EMPLOYMENT TRIBUNALS

Claimant: **Mr P Craete**

Respondent: **Aniara Limited**

Heard at: **East London Hearing Centre**

On: **1 May 2025**

Before: **Employment Judge Reid**

Representation

Claimant: in person, not represented

Respondent: Mr H Davies, Counsel

Reminder to parties: next preliminary hearing for case management already listed for 24 June 2025 at 10am.

JUDGMENT (Reserved)

1. The Claimant's application for interim relief under s128(1) Employment Rights Act 1998 is dismissed.

2. This is because it is not likely that on determining the complaint the Tribunal will find that the reason or principal reason for his dismissal was one or both of the two protected disclosures the Claimant claims he made.

REASONS

Background

1 The Claimant was employed by the Respondent from 10 September 2024 as a Security Operations Team Leader working at the ABBA Voyage Arena.

2 The Claimant presented his claim form on 18 December 2024. The claim included a claim for automatic unfair dismissal under s103A Employment Rights Act 1996, based on two claimed protected disclosures, disclosure 1 made on 22 November 2024 (relating to pest control issues) and disclosure 2 made on 5 December 2024 (relating to the safety of

the stairs up to the control room). The Claimant had been issued with an ACAS certificate on 13 December 2024.

3 A previous hearing of this application had been listed for 7 February 2025 but was postponed because of the Claimant's knee surgery (page C62).

4 I was provided with two bundles for this hearing, the Claimant's bundle (360 pages with a separate index) and the Respondent's bundle (335 pages with a separate index). The Claimant provided an updated witness statement dated 29 May 2025 and witness statements from Saleem Mustafa (who had also been employed Respondent when the Claimant was there) and Luciano Claudio (who had not been employed by the Respondent but by an agency Expedient Security Ltd, but working at the same venue as the Claimant). The Respondent provided witness statements from Kim Francis (Head of Visitor Operations), Safa Aziz (Security Operations Manager and the Claimant's direct manager) and Julie Shapter (Senior People Partner). The Claimant had also provided a skeleton argument which was to be supplemented with oral submissions as not complete.

5 The Claimant was not legally represented. He informed me he has experience in employment law and was aware of the statutory test on an application for interim relief but I explained the test set out below to him again so that it was clear that this was a limited exercise. The Claimant initially indicated that his submissions would take 2.5 hours; taking into account my reading time (with two separate bundles, neither of which were small) and time for the Respondent's submissions this was likely to run into difficulties with completing the application in the day allocated to it. The Claimant then said that he thought 90 minutes would be enough. Because he was not represented and because he said he needed extra time to process things due to what he described as cognitive issues I arranged that we start at 12.00 after my reading which would mean extra time while I was reading to check his notes and prepare what he wanted to say. At around 1pm I suggested we break for 50 minutes so that the Claimant could have a break before completing his submissions which were completed at around 2.40pm. After a short break I then heard the Respondent's oral submissions (which had been estimated as an hour) and due to lack of time reserved my judgment.

6 The Claimant wanted to adduce evidence of secretly recorded conversations, the transcripts of which were at pages 200-241 of the Claimant's bundle. He said that these showed that the Respondent had been saying his job was in jeopardy. I did not allow this and gave oral reasons, namely that the transcripts were not agreed and I was not hearing oral evidence which would have to potentially include cross examination in relation to what was claimed to have been said in these conversations or what was meant by what was said and the circumstances of their recording. The exercise at this hearing did not involve making findings of fact based on evidence but was more of a summary exercise to establish whether the Claimant could show at this stage of his claim that it was likely that he would show that either or one of his claimed protected disclosures was the reason or principal reason for his dismissal.

Procedure

7 I was not required to conduct a mini-trial and that my task was to conduct a summary or review type assessment of the materials available to me in reaching my decision, consistent with the approach suggested in Raja v SS for Justice

UKEAT/0364/09/CEA:

> *25. What a Tribunal has to do in an application for interim relief is to examine the material put before it, listen to submissions and decide whether at the final hearing on the merits "that it is likely that" that Tribunal will find that the reason or reasons for the dismissal is one or more of those listed in section 129(1).*

8 As such, witnesses did not give oral evidence and it was not tested in cross-examination.

Relevant law

9 I reminded myself of the statutory language of s.103A Employment Rights Act 1996 and ss. 128-129 Employment Rights Act 1996. See: Taplin v C Shippam Ltd [1978] ICR 1068, EAT, followed in Dandpat v University of Bath UKEAT/0408/09 and London City Airport v Chacko [2013] IRLR 61, EAT. This requires "*a significantly higher likelihood*" of success than being more likely than not or 'better than evens' as I might otherwise put it: Ministry of Justice v Sarfraz [2011] IRLR 562 at para 16.

10 The Claimant relies on section 43B(1)(b) Employment Rights Act 1996 in respect of his claim. I reminded myself of the Court of Appeal's decision in Kilraine v LB Wandsworth [2018] ICR 1850 as to what amounts to a disclosure of information within the statutory language. A disclosure needs to have sufficient factual content and specificity as to be able to be deemed to be capable of showing one of the matters listed in section 43B(1) Employment Rights Act 1996.

11 In order to have the requisite reasonable belief provided for in the statute, it is not necessary for the Claimant to be right or correct in what he believes: Babula v Waltham Forest College [2007] ICR 1026. However, the belief must be subjectively genuinely held and objectively reasonable: Chesterton Global Ltd v Nurmohamed [2018] ICR 731 (CA).

12 The Chesterton decision is also a clear reminder of the proper approach to be taken to the public interest element of the wording in s.43B(1) Employment Rights Act 1996 further explained in Dobbie v Felton (t/a Feltons Solicitors) [2021] IRLR 679 (EAT).

13 s103A Employment Rights Act 1996 provides that a dismissal is automatically unfair if the reason or principal reason is that the Claimant has made a protected disclosure. This a different legal test on causation to that applied to claims for detriment under section 47B Employment Rights Act 1996 in which the "material influence" test is adopted.

14 In conducting my summary assessment I necessarily focussed at this early stage on the likelihood (or not) of the Claimant succeeding in each constituent element of his claim under s103A Employment Rights Act 1996. It must follow that if he fails to meet the threshold of likelihood on any one of the elements then the entire application must as a matter of law fail.

The Claimant's key points

15 The key matters raised by the Claimant were as follows:

(a) That the stated reason of capability for his dismissal on 11 December 2024 was simply a plausible way to conceal the real reason, namely his protected disclosures because the Claimant was seen as a threat

(b) The Claimant was raising issues but was made to feel that raising matters was unwelcome

(c) No capability concerns were raised until after the Claimant had made disclosures 1 and 2

(d) The Respondent used the Occupational Health report dated 15 November 2024 to create obstacles to hide the real reason for dismissal; in his oral submissions the Claimant said that the Respondent's claimed requirement that he be mobile enough to leave the control room in order to attend incidents on site was not a real requirement of his role but was later added to his role in order to justify his dismissal

(e) The Claimant was dismissed very shortly after disclosures 1 and 2 with invented capability issues

(f) The Respondent's response had not provided a persuasive argument that there was no other motive

(g) In both disclosures the Claimant had provided information; something which was in his private interest could also be in the public interest

(h) The capability issue was raised after he had made the disclosures, and no competence issues had been raised despite his knee injury (in fact he had been praised as an asset).

The Respondent's key points

16 I clarified with the Respondent as to whether either disclosure 1 or disclosure 2 were accepted to have been protected disclosures because the Respondent's response dated 5 February 2023 (paras 44-61, 70-71,74-75) did not directly address this but simply related what happened without stating whether any or all of the constituent parts of a protected disclosure were accepted. It was confirmed that neither were accepted to have been protected disclosures. In oral submissions in relation to disclosure 2 the point was particularly made that the part of the test not met was whether the Claimant reasonably believed his disclosure was made in the public interest, it being, in the Respondent's view, an entirely personal matter.

17 The Respondent in its response referred to three reasons for the Claimant's dismissal on capability grounds (para 68):

(a) The Claimant had been insisting that he did not start his shift till 5.30pm which the Respondent had already explained to him it could not accommodate

(b) The Claimant had emailed the Respondent on 10 December 2024 confirming the delayed ultimate diagnosis regarding his October 2024 knee injury, saying he was likely to need surgery and it would restrict his mobility for 12 months

(c) The Respondent needed a Security Operations Leader who could quickly and safely attend emergencies in person during key operating hours, which the Claimant could not do.

Reasons

Disclosure 1

18 Disclosure 1 (page C 79) related to pest problems in the back of house area (which were described as rats and cockroaches in the staff kitchen, quiet room and prayer room) and referred to public and staff safety. There was a follow up email on 30 November 2024 from the Claimant (page C81). The Respondent operates a well known and unique venue at the ABBA Arena which has attracted public interest. The Respondent has legal health and obligations to attendees at the venue as well as to its staff. Unlike disclosure 2 which was not a problem which could move from the staff area to the public area, the problem raised by the Claimant in disclosure 1, due to its nature, could move from the staff areas (to which the public did not have access) to a public area on what is a high profile venue.

19 Taking these factors into account I conclude that it is likely in relation to disclosure 1 that the Tribunal will find that disclosure 1 was a protected disclosure namely that there was a disclosure of information which the Claimant reasonably believed he was making in the public interest ie meeting the definition in s43B Employment Rights Act 1996.

Disclosure 2

20 Disclosure 2 (page C 116) was about the stairs to the control room (ie in the staff only area not the public area) being dangerously slippery especially when it rained; the Claimant said it caused him problems eg having to use the stairs to get to the staff toilet and that it would also cause such a problem for any other person with his mobility issues.

21 Taking these factors into account I conclude that the Claimant did not actually genuinely believe and did not reasonably believe that what he was raising was anything more than a particular problem he himself had with the stairs. He was also referring to a hypothetical control room employee in the future who had mobility problems similar to his, but that was hypothetical.

22 While the presence of a personal element does not mean that there cannot also be a reasonable belief in the public interest the problem with the stairs did not and was not going to affect the public attending the venue in the public areas who would not be affected by this issue. At its highest it was stated to affect a few control room employees

but only if they had mobility issues like the Claimant's.

23 Taking these factors into account I conclude in relation to disclosure 2 that it is not likely that the Tribunal will find that disclosure 2 was a protected disclosure. The Claimant did not reasonably believe that he was making disclosure 2 in the public interest.

Reason/principal reason for dismissal – disclosure 1

24 The Claimant's application as it relates to disclosure 2 does not succeed – see above. It follows that the only disclosure relevant to the assessment of the reason/principal reason for dismissal is disclosure 1.

25 In relation to disclosure 1 the Respondent was already addressing the pest control issue in a transparent way having contracted Vergo Pest management Limited to deal with it (pages 240 and 250 show routine inspections before disclosure 1). It was not something the Respondent sought to hide or avoid addressing or openly discussing.

26 Kim Francis responded to disclosure 1 on 24 November 2024 (page C82) suggesting that they meet. The Claimant acknowledged that prompt response (page C 81) and that the response had been reassuring (page C82). Emmanual James also discussed what the Claimant had raised in his feedback meeting on 30 November 2024 (page C104) and the Claimant was specifically asked what he wanted to be taken forward on behalf of the staff at the next meeting with Kim Francis and Safa Aziz.

27 On 15 November 2024 Occupational Health issued its report about the Claimant's knee injury (page C243). He had informed Occupational Health that he needed to be at incidents in an observer capacity (page C245) and the advice was that he was unfit to attend security incidents at present. It is therefore not likely that the Claimant will be able to show that his ability to attend incidents was something the Respondent created as a way to argue that he could no longer do all of his job. The job description had also referred to the need to respond to requests to the control room in the event of an incident (page C173, C188), even if it did not involve physically ejecting people himself.

28 On 10 December 2024 (page C121) the Claimant himself told the Respondent (attaching only part of the diagnosis letter at page C123) that his knee was expected to impact him for over a year, including possible surgery and a lengthy recovery process.

29 It is therefore likely that the Tribunal will find that that there was a mobility requirement as part of his role. On the Claimant's own account at this time his mobility problems were not going to be fully resolved any sooner than his estimate of 12 months (which given the absence of most of the diagnosis letter dated December 2024 which the Claimant was apparently relying on, the Respondent was hampered in assessing).

30 On 29 November 2024 the Claimant asked for a 5.30pm shift start time (page R275). This was he said to be a transitional arrangement but he gave no indication of a timescale for this, only saying it would have to be a phased transition over time. On 2 December 2024 the Claimant asked again for a 5.30pm start (page R 281) again saying it required a gradual adjustment over a set period. On 4 December 2024 the Respondent told the Claimant that the latest start time could be 12.00 and that 5.30pm was not

possible (page R 288); the Respondent said that the temporary shift arrangements in the past allowing for a later start time were to accommodate his earlier short-term family issues (his son's injury and a bereavement).

31 On 7 December 2025 the Claimant again asked for a 530pm start time (under the heading Temporary Working Hours) (page R 300) saying he felt like he was repeating himself for the 12th time. He had already been told it was not possible. By repeating the request it was clear it was a requirement the Claimant was not going to drop.

32 On 10 December 2024 the Claimant emailed the Respondent confirming the knee diagnosis was a complete rupture of the patella, likely to require surgery and affecting his mobility for at least 12 months.

33 From the outset the Respondent acknowledged the Claimant's knee injury and referred him to Occupational Health. There were ongoing discussions about adjustments for his knee and his other conditions and the Respondent had made some adjustments such as temporary working from home and on-site parking. It was not therefore the case that that there were no capability issues until after the disclosures – the health issues were already there. The 5.30pm start time was an issue the Claimant was continuing to raise.

34 Taking the above factors into account in relation to disclosure 1 (the way the Respondent handled disclosure 1 and the events post dating it), it is not likely that the Tribunal will find that disclosure 1 was the reason or principal reason for dismissal. The Claimant referred to the absence of a reference to a right of appeal in his termination letter but that does not mean that it is likely that the reason or principal reason for dismissal was a protected disclosure particularly as it was clear from the correspondence from the Claimant at the time that he knew about employment law – it is not likely that the Tribunal will find that this was somehow a way to block an appeal tending to cast doubt on the stated reason for dismissal.

35 I am therefore not satisfied that the Claimant has a pretty good chance of establishing any more than that disclosure 1 was a protected disclosure. He does not have a pretty good chance of establishing that disclosure 2 was a protected disclosure or that the reason or the principal for his dismissal was disclosure 1.

36 The Claimant's application for interim relief is therefore dismissed.

Employment Judge Reid
Dated: 7 May 2025