



# EMPLOYMENT TRIBUNALS

## Claimant

Miss Edohan Ofulue

v

## Respondent

Blossom HCG Limited

**Heard at:** Norwich (by CVP)

**On:** 26 February 2025

**Before:** Employment Judge Postle

## Appearances

**For the Claimant:** Mr Dawes, Trade Union Representative

**For the Respondent:** Miss Omotosho, Tribunal Advocate

## JUDGMENT on APPLICATION for INTERIM RELIEF

The Claimant's Application for Interim Relief is not granted.

## REASONS

### Background

1. This is an Application for Interim Relief made under s.161 of the Trade Union and Labour Relations Consolidation Act, namely: that an employee alleging that they have been unfairly dismissed on any grounds as set out in s.152 can claim Interim Relief.
2. Section 152 provides:
  - 152 Dismissal of an employee on grounds related to union membership or activities-
    - (1) For the purposes of unfair dismissal, the dismissal of an employee shall be regarded as unfair if the reason for it (or, if more than one, the principal reason) was that the employee-

- (a) was, or proposed to become, a member of an independent trade union, or
  - (b) had taken part, or proposed to take part, in the activities of an independent trade union at an appropriate time.
3. The other grounds in that section are not relevant for the purpose of these claims as the Claimant relies upon being a member of the independent Trade Union and / or taking part in the activities.
4. It is also the case that procedural requirements for the Interim Relief Application have been complied with, including a signed certificate from the Claimant's Trade Union Representative as required under s.161(3).

### **Evidence**

5. In this Hearing we have had a Bundle of documents consisting of over 300 pages, written submissions from the Claimant's Representative and lengthy oral submissions from both Mr Dawes representing the Claimant and Miss Omotosho, the Tribunal Advocate for the Respondents.

### **The Facts**

6. Essentially the Claimant's case is that once Mr Dawes, the Trade Union Representative, became involved the Respondents trumped up charges against the Claimant as they were frustrated, or as said by the Claimant frustrated by her being a member of a Trade Union and involving her Trade Union in various aspects of her employment.
7. The Respondent's case is that given the nature of the Respondent's business, running seven sites for very vulnerable adults with all manner of impairments, given the position that the Claimant held as a Care Assistant being a responsible position working nights, required her to be awake during her shifts for obvious reasons.
8. It then becomes disputed between the parties with allegations that the Claimant in 2023 / 2024 had been the subject of concerns in her role as a Care Assistant working on nights and whether she was sleeping on night duty. The events of those allegations and how they arise are disputed between the parties.
9. Further, in July 2024, when the Claimant is said to have failed to update her mandatory training, she was taken off shift and when she completed her training the Respondents say she returned to the rotas. The Claimant says that the reason for that was that she was involved with her Trade Union. The Respondents say it had nothing to do with her Trade Union membership but that they required her to complete the mandatory training.
10. The most relevant issue for the purpose of these proceedings, is the events of the night shift of 23 / 24 October 2024. The Respondents carry

out routine management checks on staff working nights to make sure they are awake and these are usually conducted on a monthly basis. The Claimant was found on the night shift sitting down in a chair with her coat on, a blanket over her head (possibly her coat hood) and sitting in darkness. As a result of that the Claimant was suspended, this is common ground. There was an investigation, this is also common ground. There are slightly differing views as to what was said at that investigation but for the purposes of these proceedings that does not affect the outcome. At the subsequent disciplinary the Claimant was accompanied by her Trade Union Representative.

11. There was an opportunity for the Claimant to answer the allegations which were clear, sleeping on duty and as a result of that the Respondents dismissed the Claimant by letter setting out the reasons.
12. It appears, on the face of it, that the events arise out of the allegation of the Claimant sleeping on duty.

### **The Law**

13. As has been largely agreed between the parties' Representatives the Law is whether it is likely that the Claimant will succeed at the Full Merits Hearing of an unfair dismissal complaint. The statutory test is not whether the claim is ultimately likely to succeed, but whether it appears to the Tribunal that this is likely.
14. A point emphasised by the Employment Appeal Tribunal in London City Airports Limited v Chacko [2013] IRLR 610.
15. What is relevant is that it does not require the Tribunal to make specific findings of fact. It must make a decision as to the likelihood of the Claimant's success at a Full Merits Hearing of the unfair dismissal complaint. It is based on the material before me and I have to make a broad assessment on the material giving me a feel to make a prediction about what is likely to happen at the eventual Hearing before a Full Tribunal.
16. When considering the likelihood of the Claimant succeeding at a Full Hearing, the correct test to be applied is whether he or she has a pretty good chance of success at the Full Hearing. That is a very high hurdle. The Employment Appeal Tribunal have expressly ruled out alternative tests such as is there a real possibility, a reasonable prospect of success, or a fifty one per cent chance? It is: is there a pretty good chance that the Claimant will succeed at the Full Merits Hearing? I repeat, that is a high hurdle to overcome.

### **Conclusions**

17. Given my broad assessment of the case on the facts before me, I am not persuaded that the Claimant at a Full Merits Hearing has a pretty good chance of success.

18. Given the reason for the dismissal advanced by the Respondents, is that the Claimant was believed to be sleeping on duty, after that followed an investigation and a full Disciplinary Hearing.
19. Therefore the causation and the reason for the Respondent's actions at the time of the dismissal was not because the Claimant was in some way involved in activities of a Trade Union, or being a member of a Trade Union, the fact is that the Respondents believe that the Claimant was sleeping on duty in circumstances where she was supposed to be awake and looking after vulnerable adults.
20. My broad assessment is that the Claimant does not have a pretty good chance of success at a Full Merits Hearing and therefore the Claimant's claim for Interim Relief is not well founded.

**Approved by:**

Employment Judge Postle

Date 17 March 2025

Sent to the parties on: 26 March 2025

For the Tribunal Office.

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