



# EMPLOYMENT TRIBUNALS

## Claimant

Miss J Ahmed

## Respondent

ANGLO Limited

v

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

**On:** 26 March 2025

**Before:** Employment Judge Postle

## Appearances

**For the Claimant:** In person

**For the Respondent:** M I Hulks, Litigation Consultant

## JUDGMENT on APPLICATION to STRIKE OUT

The Claimant's claim brought under the whistle blowing provisions of the Employment Rights Act 1996 is struck out as having no reasonable prospect of success.

## REASONS

### Background

1. This is an Application by the Respondent that:-
  - 1.1. The Claimant's claims be struck out under Rule 38(1)(a) of the Employment Tribunal Rules of Procedure 2024 on the grounds the claim has no reasonable prospect of success; and
  - 1.2. In the alternative there be a Deposit Order under Rule 40 of the Employment Tribunal Rules of Procedure 2024 on the basis the claim has little prospect of success.
2. The basis of the Respondent's Application is that following the Claimant's unsuccessful interim relief Application on 25 October 2024, it is further submitted that the claims have little reasonable prospect of success due to:-

- 2.1. The Claimant was initially employed by the Respondent on a Fixed Term Contract on 16 June 2024 and 30 July 2024;
- 2.2. The Claimant was dismissed on the grounds of capability on 24 July 2024;
- 2.3. The Claimant successfully appealed the dismissal and was re-instated to her role on 2 August 2024;
- 2.4. The Claimant was offered the chance to work at the Respondent's Guildford site in the same role as she did not wish to return to her previous site in Uxbridge, the Claimant apparently rejected this offer to return to work for the Respondent and effectively resigned on 9 August 2024;
- 2.5. The Claimant was paid in full during the period she was dismissed and suffered no loss; and
- 2.6. Further, the Claimant's claim of whistle blowing has no reasonable prospect of success as pleaded as the Claimant has not raised any protected disclosures with the Respondent and there is no evidence of this presented by the Claimant. No safeguarding concern was raised by the Claimant, rather safeguarding was mentioned to the Claimant in relation to her dismissal on 24 July 2024.
3. The Respondent therefore submits that there is no legitimate claim for whistle blowing, nor any subsequent detriment.
4. With regard to the Claimant's reference to tax codes being entered incorrectly in her claim, the Respondent submits the error stems from the Claimant completing her employee starter check list and the Respondent having paid the Claimant in full and complied with HMRC as required.

### **The Claimant's Submissions**

5. At today's Hearing the Claimant submitted that on an excursion to Cambridge accompanying children / students on 30 June 2024, she told her Line Manager Chelsea what her plan was and that was 30 minute breaks between each tour.
6. Her Line Manager responded by suggesting that the students be given the full tour and then longer lunch breaks. The Claimant said that as a result of that her contract ended.
7. As there was not a proper appeal process, despite being re-instated she was not prepared to return to work.
8. The Claimant had no further submissions to make.

**Evidence**

9. The Tribunal has had the benefit of a Bundle of documents consisting of 88 pages from the parties and a further Bundle of miscellaneous unpaginated documents from the Claimant which consists largely of a number of emails between from the Claimant of 17 July 2024 through to 9 August 2024.

10. The Tribunal note of particular relevance in the Claimant's Bundle was a letter from Stephanie Partridge dated 24 July 2024 to the Claimant which read,

"Further to recent correspondence with Dean Herbert this email serves as written confirmation of the verbal dismissal you received in the meeting with Kevin and Shelci on 16 July at our Uxbridge Centre.

The reasons outlined to you in your dismissal meeting is following multiple warnings regarding performance your standard of work was still below the level expected for the needs of an Anglo programme.

... "

11. There is then subsequent to that in the Respondent's Bundle at page 41, an email from Stephanie Partridge to the Claimant dated 2 August 2024 which reads,

"Following your appeal of your dismissal we are writing to inform that your appeal has been successful.

As you are now re-instated in your job role we'd like you to recommence your duties on Saturday 3 August or at your earliest convenience to this date.

As your dismissal has been overturned you will receive your pay and payslips for the missing week when then are processed next week.

You will be paid for your contractual hours for which you would have worked had you been at work from 17 July to 2 August inclusive.

...

In the interests of your comfort, we would also like to offer you a transfer to the Guildford Campus to start fresh with a new team. ... we look forward to your return to work."

12. As we know the Claimant subsequently declined and effectively resigned having been re-instated.

## Legal Framework

### Power to Strike Out

13. The Tribunal has the power to strike out a claim which has no reasonable prospect of success pursuant to Rule 38 of the Employment Tribunal Rules of Procedure 2024.
14. Rule 38(1) provides,
  38. Striking Out
    - (1) The Tribunal may, on its own initiative or on the application of a party, strike out all or part of a claim, response or reply on any of the following grounds-
      - (a) that it is scandalous or vexatious or has no reasonable prospect of success;
      - ...
15. A Tribunal should always be conscious of striking out claims involving litigants in person and needs to take a claim at its highest particularly if there are any factual disputes. In this case there appears to be no or little factual dispute.
16. However, where a case even taken at its highest, has no reasonable prospect of success it should be struck out as per Ahir v British Airways [2017] EWCA Civ.1392.

### The Evidential Burden

17. To succeed the Claimant must establish that she has some / more than little prospect that the Tribunal would find at a Final Hearing that,
  - 17.1. She made a disclosure;
  - 17.2. She believed the disclosure tended to show one or more of the matters listed in s.43B(1) of the Employment Rights Act 1996;
  - 17.3. That the belief was reasonable;
  - 17.4. That the disclosure was made in the public interest; and
  - 17.5. That the dismissal in this case was on the grounds of the disclosure being the sole or principal cause of dismissal.
18. Given the Claimant has less than two years' continuous service the burden is on her to prove the causal link between the disclosure and dismissal, see Smith v Hayle Town Council [1978] ICR 996 Court of Appeal.

Employment Rights Act 1996 – s.43B

19. Section 43B ERA 1996 provides,

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 / employee making the disclosure, (is made in the public interest and) tends to show one or more of the following-
  - (a) ...
  - (b) ...
  - (c) ...
  - (d) that the health and safety of any individual has been, is being or is likely to be endangered, (this is being asserted by the Claimant);
  - (e) ...
  - (f) ...

Public Interest

20. The employee’s view of their belief that the disclosure was made in the public interest cannot be seen in the facts and that belief must be reasonable. That is an objective test.

**Tribunal’s Conclusions**

- 21. The Tribunal, looking at the alleged disclosure, are of the view that the disclosure alleged (being discussion on 30 June at Cambridge between the Claimant and her Line Manager Shelci about the length of breaks) is merely a discussion about a private matter, a disagreement between the Claimant and her Line Manager. Where is the health and safety of an individual being more likely to be endangered?
- 22. This was not a qualifying protected disclosure. Even if it was made in the public interest, again we repeat it was a private matter being a dispute about the length of breaks between the Claimant and her Line Manager.
- 23. As to the causal link between the alleged disclosure and the dismissal, the evidential hurdles on the Claimant’s part are fundamental. In particular, if that disclosure on 30 June was the reason for the Claimant’s dismissal one would have expected her to have been dismissed in the nature of the employment almost immediately. That was not the case as the Claimant was not dismissed until around 17 July 2024. Clear reasons were given for that dismissal and were entirely unrelated to any alleged public interest

disclosure as set out in the email of 24 July 2024 from Stephanie Partridge to the Claimant which makes it clear,

“...following multiple warnings regarding performance your standard of work was still below the level expected for the needs of an Anglo programme.”

24. This is completely unrelated to any alleged public interest disclosure.
25. Notwithstanding the fact that the Claimant was in any event re-instated. It is clear that the principal or sole reason for the Claimant's dismissal had been and always was performance and had nothing to do with an alleged public interest disclosure.
26. In those circumstances the Claimant's claim that she was automatically unfairly dismissed for making a public interest disclosure is therefore struck out as having no reasonable prospect of success.

**Approved by:**

Employment Judge Postle

Date: 16 April 2025

Sent to the parties on: 28 April 2025

For the Tribunal Office.

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