EMPLOYMENT TRIBUNALS

Claimant: Mr N Rumsey

Respondent: Savills Management Resource

Heard at: London South (by video) **On:** 20 June 2025

Before: Employment Judge N Wilson

Appearances

For the claimant: Mr N Rumsey (in person)
For the respondent: Mr M Briggs (counsel)

JUDGMENT ON INTERIM RELIEF

1. The claimant's application for interim relief is refused.

REASONS

Background

2. These written reasons are produced at the claimant's request dated 20 June 2025 following my refusal of his application for interim relief in respect of his claim.

3. The claimant represented himself at the hearing and the respondent was represented by Mr Briggs (counsel).

4. The claimant makes an automatic unfair dismissal claim under section 103A of the Employment Rights Act 1996 ('ERA') and at the time of issuing his ET1 makes an application for interim relief. The application has been made in time.

5. The claim was brought on 30 May 2025, and the effective date of termination was 29 May 2025. Therefore, the respondent has not yet filed it's ET3 although I have the benefit of a draft ET3 contained in the hearing bundle.

6. I had before me a 43-page bundle (which the parties had access to) comprising the ET1, draft ET3 the investigation minutes, disciplinary minutes, the disciplinary outcome letter and the claimant's appeal letter. I also received separately from the claimant (which was provided to the respondent's representative also before we started) the following:

    - Letter to ET dated 15 June 2025 from the claimant – timeline of events
    - Letter with outcome of disciplinary dated 29 May 2025
    - Letter from the claimant dated 14 June 2025 titled 'statement in support of whistleblowing UDL'
    - Supplemental letter dated 14 June 2025 from the claimant regarding 'new information related to the UDL'
    - Disciplinary hearing notes (in the bundle also)
    - Investigation notes (in the bundle also)
    - Audio Recording

7. It is not in dispute that the claimant was employed from 27 March 2024 until 29 May 2025 as a night Concierge with the respondent.

8. The claimant brings a claim which he describes as unfair dismissal following him whistleblowing (making protected disclosures) about criminal activity on the part of a resident (a third party) of the building the claimant worked at. Specifically, that the resident had taken footage of the claimant whilst asleep at work and threatened to use/circulate the footage unless the claimant met his demands. The claimant confronted the resident and a colleague who had informed him the resident was circulating the video amongst staff. The claimant recorded one of those conversations. When the third party refused to delete the video, the claimant reported it to the police and to his line manager Mr Francesco Furcas.

9. The claimant states in his submissions that he made the disclosure to Mr Furcas on 5 February 2025. The investigation into the complaint raised by the resident about the claimant falling asleep whilst working was received by the respondent on 8 February 2025. An investigation meeting was held on 11 March 2025.

10. The respondent states the reason for dismissal was the claimant's conduct; namely falling asleep whilst at work.

Legal principles

11. Interim relief is an interim remedy provided for by section 128 Employment Rights Act 1996, which says:

"an employee who presents a complaint to an employment tribunal that he has been unfairly dismissed and… that the reason (or if more than one the principle reason) for the dismissal is one of those specified in – Section 100(1)(a) and (b), 101A(1)(d), 102(1), 103 or 103A, or Paragraph 161(2) of Schedule A1 to the Trade Union and Labour Relations (Consolidation) Act 1992… may apply to the Tribunal for interim relief."

12. Section 129 of the ERA 1996 says that the interim relief procedure applies when "it appears 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 principle reason) for the dismissal is [one of the reasons outlined above]". Consequently, to be successful in this application, the claimant has to show it is "likely" that the Tribunal on determining the claim will find that the reason for dismissal was the relevant one – in this case that the claimant made a protected disclosure. "Likely" has been interpreted to mean having a "pretty good chance" of success. A pretty good chance of success has in turn been held (in Ministry of Justice v Sarfraz [2011] IRLR 562) to mean "a significantly higher degree of likelihood" rather than "simply more likely than not".

Determination of application

13. The claimant would need to satisfy me that he has a pretty good chance of being successful in his whole claim. This means that I need to consider there is a pretty good chance of the Tribunal finding that:-

13.1 he made qualifying disclosures to the respondent which were protected.
13.2 the respondent dismissed him because of those disclosures.

14. For me to consider that the claimant has a pretty good chance of being successful in all of his claim, I need to be able to see a relatively straight line through to that end without hurdles which appear inherently uncertain.

15. I do not consider, at this stage, that the claimant has a pretty good chance of establishing that he made a qualifying protected disclosure as he contends he did. The claimant in his ET1 and particulars of claim specifically states that the protected disclosure related to the resident taking footage of him which

amounted to harassment and potential blackmail. He specifically pleads the information tended to show a criminal offence of harassment or blackmail which relates to him.

16. The respondent does not accept the claimant made a qualifying disclosure nor that it was in the public interest. The claimant's own submissions today tend to cast doubt on the public interest part of the test as he states the disclosure was in the public interest because he was concerned about the lack of clear safety policies which could risk staff - which appears to relate to the resident asking him to look after his belongings (which the claimant states was not part of his job). However, this is contradictory to his ET1 and particulars of claim which specifically refers to the disclosure being one which tended to show a criminal offence being committed that was specifically relating to him in terms of harassment and the blackmail. There is therefore the hurdle of the public interest element of the test for him to surmount and if his case is now that there was a disclosure that related to the endangerment of health and safety of other staff then it seems to me that would require an amendment application in any event.

17. The respondent's submissions indicate that there will be a dispute about the information being disclosed to the employer and the nature of any information disclosed amounting to a qualifying disclosure.

18. There are therefore clearly some evidential hurdles the claimant needs to surmount not least because the respondent states the principal reason for dismissal was his conduct in falling asleep whilst on shift and the investigation minutes and dismissal letter seemingly support the respondent's position subject to the evidence being tested.

19. For those reasons I do not consider, at this stage, that the claimant has a pretty good chance of establishing that he was dismissed due to his protected disclosures (assuming that is what they were). The respondent says that absent two years qualifying service all they need to establish is that the real reason for dismissal was the claimant's conduct and the claimant accepts he did fall asleep on the job and that a resident disclosed a video of him doing so to the respondent following which this was investigated by the respondent. The claimant will need to show that the reason or principal reason for dismissal is that he made protected disclosures. The respondent will advance other justification for taking the actions it did, and the Tribunal will need to consider that and balance it against what the claimant evidences in order to make its decision. I do not have that evidence at this stage.

20. In conclusion, I do not consider that the claimant is 'likely' to be successful in his claim. I must therefore refuse this application.

21. Given the nature of the application and the stage in proceedings when it is heard, there is usually very limited information upon which to make a determination. Determination is naturally a broad-brush assessment based on what is available. Refusal of this application should not be taken as a ruling on the claimant's claim itself. It might be that, once all of the evidence is known and tested, the claimant is successful in his claim. For the same reason, nothing in these reasons should be interpreted as a factual finding which binds the Tribunal going forward. I have not heard or tested sworn evidence when making this assessment, and it might be that some of the conclusions I have drawn in this assessment are not sustained when the Tribunal has the benefit of hearing that evidence and submissions of the parties.

Public access to employment tribunal decisions

1. All judgments and written reasons for the judgments (if provided) are published in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the parties in a case.

Approved by
Employment Judge N Wilson
Dated: 29 June 2025

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Sent to Parties.
30 June 2025