



# THE EMPLOYMENT TRIBUNAL

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**SITTING AT:** LONDON SOUTH

**BEFORE:** EMPLOYMENT JUDGE ANDREWS  
sitting alone

**BETWEEN:**

Mr D Hutchinson

Claimant

and

ADT Workplace Ltd

Respondent

**ON:** 23 April 2025

**Appearances:**

**For the Claimant:** In person

**For the Respondent:** Mr G Baker, Counsel

## **INTERIM RELIEF JUDGMENT**

The claimant's application for interim relief is refused.

### **REASONS**

1. In this matter the claimant says that he was an employee of the respondent between 1 February 2023 and 3 March 2025 and that he was dismissed because he had made a protected disclosure ('PD'). He made this application for interim relief on 4 March 2025.

### **Relevant Law & Procedure**

2. By section 128(1) of the Employment Rights Act 1996, an employee who presents a complaint of automatic unfair dismissal pursuant to section 103A may apply to the Tribunal for interim relief. Section 103A provides that an employee who is dismissed shall be regarded as unfairly dismissed if the reason or principal reason is that the employee made a protected disclosure.

3. An application for interim relief will be granted where, on hearing the application, it appears to the Tribunal that it is likely that on determining the complaint to which the application relates, a Tribunal will find that the reason for dismissal is the one specified (s.129(1)). The burden of proof is on the claimant.
4. The case of *Taplin v Shippam Ltd* [1978] ICR 1068 EAT defined 'likely' for these purposes as meaning a 'pretty good chance of success'. That test was reaffirmed in the case of *Dandpat v The University of Bath & ors* UKEAT/0408/09 and in *Ministry of Justice v Sarfaz* [2011] IRLR 562, where the then President of the EAT said:

'In this context "likely" does not mean simply "more likely than not" - that is at least 51 per cent - but connotes a significantly higher degree of likelihood.'
5. The standard of proof required is greater therefore than the balance of probability test to be applied at the final hearing. This is necessary as the granting of such relief will prejudice a respondent who will be obliged to treat the contract as continuing until the conclusion of the proceedings. Such a consequence should therefore not be imposed lightly.
6. Pursuant to rule 94 of the Employment Tribunal Rules of Procedure 2024, an interim relief application is considered at a public preliminary hearing and the Tribunal must not hear oral evidence unless it directs otherwise.

### **Documents**

7. I did not consider it appropriate to direct that oral evidence be heard but I did consider a bundle of documents submitted by the respondent which included witness statements by Mr C Sanderson and Mr D Clemetson, both Directors of the respondent. I also considered a witness statement submitted by the claimant and an email he received on 28 February 2025 from customer support at The Pensions Regulator ('TPR') and an exchange of emails between the claimant and TPR on 24 March 2025. The claimant's documents were only received at the Tribunal either shortly before or during this hearing and were forwarded to the respondent.

### **Submissions**

8. Both parties made oral submissions.
9. In summary the claimant said:
  - a. the evidence will show that in reality he was in all respects an employee of the respondent taking into account all relevant factors and that two sham contracts were drafted by the respondent to show otherwise;
  - b. the respondent's actions were done in bad faith to avoid having to make pension contributions for the claimant and amounted to an act of fraud;

- c. that on 24 February 2025 he spoke to Mr Sanderson and told him that he had already taken advice, had spoken to TPR and HMRC and would speak to them again;
- d. on 28 February 2025 he spoke to TPR and HMRC (alleged PDs) and the email dated 28 February 2025 from TPR confirms that he had told them that he had already raised his concern with his employer;
- e. on 3 March 2025 he emailed the HR Department (alleged PD) together with an invoice for money that he said was owing to him and shortly after was removed from the respondent's systems;
- f. on 5 March 2025 the respondent wrote to the claimant terminating his agreement and this was done because he had made the PDs alleged above;
- g. there had been no performance issues brought to his attention whether formally or informally; and
- h. therefore it is clear that he was an employee and the reason his employment was terminated was because he had made PDs.

10. In summary the respondent said:

- a. the claimant was not an employee and determining whether or not he was, will involve consideration of an allegation of a sham contract;
- b. the claimant's email of 3 March 2025 on its face cannot be a protected disclosure and in any event it is not referred to in his claim form nor is any disclosure to HMRC;
- c. even if he did make a protected disclosure to TPR, it is disputed that the claimant told Mr Sanderson and/or Mr Clemetson that he had spoken to TPR at any time prior to them making the decision to terminate his agreement;
- d. the reason for the termination was the claimant's poor performance, as referred to in the termination letter, and his attempt to invoice them for alleged significant sums of unpaid monies owing which were disputed; and
- e. therefore there is no basis at this stage to say that it is likely the claim will succeed.

### **Decision**

11. I am not persuaded at this stage that it is 'likely' the claim will succeed.

12. There are significant areas of factual dispute between the parties on both the first issue as to whether the claimant was an employee, and therefore can bring the claim in the first place, and the reason why his engagement was terminated. The claimant does have the benefit of both the statement

contained in the TPR's email of 28 February that he had told them that he had already raised the issue with his employer and of what might be portrayed as highly coincidental timing between him speaking to the TPR and his termination. However, given the outright denial by both Mr Sanderson and Mr Clemetson that they had any knowledge of that conversation together with the contents of the claimant's own email of 3 March 2025, as well as the matters referred to in the termination letter regarding the claimant's performance, those issues can only be determined - even at a summary level - by a careful consideration of the evidence both oral and documentary.

13. The application for interim relief is therefore denied.

**Approved by Judge Andrews**

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Employment Judge Andrews

Date: 23 April 2025