Case Number: 6020568/2024

EMPLOYMENT TRIBUNALS

Claimant: **Mr Imad El Kanj**

Respondent: **Intesa Sanpaolo S.p.A.**

Heard at: London Central (by cvp) **On:** 5 March 2025

Appearances
For the claimant: In person
For the respondent: Ms R Kennedy (counsel)

JUDGMENT

It does not appear to the Tribunal that it is likely that on determining the complaint to which the application relates the Tribunal will find that the reason (or if more than one the principal reason) for the dismissal is that specified in section 103A Employment Rights Act 1996. The application for interim relief is therefore refused.

REASONS

1. Reasons were provided at the hearing; written reasons were requested.

Procedural issues

2. The claimant was concerned at the outset of the hearing that the respondent had not complied with orders on dates of exchange of documents and statements. The claimant delivered his documents on 19 February, and the respondent a day later. On skeleton arguments he submitted his on 21 February, the respondent on 28 February. “So, they had the possibility to view my documents” and design their defence, “that’s unfair”. However, said the claimant, he is not disadvantaged because their arguments “are in my favour”. But he asked that their arguments he struck out “on grounds of fairness.”

3. Ms Kennedy accepts the respondent served documents later than the claimant, but says the respondent provided its skeleton within 2 days of the hearing date being given; there was no unless order, they have acted reasonably in the circumstances and it would be disproportionate to strike-out the respondent's statement and skeleton.

4. I declined to strike out the respondent's defence to the interim relief application. While there were delays, the deadline for this hearing was very tight, and the respondent has not acted unreasonably. In addition, on the claimant's own case, he is not disadvantaged by their arguments.

The evidence

5. The claimant provided a 198-paragraph witness statement and a 323-page bundle. The respondent provided a 24-paragraph statement and a 470-page bundle. Both parties provided skeleton arguments. I read the statements, skeletons, and some of the documents before the hearing started. I did not hear evidence, but I heard submissions, and I asked questions. I refer in the judgment below only to documents which are referred to in the statements or which I was taken to during the hearing.

The relevant facts

6. The claimant seeks reinstatement in his employment until his hearing for unfair dismissal. He argues that the respondent is forcing his transfer from the UK to Italy so they can act against him. He has built his life in the UK, he believes his employers are acting vindictively against him because he is of Middle Eastern origin who has "challenged management". He does not accept the respondent's argument that his performance was poor, he had been "a top performer" who was selected for promotion.

7. The claimant's case is that he was paid in February 2025, he does not know if he will be paid for March 2025, but he thinks not.

8. The claimant accepts that he came to the UK as a secondee from the Italian parent company to its UK subsidiary. His employment contract was with the respondent's parent company, based in Milan, and he had been working for the respondent in Milan since July 2019.

9. The claimant accepts that initially he was seconded from Milan to the respondent's UK subsidiary. He says that while he received a secondment letter and terms on 29 September 2023, (pages 5-27 respondent's bundle) and signed this "I did not agree its terms", but he says he believed that the promises he says he was given of a higher salary, his mother being able to join him in the UK would be fulfilled. It was on this basis he says he signed the secondment agreement. He started working in the UK under this agreement on 5 October 2023.

10. The terms of the secondment agreement record that the secondment will start from 1 October 2023 and would be effective, unless the early termination clause was activated, until 30 September 2025. Early

termination could be activated “at any time” on a notice period not shorter than 10 calendar days (clause 1.7), at which time he would be transferred to his original role in Milan.

11. The respondent argues that his wage slips show that he was paid by the UK entity (R30) and the Italian company (R40). For example, during his secondment the Italian parent continued to pay national insurance, health insurance and severance allowance in Italy throughout his secondment.

12. The claimant argues that secondments are usual within the company, and that most of the secondees who transferred from Italy became “regular employees” of the London branch. He says he was told that he would be a secondee for 5 years after which he could transfer to a UK local contract. It was on this basis that he sold everything in Milan and moved to the UK.

13. He argues that he was moved to the UK as ‘retaliation’ and the company now wants to move him back. He says it is ‘illegal’ to transfer him back to Italy after such a short period, that they are wrecking his life, that the aim of the respondent is to put him under the management of his old manager in Italy, who insulted and accused him in the past.

14. The claimant argues that he is an employee of the UK respondent now, because he was paid in the UK, he adhered to FSA regulations and is a regulated person. He had authorisation and power of signature on behalf of the UK company, he was integrated into the organisation: “I was representing the bank, signing on behalf of the branch, including signing contracts on behalf of the bank.

15. The claimant says that the reason why he was dismissed is because he whistleblew. He referred to the notes of a meeting on 24 May 2024 as evidence of public interest disclosures (claimant’s bundle 186 - 194). The notes record that the claimant raised concerns about his “economic package” following transfer, that the aim of the meeting from the respondent’s perspective was to “clarify any misunderstanding of expectations...”. The claimant referred to the discussions in Italy prior to his transfer, the expectations he had, that a promise was made to increase his package to allow him to transfer his mother to the UK, "but none of these promises have been fulfilled”. In addition, he raised issues of confusion over the management of the team, “creating unresolved confusion” to him and the team; that members of the team were giving him “hard times”; he was not invited to meetings; that not filling a role or sending someone who was inexperienced will “generate an operational risk” to the bank; that he was concerned he would have to travel to Lebanon because of the respondent’s breach of promise on his salary, where there was risk to him and his family.

16. The claimant also refers to another act of whistleblowing, a memo he sent on 26 May 2024 (196-200). This refers to the history of how he was “forced” to move to London, the issue with his family and mother and visa issues over her move; that he was not paid the correct sums, that there

was confusion over the management of the team and who should report to who.

17. The claimant says that it was prior to these meetings that he raised issues, that at the meetings they harassed him and that he was attacked, and it was suggested that London was “not the right place” for him.

18. While this is only a summary of these documents, the claimant was unable to specify what in them amounted to a disclosure of information of, say, a breach of a legal obligation or of any regulatory issue.

19. The respondent does not accept that the claimant made whistleblowing disclosures.

20. At a meeting on 24 May 2024 the claimant was informed that his international assignment would end on 20 September 2024, and he was assigned to Milan starting 1 October 2024. As he was on sick leave, he would remain employed in London until 30 days after return to work at which time his transfer would take effect (claimant's bundle 219-20). The claimant says he saw this letter first on 7 August 2024. The claimant returned to work on 17 February 2025, which triggered the request for him to return to a role in Milan.

Submissions

21. The respondent argues that there can be no Order for Interim Relief as there has been no dismissal; and accordingly, there can be no claim for unfair dismissal. Even if this is wrong, it can't be said that he is likely to succeed in his claims of discrimination or of automatic dismissal on grounds of whistleblowing.

22. There is an existing employment contact with the Italian parent, which has not been terminated, meaning there has been no dismissal. Prior to the claimant’s secondment, he had no connection to the UK. The secondment letter makes it clear that he is on a temporary posting to the UK and he will return to the Italian parent.

23. The respondent says that the secondment was not working, neither the claimant nor the UK managers were happy, and “so it made sense” for the claimant to work in Italy where there would be a different role. In the circumstances, this amounts to a “business need” for his transfer back to Italy.

24. The respondent argues that the claimant has an Italian employment contract which continues, that he has a secondment agreement which governs this posting for the length of the posting. Because his contract continues, and because at the date of this hearing he was receiving salary, there was no dismissal.

25. There is no evidence that the claimant made protected disclosures: the claim is not properly argued, it appears that any information he provided

was “self-serving”, for his own benefit. It is not clear what it was he said which amounts to a potential protected disclosure.

26. The claimant is unable to show that he is likely to succeed in his claim that he made public interest disclosures.

27. On jurisdiction, it may be that the claimant can show a territorial pull, this is not decisive – it is not likely that he will establish that he was an employee; all the evidence suggests he remains an employee of the Italian parent. He was domiciled in Italy, he has accommodation there, he was seconded on a temporary assignment, he had a temporary visa, and he was given finances to travel regularly to Italy and Lebanon. There is a dispute to resolve on issues of jurisdiction, which again suggests that the claimant cannot show he is likely to succeed in his claim.

28. Another factor to consider what the respondent characterises as the claimant's vexatious conduct in the proceedings: he continuously accuses the respondent's lawyers of misconduct and has reported them to the SRA and ICO; he says he is starting criminal proceedings; there are 93 pages of such correspondence in the bundle. He continues to send vexatious correspondence leading to unnecessary costs. The respondent says that this may force it to make a costs application on grounds of unreasonable conduct in the proceedings.

The law

29. Employment Rights Act 1996 - s. 128 Interim relief pending determination of complaint.

(1) An employee who presents a complaint to an employment tribunal that he has been unfairly dismissed and—

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

(i) section ... 103A ...

may apply to the tribunal for interim relief.

s.129.— Procedure on hearing of application and making of order.

(1) 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 ...

(2) The tribunal shall announce its findings and explain to both parties (if present)—

(a) what powers the tribunal may exercise on the application, and

(b) in what circumstances it will exercise them.

30. Case law:

    a. *Hancock v Ter-Berg and another UKEAT/0138/19:* A tribunal should consider whether all aspects of the claim are "likely to succeed".

Conclusions on the evidence and the law

31. I accept that there are potentially significant evidential difficulties facing the claimant in his claim, such that he cannot show his claim of automatic unfair dismissal is “likely to succeed”. These are as follows.

32. Firstly, it is unclear whether the claimant has been dismissed. He was paid in February 2025, the respondent says he has a job to return to in Italy. The claimant appears to accept there is a role in Italy, it is just he does not want to return to Italy to do this role.

33. Given the claimant has a role in Italy, and a contract stating that he may be relocated back to Italy, and a secondment agreement stating he was on a fixed-term assignment in the UK with a break clause, there is little evidence to suggest the claimant is ‘likely to succeed’ in showing that he has been dismissed or is under notice of dismissal.

34. Also, it is unclear on the papers what are the acts of whistleblowing the claimant alleges he made. There is little evidence that he did whistleblow on the papers he referred me to. He appears to make complaints in the main of a private nature – issues with his salary, visa, promises he says were made to him. While he points to difficulties with responsibilities and issues in the team, I could not see any provision of information in the ‘public interest’ in these papers.

35. Accordingly, there is little evidence that I saw which suggests that the claimant is likely to succeed in the allegation that he made public interest disclosures.

36. It appears that the respondent decided to end the secondment agreement because of the claimant's obvious dissatisfaction in the UK. *If* any of his statements were acts of whistleblowing, there *may* be an argument that his secondment was ended as a consequence. But this is complicated by the fact the claimant refers to complaints he made while employed in Italy, the claimant’s witness statement sets out a significant history of prior complaints. These complicate the issue of causation and may support the respondent’s case that there was simply a breakdown of the relationship in London. This again means that the claimant is unable to show he is likely to succeed in his claim at the full hearing.

37. For these reasons, the application for interim relief fails and is dismissed.

Approved by:
Employment Judge Emery
20 March 2025

Written reasons approved
3 June 2025

SENT TO THE PARTIES ON

11 June 2025

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R THE TRIBUNAL OFFICE