interest disclosure. She satisfied the time limits for making an application for interim relief.

3. She had applied for an adjournment of today's hearing which had not been dealt with by the tribunal but she agreed at the outset today that she was able to proceed with the hearing and no longer requested an adjournment.

4. I had regard to the claimant's original claim form (she agreed I could discount a number of amendments she had applied for), and four bundles of documents provided by the claimant (she had uploaded more but agreed that all the documents she wanted me to look at were in these bundles. I also had regard to two written witness statements, one by Mr Robert Haynes (CEO of the respondent) and the other by Mr Rowan Ling (Chief Product Officer and the claimant's line manager). The respondent also provided a bundle of documents.

5. As explained when I gave oral reasons these reasons explain my decision in more detail than the reasons I gave orally.

Relevant law

6. S129 Employment Rights Act 1996 states that an interim relief order should be made where it appears to the tribunal that it is likely that on the final determination of the complaint the tribunal will find that the reason or principal reason for dismissal is that the claimant made a public interest disclosure.

7. A protected disclosure is defined in s43B Employments Rights Act 1996 as follows:

   "…any disclosure of information, which in the reasonable belief of the worker…is made in the public interest and tends to show one or more of the following…. "that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject)…"

8. There used to be a requirement that the disclosure is made in good faith but that now only applies to remedy.

9. "Likely" in the context of s129 means "pretty good chance" of success at the final hearing (Taplin v C Shippam Ltd 1978 ICR 1068). It is a higher bar than the balance of probability. It is nearer to, but nevertheless is not as high as, certainty.

10. I am required to make an expeditious summary assessment as to how the matter appears/ the tribunal's impression based on the untested evidence advanced by each side. I am not to make findings of fact and I need to avoid any findings that might be taken to bind the tribunal hearing the case at final hearing.

11. I am just required to give the essential gist of my reasoning, sufficient to let the parties know why the application failed given the issues raised and test applied (Al Qasimi v Robinson EAT 0283/17).

12. The respondent's representative referred me to Ministry of Justice v Sarfaz (UK EAT/0578/10/ZT) and Blackbay Ventures Ltd t/a Chemistree v Gahir (UKEAT/0449/12JOJ). In Sarfaz it was said that in order to make an interim relief order the Judge had to have found it was likely that the Tribunal at the final hearing would find five things: (1) that the claimant had made a disclosure to his employer, (2) that he believed that that disclosure tended to show one or more of the things itemised at a) to f) under section 43B (above) (in this case that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject) (3) that the belief is reasonable (4) whether the worker had a reasonable belief that making the disclosure was in the public interest (substituted for the good faith requirement which is no longer applicable and following Blackbay Ventures) and (5) that the disclosure was the principal reason for the dismissal.

13. The respondent sought to rely on paragraph 21 of Sarfaz to argue that the claimant can only rely on the last disclosure as if any qualifying disclosure was the principal reason for dismissal it could only have been the most recent. I note that this is a comment made about the particular facts of that

case and is not a statement of legal principle and indeed Blackbay Ventures expressly acknowledges the possibility of the cumulative effect of a number of disclosures. She also argues that there is a requirement that the source of the legal obligation should be identified and capable of verification by reference to a statute or regulation. I note that in fact there is an exception for "obvious cases" but that in any event this is an exercise for the Employment Tribunal at the final hearing (and not the claimant in her claim or when making the disclosure).

Conclusions

14. I consider there is a pretty good chance the Claimant will succeed at the final hearing in showing that she made 2 similar public interest disclosures during her short employment.

15. The Claimant raised concerns about whether there were data protection breaches in a new product feature allowing users to invite others (using their email addresses) via the platform. Mr Ling himself says the claimant was concerned the feature could violate GDPR.

16. She also within the same month raised concerns that the respondent could be breaching the FCA (know your customer) requirements….. and there were disagreements with her Line Manager about this (both sides effectively accept this).

17. She has a pretty good chance of showing that at the time she raised the issues she had a reasonable belief that there was a breach of data protection and that she was raising the issues in the public interest.

18. She may well show that was the principal reason for her dismissal. Her dismissal seems to have been sudden without warning and outside the respondent's probationary processes. To the degree the respondent says the reason for dismissal was about the CEO's offence/and the other particular examples given in the respondent's evidence this appears an overreaction. There is also a dispute about whether her access to the IT system was removed. She says she lost access by 16 September, contrary to what the respondent says.

19. However, there is some evidence that there were genuinely concerns about the claimant's work in the text messages and clear irritation about her failure to respond as expected in relation to the 12 September request (even if that was an overreaction). Her line manager gives more detail in his statement.

20. For the reasons above the claimant has reasonable prospects of showing the principal reason for dismissal was that she made public interest disclosures but given the evidence of other reasons in paragraph 19 I cannot say on this summary assessment that she has a pretty good chance of showing that (that being a higher test than balance of probability or reasonable prospects).

Employment Judge Corrigan

Date: 8 November 2024

Notes

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