



EMPLOYMENT TRIBUNALS

Claimant

Miss Farida Begum

v

Respondent

Kier Limited

Heard at: Norwich (by CVP)

On: 5 March 2025

Before: Employment Judge M Warren

Appearances

For the Claimant: In person

For the Respondent: Mr R Fitzpatrick, Counsel

JUDGMENT on APPLICATION for INTERIM RELIEF

The Claimant's Application for Interim Relief is refused.

REASONS

Background

1. Miss Begum was employed by the Respondent between 4 January 2021 and 13 September 2024 as an Assistant Commercial Accountant.
2. There are in fact two sets of proceedings.
3. The first claim was issued in Manchester under case number: 2402875/2024. This was issued after Early Conciliation between 5 March and 16 April 2024, the ET1 Claim Form being dated 15 May 2024. Those claims are of race discrimination, disability discrimination (the disability relied upon being a hearing impairment) and owed wages.
4. The second claim issued in Watford under Case Number: 3309200/2024, has been issued as a result of Miss Begum being dismissed on 13 September 2024. Early Conciliation was on 19 September 2024 and the ET1 Claim Form is dated 20 September 2024. The claim is of unfair dismissal and protected interest disclosure (whistle blowing) detriment and automatic unfair dismissal.

5. The ET1 contains an Application for Interim Relief based upon, Miss Begum says, that she was automatically unfairly dismissed for having made protected disclosures.
6. I have not seen the tribunal file, but I understand that there was a Preliminary Hearing on the Manchester case on 27 November 2024. The Employment Judge in that instance referred the case to the Regional Employment Judge for a transfer to this Region, the South East, administered from Watford.
7. I believe the transfer has taken place, although I am not absolutely certain and I do not think at this stage the two claims have yet been consolidated, though no doubt in due course they will be. I am not sure why it has taken so long for the Application for Interim Relief to have been listed, certainly s.128(3) of the Employment Rights Act 1996 requires that such an Application should be determined as soon as practicable. However, we are where we are and the Application is before me today.

Documents before me today

8. I have received a Bundle of documents put together by the Respondents containing documents agreed with Miss Begum, for which I am grateful. There are a couple of documents Miss Begum wanted included which were not. They have been provided separately by Miss Begum. Their admissibility in evidence is disputed by reason of privilege. I make no further reference to them. There is no need for me to do so.
9. I have received Witness Statements from Miss Begum and for the Respondents, from a Ms Chivers of HR and a Ms Delaney who was the Dismissing Officer.
10. This being an Interim Relief Hearing, I have not heard evidence.
11. I also had from Mr Fitzpatrick, a helpful document entitled "Respondent's Submissions", for which I am grateful. Miss Begum had the opportunity to see that in advance of the start of the hearing, which should have helped her understand the matters I am dealing with today.

The Law

12. The right to apply for Interim Relief is set out at s.128(1) of the Employment Rights Act 1996 ("ERA"). In short, an Order for Interim Relief is an Order that an employer re-instate the dismissed employee pending the outcome of the claim for unfair dismissal, or continue to remunerate the employee in accordance with their contract of employment pending the outcome of their claim.
13. Section 129(1) of the Employment Rights Act 1996 sets out that the test for determining an Interim Relief Application is whether the claim is likely to succeed. Amongst the types of cases that have the benefit of this

jurisdiction, are cases of automatic unfair dismissal for protected disclosures, under s.103A ERA 1996.

14. Therefore the key for an Interim Relief determination is what the word, “likely” means. In the case of Tapplin v Shippam Limited [1978] IRLR 450, that expression was said to mean, “a pretty good chance of success”.
15. Some years later, in the case of Dandpat v The University of Bath UK EAT0408/09, the then President of the Employment Appeal Tribunal Mr Justice Underhill, (as he then was) had been invited to re-visit that statement of the test of what, “likely” meant and he declined to do so. He said in that case,

“There are good reasons of policy for setting the test comparatively high”.

16. In London City Airport v Chacko [2013] IRLR 610, the Employment Appeal Tribunal explained that on an Interim Relief Application, the process to be followed by the Employment Judge hearing it, is to carry out an expeditious summary assessment on how the case appears on the material available, doing the best that one can on untested evidence advanced by each side.
17. Her Honour Judge Eady QC in Al Qasimi v Robinson UK EAT0283/17, gave a similar explanation of the process the Tribunal has to follow in reaching a summary conclusion on what is before it, in determining an Interim Relief Application.
18. Lastly, I make reference to the case of Ministry of Justice v Sarfraz [2011] UK EAT0578. On an Interim Relief Application in a whistle blowing case, for the Claimant to succeed the Tribunal must find that they are likely to succeed on each element of such a claim. It was also reiterated that, “likely” does not simply mean, “more likely than not”. It is not simply an at least 51% chance of success. It connotes, as we know from Taplin, a significantly higher degree of likelihood.
19. The key elements of a whistle blowing case, (the elements that Miss Begum must satisfy me she is likely to succeed on) are that:
 - 19.1. She is likely to be found to have made a disclosure of information, (not merely the making of an allegation).
 - 19.2. It is likely to be found that was information of something she believed tended to show one of the things set out at s.43B(a) – (f) ERA 1996, in this case most probably, a breach of a legal obligation.
 - 19.3. She must show that she will be likely to be able to convince the Tribunal hearing her case that such belief was reasonable and that the disclosure she made was in the public interest.

19.4. Finally, she must show that the Tribunal hearing her case is likely to conclude that such disclosures were the reason or principle reason for her dismissal.

Analysis and Determination of the Application

20. On Miss Begum's pleaded case, having regard to her Witness Statement and the documents in the Bundle that have been referred to, it is not readily apparent what her disclosures of information are.
21. Following a detailed discussion this morning, which was at times very hard indeed to follow, I believe that we eventually established that there are two alleged disclosures that Miss Begum relies upon.
22. The first alleged disclosure, (Disclosure 1) is said to have been made at a Grievance Hearing on 15 March 2024. The Chairperson was a Ms Sanders and HR advice was provided by a Ms Summerton. Ms Begum made reference to documents in the Bundle, in particular at page 125 to 129, but I could not extract from them where there was disclosure of information as opposed to merely the making of allegations generally speaking of, "discrimination", without giving details of in what way she was subjected to discrimination.
23. The second alleged disclosure, (Disclosure 2) identified by Ms Begum was she says, that on 22 May 2024 in a second grievance, she disclosed that her work was being overcharged to a client. She would say that is a breach of a legal obligation to the client and that it is in the public interest that the Respondent does not overcharge its clients. The client referred to is a charity.
24. Potentially Disclosure 2, might be a protected disclosure, although it is right and fair to say that it was identified after some elucidation and that might present Miss Begum with some difficulty in the Final Main Hearing, given that it is not clear what the disclosure was, how does she say that influenced the mind of the Dismissing Officer? Be that as it may, it is potentially a protected disclosure.
25. Alleged Disclosure 1 on the face of it does not seem to me a disclosure because I do not see the provision of information, as opposed to allegations. I am not determining the case, of course, I am simply weighing up the likelihood of success.
26. The next question for the Tribunal at the Final Main Hearing would be, was such disclosure the reason or principle reason for dismissal? I ask myself what is the likelihood of Miss Begum being able to show that it or they, were?
27. I note that these alleged disclosures were made during a period when Miss Begum was already on garden leave. That garden leave followed a protected conversation on 15 February 2024, referred to in the Witness Statement of Ms Chivers.

28. In her Witness Statement, Ms Chivers explains that in February 2024, before the alleged protected disclosures, there were discussions about dismissing Miss Begum because of her poor performance. I do not know, such discussions might be outrageous and incredibly unfair on Miss Begum, I have no way of knowing that. That is not what I am concerned about. What I am concerned about is how does that inform the later allegation that the reason for dismissal was the disclosures.
29. The protected conversation of 15 February 2024 proposed to terminate Miss Begum's employment because of poor performance. Ms Chivers' Witness Statement at paragraph 7 says that the decision had been made to remove her.
30. The proposal in the protected conversation is confirmed by letter of 15 February 2024, which is in the Bundle before me at page 216. It refers to her work performance as not being at the expected level, of there being documented examples demonstrating that, of the business needs not being met and that the Respondent feels she does not have the capability to undertake her role.
31. This will raise questions in the mind of the Tribunal Hearing this case at the Final Main Hearing. What was the reason for dismissal in the mind of Ms Delaney? Was it that Miss Begum had made far from clear protected disclosures where the Respondent, before the disclosure, already had in mind dismissing her because of performance? That militates against a finding that in the mind of Ms Delaney, there was some unclear protected disclosure.
32. I see the Dismissal Letter at page 203, makes references to performance, performance concerns and of Miss Begum not being able to accept there were such concerns.
33. On that basis, Miss Begum, I cannot say your case of automatic unfair dismissal for making protected disclosures is likely to succeed.
34. Therefore the Application for Interim Relief is not granted.

Approved by:

Employment Judge M Warren

Date: 13 March 2025

Sent to the parties on: 28/03/2025

For the Tribunal Office.

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