Case Number: 6018307/2024

EMPLOYMENT TRIBUNALS

Claimant: **Mrs S. Crabb**

Respondent: **Nuffield House Surgery**

Heard at: **East London Hearing Centre (via CVP)**

On: **10 March 2025**

Before: **Employment Judge G. King**

Representation
Claimant: In person
Respondent: Ms A. Acheampong

RESERVED JUDGMENT

On an application for interim relief:

1. The Tribunal grants the Claimant's application for interim relief.

2. The Tribunal orders the continuation of the Claimant's contract of employment as an Advanced Clinical practitioner from the date of termination of employment on 6 November 2024 until the determination or settlement of the complaint.

3. The Tribunal further orders the Respondent:-

    a. to pay to the Claimant the sum of £29,362.50, subject to usual deductions for tax and National Insurance; this resulting figure being normal pay due to the employee in the period 7 November 2024 to 7 March 2025. Payment is ordered on or before 31 March 2025 and

    b. from the 10 March 2025, and each week thereafter, to pay to the Claimant weekly wages of £1,687.50, subject to usual deductions for tax and National Insurance, until the final determination or settlement of the claim.

REASONS

Background

1. This hearing was to hear the Claimant's application for interim relief pursuant to section 128(1)(a)(i) of the Employment Rights Act 1996 (the *"ERA"*) alleging his dismissal as automatically unfair in terms of section 103A of the ERA.

2. On Friday, 7 March 2025, the Respondent's representative made an application to postpone the hearing. The application was sent the Tribunal by email at 17:43. The Respondent argued that a postponement was interests of justice for the following reasons:

    a. *"The proposed postponement would ensure procedural fairness, allowing both parties to be on an equal footing. Without full instructions, the Respondent's representative will be unable to properly present their case.*

    b. *Granting this application aligns with the Tribunal's duty to adopt a flexible approach where appropriate, in accordance with rule 3 (c) of the Employment Tribunal Rules of Procedure 2024.*

    c. *A postponement would be in accordance with the overriding objective, ensuring the Respondent has a fair opportunity to present their defence to the Claimant's application is in accordance with the overriding objective to permit the postponement to allow the Respondent to put their defence to the Claimant's application."*

3. The Claimant objected to the application by email sent to the Tribunal at 21:01 on Friday, 7 March 2025. As both these emails were sent outside the Tribunal hours, the application fell to be determined at today's hearing.

4. In further explanation to the Tribunal, Ms Acheampong said that Notice of Hearing was not received by the Respondent until Tuesday, 4 March 2025. The Respondent's practice manager, Ms Curnow, does not work on Tuesdays, and so she did not read the Notice of Hearing until the following day. The Respondent sought representation on the Thursday. The Respondent's representative said there was not sufficient time to take instructions on the Friday.

5. The Tribunal considered the overriding objective, and also the principle that hearings for application for interim relief would not usually be adjourned unless there were special circumstances.

6. The next available date for a hearing was 23 May 2025. This is unacceptable delay. The overriding objective requires Tribunal to deal with cases promptly, so long as it is fair to do so.

7. The Tribunal considered a necessity the party to be on an equal footing. The Tribunal noted that the Claimant is a litigant in person. The Respondent

was represented although Ms Acheampong said she did not have instructions, as they had not been sufficient time to get these from the Respondent.

8. The Respondent had notice of the hearing on 4 March, although it was not looked at until 5 March. It is the Respondent's choice if they do not have someone to cover the practice manager's duties on the day she is off. Even once Ms Curnow was aware of the hearing, the Respondent still had three clear days in which to obtain representation and give instructions. The application to postpone at 17:43 on Friday 7 March was, in the Tribunal's view, too late. The Tribunal was also of the opinion that the Respondent had sufficient time to provide instructions to its representative. There were no *"special circumstances"* that applied.

9. The application to postpone was therefore refused. In order to ensure fairness, however, the hearing was put back until 13:30 to enable the Respondent's representative to take instructions.

10. The hearing began at 13:30 and the Claimant was invited to explain her reasons as to why her application should succeed. The Respondent was given the opportunity to put its case. Both parties were then given a right of reply, with the Claimant first and Respondent second. In order that the Tribunal was sure that all parties had said everything they wanted to relation to the application, both parties were given a second opportunity to reply.

The Law

Interim relief applications

Employment Rights Act 1996

11. 128.— Interim relief pending determination of complaint.

(1) An employee who presents a complaint to an employment Tribunal—

(a) that he has been unfairly dismissed by his employer, and
(b) that the reason (or, if more than one, the principal reason) for the dismissal is one of those specified in section 103A .

(2) The Tribunal shall not entertain an application for interim relief unless it is presented to the Tribunal before the end of the period of seven days immediately following the effective date of termination (whether before, on or after that date).

(3) The Tribunal shall determine the application for interim relief as soon as practicable after receiving the application.

(4) The Tribunal shall give to the employer not later than seven days before the date of the hearing a copy of the application together with notice of the date, time and place of the hearing.

(5) The Tribunal shall not exercise any power it has of postponing the hearing of an application for interim relief except where it is satisfied that special circumstances exist which justify it in doing so.

12. Section 129(1) provides that an application for interim relief should be granted *if "it appears to the Tribunal that it is likely that on determining the complaint to Which the application relates the Tribunal will find"* that the reason or principal reason for dismissal was one of the statutory automatically unfair reasons.

13. The EAT has held that *"likely"* in this context means that the Claimant must show that his case has "a pretty good chance· of success, Which means that something better than likelihood on the balance of probability (i.e. better than a 51% chance): Taplin v C Shippam Ltd (1978) ICR 1068, as approved and followed in London City Airport Ltd v Chacko (2013) IRLR 610 at para 10 and (His Highness Sheikh Bin Sadr al Qasimi v Robinson) UKEAT/0283/17 (22.12.17, unreported).

14. The Tribunal must be satisfied that the Claimant is *"likely"* to succeed on each necessary aspect of his or her claim (Robinson para 11), applying that high threshold, before relief can be granted, i.e. that it is *"likely"* she made a protected disclosure within the statutory definition (as to which see below) and that it is *"likely"* it was the sole or principal reason for dismissal.

15. The default position for procedure at interim relief hearings is that there will be no oral evidence (unless the ET directs otherwise).

16. The EAT in Chacko gave further guidance on the approach to be taken by the Tribunal at paragraph 23:

> *"In my judgment the correct starting point for this appeal is to fully appreciate the task which faces an employment Judge on an application for interim relief. The application falls to be considered on a summary basis. The employment Judge must do the best he can with such material as the parties are able to deploy by way of documents and argument in support of their respective cases. The employment Judge is then required to make as good an assessment as he is promptly able of Whether the Claimant is likely to succeed in a claim for unfair dismissal based on one of the relevant grounds. The relevant statutory test is not Whether the Claimant is ultimately likely to succeed in his or her complaint to the Employment Tribunal but whether "it appears to the Tribunal" in this case the employment Judge "that it is likely". To put it in my own words, what this requires is an expeditious summary assessment by the first instance employment Judge as to how the matter looks to him on the material that he has. The statutory regime thus places emphasis on how the matter appears in the swiftly convened summary hearing at first instance. Which must of necessity involve a far less detailed scrutiny of the respective cases of each of the parties and their evidence than will be ultimately undertaken at the full hearing of the claim."*

17. The summary assessment of the material before it to determine this question, is described by HHJ Eady QC in Robinson as a necessarily *"broad-brush approach"* and *"very much an impressionistic one"*. (Robinson, see Headnote and para. 54 and 59).

Law on protected disclosures

The Employment Rights Act 1996 provides:

18. 43B Disclosures Qualifying for protection.

(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-

(a) that a criminal offence has been committed, is being committed or is likely to be committed,

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

…

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

…

(f) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.

The Claimant's case

19. The Claimant started work on 1 July 2024.

20. The Claimant's case is that on 11 September 2024 he discovered that the surgery was operating under expired Patient Group Directives (PGDs). Her case is that PGDs are required to be authorised and up to date according to the Human Medicines Regulations 2012. She said that many of these PGDs had been expired for over a year, and some staff members had been administering vaccines when they had not signed the PGDs from 2022, which had expired in 2023.

21. The Claimant says she brought this to the attention of the practice manager, Ann Curnow, and two of the partners, Dr Leon Kartey and Dr Alex Phipps. The two partners took the PGDs into a meeting with the rest of the partners and the management team for review. The Claimant says she was tasked by Dr Kartey to ensure the PGDs were up-to-date.

22. The Claimant says that from this point onward she was treated differently by the senior partner, Dr Felix Kehinde. Her case is that, one week after she had raised the issues with the PGDs, Dr Kehinde said he was going to reduce her working hours to two or three days a week, which was less than she was contracted to do. The Claimant says this was not implemented due to the intervention of Dr Kartey.

23. On 30 October 2024, the Claimant says she unexpectedly called to a meeting with Ann Curnow and Dr Kehinde. At this meeting she was handed a letter stating that my role as an Enhanced Practice Nurse (which she says is not her role or job title) was not achieving what was intended within the PCN, and it informed that she was being given one week's notice of termination of employment. The Claimant says the PCN had no involvement with her role or pay, so the letter was not even accurate. The Claimant's case is that, when handing her this letter, Dr Kehinde laughed and said *"Leon cannot help you this time"*.

The Respondent's case

24. The Respondent's case is that the 2024/25 funding arrangement from the Primary Care Network (PCN) allows for the employment of one Enhanced Practice Nurse (EPN). The Respondent says this was the Claimant's role. The Respondent further said that this was supported by the fact that the Claimant did not work Wednesdays which was how the role of the EPN worked.

25. In support of this the Respondent supplied 10 pages of largely redacted meeting notes. These meeting notes to refer *"Asthma Diagnostic Hub - 2nd wave"* in meetings on 17 April 2024 ,15 May 2024, 26 June 2024, and 25 September 2024. A further mention of *"Asthma Diagnostic Hub"* is made in a meeting of 26 February 2025, but this post-dates the Claimant's dismissal. There is also a reference a post of *"Enhanced nurse"* from a meeting on 22 January 2025, but again this post-dates the Claimant's dismissal.

26. The Respondent further said that the surgery the Claimant was employed for four days out of five each week (Nuffield House Surgery) was planned to be the host for an asthma diagnostic clinic. For this clinic to operate it was essential that the EPN had a specific qualification, called the ARTP qualification. The Respondent's case is that the Claimant did not have this qualification and it would have taken her 18 months to obtain it and this is not a timeframe that could be accommodated. Respondent says the Claimant was dismissed because she did not have the required qualification. The Respondent says further that it was confirmed to the Claimant in the dismissal meeting that her dismissal was not due to her work. The Respondent denied that Dr Kehinde said *"Leon cannot help you this time"*.

27. The Claimant's reply to the Respondent was that she was employed as an Advanced Clinical practitioner and had never been employed as a practice nurse. The Claimant said that she did work Wednesdays.

Deliberation

28. It is not the role of an employment Judge hearing application for Interim Relief to make findings of fact. The Tribunal is reliant on the parties to set out the material facts for each side highlighting their strongest points. There has not been any oral evidence.

29. The Tribunal has considered whether there is a *"pretty good chance"* that the Tribunal at the final hearing will find five things:

    (1) that the Claimant had made a disclosure to her employer;

    (2) that she believed that that disclosure tended to show one or more of the things itemised at (a - f) under s.438(1);

    (3) that she believed that the disclosure was made in the public interest

    (4) that those beliefs were reasonable; and

    (5) that the disclosure was the principal reason for her dismissal.

30. The Respondent accepts that the Claimant raised issues regarding the PGDs and the Respondent concedes that this was a disclosure of information. The Respondent also concedes that the disclosures of information made by the Claimant show or tended to show one or more of the things itemised at (a - f) under s.438(1); in particular she relies on (b) and (d). The Respondent further concedes that the disclosures were in the public interest.

31. Following those concessions by the Respondent, the Tribunal is satisfied that the Claimant would have a pretty good chance of succeeding at a final hearing on points (1), (2) and (3). Even if the Respondent had not made this concession, the Tribunal is satisfied that the Claimant would still have a pretty good chance of succeeding in persuading that he had made a disclosure to her employer. The Claimant's case that PGDs are a legal requirement is a convincing one and the Tribunal is satisfied she would have a pretty good chance of persuading a Tribunal at the final hearing that her disclosure was that the Respondent was in breach of a legal obligation and that health and safety of others was being endangered. The Tribunal is further satisfied that she would have a pretty good chance of persuading the Tribunal at the final hearing that this was in the public interest.

32. The Respondent disputes that the Claimant held a reasonable belief that her disclosure was in the public interest. The Respondent's cases this is because of the manner in which the Claimant made the disclosures. It is not clear what the Respondent means by this. The Tribunal finds the argument unconvincing. A disclosure regarding a medical practice operating under expired legal documentation is likely to be in the public interest, and the Tribunal finds that there is a pretty good chance that the Claimant would be successful in persuading the Tribunal at a final hearing that her belief that the disclosures in the public interest was a reasonable one.

33. The main question for the Tribunal is *"does the Claimant have a pretty good chance of demonstrating to a Tribunal at the final hearing that the disclosure was the principal reason for her dismissal?"*.

34. The Respondent says the Claimant was dismissed for not having the ARTP qualification that was required for her role as an asthma diagnostic nurse. Respondent's case that the Claimant was employed as an Enhanced Practice Nurse funded by the PCN also does not seem to be plausible. The contract of employment which the Claimant supplied to the Tribunal states *"your job title is Advanced Clinical practitioner"*. The contract also confirms the Claimant's contention that she did work Wednesdays, as the contract states *"You will be located at Nuffield House Surgery, Harlow, for 4 days a week and Sydenham House Surgery for 1 day a week"*. Given that the parties agree that the practices were not open at the weekend, the Claimant's working five days must therefore be Monday to Friday inclusive. This is at odds with the Respondent's contention that the Claimant was an EPN who did not work Wednesdays.

35. It is therefore unlikely that a Tribunal at the final hearing would conclude that the Claimant was employed as an EPN, nor that having the ARTP qualification was a condition of her employment. There is no mention of such qualification being required in her contract. It is also unlikely that, if this qualification was so vital to the Claimant's role, the Claimant would be employed on 1 July 2024 without the qualification, and then not dismissed until 6 November 2024 for not having it. The Respondent's case on this point is implausible. Further, there is no mention of the lack of the ARTP qualification being the reason for dismissal in the dismissal letter. It would be no hardship for the Respondent to have stated this was the reason. Instead, the only reason given by the Respondent in the dismissal letter is the sentence *"The role of the enhanced practice nurse funded by the PNC is not achieving what is intended"*. This is a very ambiguous and somewhat cryptic sentence. The Respondent says that this sentence should be interpreted as saying that the Claimant does not have the requisite qualification and is being dismissed for that reason. The Tribunal, however, finds that is an unrealistic interpretation of that sentence.

36. The Tribunal also notes that Dr Kehinde attempted to reduce the Claimant's working hours when her contract did not permit this, and this took place a week after the Claimant had made the protect disclosure. The Respondent never challenged this. This case is not brought as a whistleblowing detriment case, but this behaviour would suggest there was some ulterior motive towards the Claimant by Dr Kehinde following her protected disclosures.

37. The Tribunal is satisfied that the Respondent has put forward no convincing reason for the Claimant's dismissal, and the reason that has been put forward is not supported by the contemporaneous documents that are available to the Tribunal at this hearing. The Tribunal is therefore satisfied, on the evidence before it today, that the Claimant would have a pretty good chance of convincing the Tribunal at a final hearing that the principal reason for her dismissal was her protected disclosure.

38. The test is therefore made out and the application succeeds.

Employment Judge G. King
Dated: 19 March 2025