THE EMPLOYMENT TRIBUNALS

Claimant **Respondent**

Ms S Savoia **v** **Alchemy Prime Limited**

Heard at: London Central **On**: 16 April 2025

Before: Employment Judge Glennie

Representation:
Claimant: In person
Respondent: Ms S Robertson (Counsel)

JUDGMENT ON APPLICATION FOR INTERIM RELIEF

The judgment of the Tribunal is that the application for interim relief is refused.

REASONS

1. The Claimant, Ms Savoia, commenced employment with the Respondent, Alchemy Prime Limited, on 2 September 2024. The Claimant's role was that of a Senior Compliance Manager. In her claim form she makes complaints of automatic unfair dismissal and suffering detriments for making protected disclosures.

2. English is not the Claimant's first language, although her English is very good and she presented her case in English. In the course of the hearing she was occasionally assisted by an Italian interpreter in understanding what was said by others.

3. Section 128 of the Employment Rights Act 1996 provides for the making of an application for interim relief. Section 129(1) specifies when an order for interim relief may be made, in the following terms:

This section applies where, on hearing an employee's application for interim relief, it appears to the tribunal that it is likely that on determining the complaint to which the application relates the tribunal will find –

(a) That the reason (or if more than one, the principal reason) for the dismissal is one of those specified in –

(i) Section…..103A….

4. Section 103A of the Employment Rights Act provides that:

An employee who is dismissed shall be regarded…….as unfairly dismissed if the reason (or if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure.

5. In **Ministry of Justice v Sarfraz [2011] IRLR 562** the Employment Appeal Tribunal held that, for an order for interim relief to be made, it was necessary for there to be a finding that it was likely that the Tribunal would find both that the claimant had made a protected disclosure within the terms of sections 43B and 43F of the Employment Rights Act, and that this was the reason or principal reason for dismissal.

6. Also in **Ministry of Justice v Sarfraz** the Employment Appeal Tribunal confirmed that the test of such findings being "likely" does not mean their being more likely than not, or probable. It means "something nearer to certainty than mere probability".

7. Assessing what is likely in this sense does not involve the judge hearing an application for interim relief making findings of fact. Instead, the judge makes an assessment, on the information available, of whether it is likely that the Tribunal ultimately hearing the case will find that the reason or principal reason for the dismissal was the making of a protected disclosure or disclosures.

8. In the application for interim relief attached to her claim form, the Claimant states that she made disclosures within the Respondent's organisation to the CEO Mr Kundnani, the Head of Compliance Mr Cann, and other senior managers. She also states that she made disclosures to the Financial Conduct Authority (FCA), the National Crime Agency (NCA), and the National Fraud Intelligence Bureau (NFIB).

9. In her skeleton argument Ms Robertson submitted that the information given by the Claimant about her disclosures was not sufficient to demonstrate that it was likely that they would satisfy the requirements of section 43B. In her oral submissions Ms Robertson suggested that it would be preferable to focus on the question of the reason for the dismissal.

10. It is the case that the interim relief application and the claim form do not set out the specific elements of each disclosure in a way that would enable me

to form a view about whether it is likely that they would be held to fall within section 43B. Where document, such as emails, are relied upon, I have not seen copies of them.

11. The Claimant does, however, give some indication of the types of disclosure that she made. As examples, those made internally are said to have included reports of conflict of interest, manipulation and deletion of documents, and failures in financial crime prevention. Again as examples, those to the FCA are said to have included reports of failures to prevent financial crime; those to NCA to have included reports of tax fraud; and that to the NFIB to have included a report of suspicious activities related to fraud.

12. In the circumstances, I do not base my decision on the issue as to whether it is likely that the Tribunal will find that the Claimant made protected disclosures. Without making any finding on the point, I assume for the purposes of the present hearing, in the Claimant's favour, that it is likely that the Tribunal will ultimately find that she made a protected disclosure or disclosures.

13. I regard this approach as open to me because I have formed a clear view on the question as to the reason or principal reason for the dismissal. The Respondents have produced 2 witness statements: one from Mr Woods, who states that he took the decision to dismiss the Claimant, and one from Ms Borissov, the Respondent's HR Manager. Both state that the Claimant was dismissed because of performance concerns and grievances submitted against her.

14. I emphasise that, at this stage, I am not making any finding of fact about why the Claimant was dismissed. I have to decide whether it is likely, in the "something nearer to certainty" sense, that the Tribunal will decide that the reason or principal reason was the making of disclosures. I do not consider that this is likely, for the following reasons.

15. Mr Woods and Ms Borissov have produced witness statements, as referred to above. There has been no cross-examination of them, but each statement is signed and carries a statement of truth. Both witnesses will presumably give evidence to the same effect at the final hearing.

16. Mr Woods states that in late January 2025 he replaced Mr Cann as the Claimant's line manager. In summary, he says that there were tensions between members of the compliance team and that he initially tried to de-escalate these. He states that in discussions with him, the Claimant largely concentrated on complaining about colleagues; that she was confrontational and argumentative with an external consultant; and that she failed to co-operate with the process of onboarding new clients. Mr Woods further states that the Claimant gave incorrect advice on occasions, providing some details of this. He also states that two of the Claimant's direct reports raised grievances against her, orally on 4 March 2025 and in writing on 5 March 2025.

17. The Respondent has produced copies of the written grievances. One of these refers to matters including micromanaging, passing on work that the Claimant should have done herself, and having a vendetta against Mr Cann and another colleague. The second grievance complained of matters including aggressive and profane language, manipulation, unauthorised requests to access correspondence, inappropriate delegation, misrepresentation of the complainant's words and actions, and hindering of professional development.

18. In paragraph 21 of his witness statement Mr Woods states that by the end of the working day on 4 March 2025 it had become clear that the Claimant's continued employment was unsustainable due to her conduct and the performance issues. He says that he therefore contacted Ms Borissov and Mr Kundnani for approval of terminating the Claimant's employment. The Respondent has produced an email from Mr Woods timed at 18.05 on 4 March 2025 which reflects this. The email contains details of concerns along the lines of those described above.

19. Under the subheading "potential fallout" Mr Woods wrote:

> "There is a clear and credible risk of fallout from terminating Sally in that she will rush to the FCA to get her revenge as a disgruntled ex employee. I believe this is inevitable and see no possibility of avoiding this so we should consider pre-empting her by getting our defence in first……"
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> Mr Woods continued in terms which showed that he meant that the Respondent should "get in first" by informing the FCA that the Claimant had been let go because she did not have the suitable skill set for her role.

20. It seems to me that Mr Woods's reference to "getting the defence in first" in this way is, on the face of the matter, consistent with his being unaware at the time that the Claimant had in fact already made reports to the FCA and other organisations. I am aware that it is conceivable that this passage in the email was constructed with a view to possible future litigation and in order to give that impression. There is, however, nothing available to me that suggests that this is a likely scenario.

21. The Claimant's observation about Mr Woods' statement was that it contained "a lot of lies" and had "a lot of things wrong." She said that paragraph 21 was fabricated.

22. In support of her case the Claimant relies on recordings of conversations from the Respondent's internal system involving Mr Kundnani and Mr Cann in January 2025. The Claimant has produced transcripts of these conversations which are not agreed, but which I take as accurate for the purposes of the present application. The relevant elements are the following:

22.1 Mr Cann saying to Mr Kundnani, referring to the Claimant, that she is just a whistleblower and is "collecting to whistleblow".

22.2 Mr Cann saying to an unidentified person that Mr Kundnani is looking to put things in place to get rid of her (the Claimant) some time this year, but "let's make use of her for the present."

22.3 Mr Cann saying that it was necessary to keep the Claimant away from CFC business.

22.4 Mr Cann describing the Claimant as a snake in the grass and a ratbag, and saying that she could not be trusted.

23. These recordings tend to support the proposition that Mr Cann, and possibly Mr Kundnani, regarded the Claimant as a whistleblower and intended or wanted to end her employment. Although the Claimant did not expressly formulate her case in the following way, my understanding is that she would argue that Mr Kundnani and Mr Cann (the CEO, and a Director and former Head of Compliance, respectively) intended to end her employment because she was a whistleblower and that it is likely that they instructed or influenced Mr Woods accordingly: hence her contention that Mr Woods's statement is untrue. The Respondents in turn submit, in essence, that whatever Mr Kundnani and Mr Cann may have thought about the Claimant, the evidence is that Mr Woods made the decision to dismiss her, and did so for the reasons that he has given.

24. I am not in a position to make findings about those matters, and I do not do so. It is possible that the Tribunal which ultimately hears the case will decide that Mr Woods's statement is untrue in relevant respects. It is possible that the Tribunal may find that Mr Woods, or someone else found to be the real decision maker, had as their reason or principal reason for dismissing the Claimant her making of disclosures. In my view, the recordings lend some degree of support to the Claimant's case, in the sense explained above.

25. I cannot, however, say that it is likely, in the "approaching certainty" sense, that the Tribunal will decide that Mr Woods's' evidence is untrue. This would involve finding that the stated performance concerns were imaginary or unimportant. The grievances from the two members of the team appear to be genuine, are extensive, and raise apparently serious matters. In my judgement, they are the sort of issues that could well lead an employer to terminate a manager's employment at a relatively early stage. It is possible that the Tribunal will find that the grievances have been invented, or were provoked in some way, in order to provide a smokescreen intended to hide the Claimant's disclosures as the real reason for her dismissal. In my judgement, however, this is not likely in the relevant sense.

26. Furthermore, in order to make a finding that the purported reason for the dismissal was not the true reason, and that the reason or principal reason was the Claimant's disclosures, the Tribunal would also have to deal in

some way with Ms Borissov's evidence. Presumably it would need to find either that this too is false, or that she had in some way been duped as to the real reason for the decision to dismiss the Claimant. Again, this is not impossible, but on the information available to me, this is not a likely finding.

27. I therefore find that the test for making an interim relief order has not been satisfied, and that the application should be refused.

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Employment Judge Glennie

Dated: ……..……29 April 2025……..

Judgment sent to the parties on:

2 May 2025
…….....

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For the Tribunal Office