EMPLOYMENT TRIBUNALS

Heard at	Croydon (by video)	**On** 3 July 2025
Claimant	Mr Daniel Franklin	
Respondent	Lodge Security Ltd	
Before	Employment Judge Fowell	
Appearances		
Claimant	No attendance	
Respondent	Mr Simon John of counsel, instructed by rradar	

JUDGMENT

The application for interim relief is dismissed.

REASONS

Introduction

1. Mr Franklin has brought a claim for automatically unfair dismissal on the basis that he is a whistleblower, i.e. that he made a protected disclosure, and with that claim has made an application for interim relief.

2. Interim relief is a powerful remedy. It can result in an order for reinstatement, or re-engagement or ultimately that the contract of employment (or at least pay) continues until the final hearing.

3. A curious feature of this claim is that Mr Franklin has already got another job. From the information he has provided he started work this week, on 1 July, and will be working each day this week. Hence, he is not here. He made an application for a postponement of this hearing which has been refused by the Regional Employment Judge. In fact, it was renewed and refused again on the basis that a hearing of this importance ought to take priority and there should at least be some evidence of attempts to obtain time off work, but no such evidence has been provided so there has been no change in circumstances since that decision was made to refuse an adjournment.

4. More generally, such hearings are arranged on an urgent basis and, by section 128(5) Employment Rights Act 1996, "the tribunal shall not exercise any power it has of postponing the hearing except where it is satisfied that special circumstances exist which justify it in doing so." I take the view that obtaining other employment is not a special circumstance and I decided to proceed in his absence.

The test for interim relief

5. Section 129 of that Act goes on to state that an application can succeed where it is 'likely' that the Tribunal will ultimately find in his favour, i.e. that the principal reason for dismissal was that he had made a protected disclosure.

6. How likely is 'likely'? The Employment Appeal Tribunal decided in the case of **Taplin v C, Shippam Limited** [1978] ICR 1068 that this meant that the claim needed a 'pretty good chance' of success.

7. That case has been considered more recently by the Employment Appeal Tribunal in **Ministry of Justice v Sarfraz** 2011 IRLR 562, EAT. There, Mr Justice Underhill held that 'likely' does not mean simply 'more likely than not' but connotes a 'significantly higher degree of likelihood', i.e. 'something nearer to certainty than mere probability'.

8. It is also important to bear in mind that the claimant has to show this likelihood of success (or near certainty) overall. In a typical whistleblowing case there may be several issues - whether there was a legally protected disclosure, whether it was made in the public interest and whether the disclosure was the principal reason for the dismissal. If the claim had an even chance of success on each of these three issues, there would only be a one in eight chance of success overall, so any obvious weakness on any of these issues may mean that the claim is not likely to succeed overall.

The appropriate test and approach

9. It is of course very difficult to assess these probabilities at a short hearing of this sort and without hearing any evidence. In fact, rule 94 of the Employment Tribunal Rules of Procedure provides that the Tribunal 'must not hear oral evidence' unless it directs otherwise, so the hearing normally involves submissions only.

10. In **Al Qasimi v Robinson** EAT 0283/17 Her Honour Judge Eady QC explained the correct approach:

> 'By its nature, the application had to be determined expeditiously and on a summary basis. The [tribunal] had to do the best it could with such material as the parties had been able to deploy at short notice and to make as good an assessment as it felt able. The employment judge also had to be careful to avoid making findings that

> might tie the hands of the [tribunal] ultimately charged with the final determination of the merits of the points raised. His task was thus **very much an impressionistic one**: to form a view as to how the matter looked, as to whether the claimant had a pretty good chance and was likely to make out her case, and to explain the conclusion reached on that basis; not in an over-formulistic way but giving the essential gist of his reasoning, sufficient to let the parties know why the application had succeeded or failed given the issues raised and the test that had to be applied.' [Emphasis added]

11. So, I have to form a view on the material available whether there is a pretty good chance (in the sense of much nearer to certainty that an even chance) that this claim will succeed in due course.

12. I have been provided with what appear to be the key documents from both sides, but the respondent has provided me with a bundle of 260 pages. I also had a skeleton argument from Mr John, and this material has already been provided to Mr Franklin.

13. From Mr Frankin there has been extensive correspondence in support of the application and about 40 pages of documentary evidence. Clearly much of this was in the bundle. References in brackets below are to pages in the respondent's bundle.

Impressions

14. In assessing this material I am not making any findings of fact, just explaining the impression it gives.

15. It is agreed that Mr Franklin began his employment on 7 May 2025, working as a security guard on a zero hours contract. He was deployed to work at the Boots store in Maidstone.

16. On 9 May a concern was raised by the Area Manager at Boots, Ms O'Brien. She emailed Miss Rodwell, who attended this hearing on behalf of the respondent. In that email [145] she pointed out that Mr Franklin had previously worked at the Maidstone store and there had been an incident involving excessive use of force and rudeness to one of the assistant managers. As a result, she wanted him removed. So, concerns about Mr Franklin were raised before the alleged protected disclosure.

17. As a result, on 19 May, Mr Franklin was invited to an investigation meeting There is an email attaching the invitation letter at page 150 and the meeting was to take place on 22 May.

18. The next day, Mr Franklin replied to that email [149]. It is from him but refers to himself in the third person and starts:

> Please find attached a formal letter raising serious legal and procedural concerns in relation to Mr Franklin's exclusion from the Boots Maidstone site. This letter also

constitutes a Subject Access Request under Article 15 of the UK General Data Protection Regulation (UK GDPR).

The matters outlined engage both statutory and contractual rights, including those under the Employment Rights Act 1996, the ACAS Code of Practice on Disciplinary and Grievance Procedures, and relevant data protection legislation. The issues raised are not only material to Mr Franklin's personal position, but also to the wider treatment of agency and zero-hours workers placed by Lodge Security.

19. The reference in the opening line to a formal letter appears to be in error because there is no attached letter and no such letter has been identified. It is the email itself which raises his concerns and it is this email which is relied on as a protected disclosure.

20. However, after these initial and general paragraphs, no actual information or allegation is set out. It goes on to criticise the process as 'devoid of fairness transparency or lawful justification', states that he hadn't 'had the opportunity to know, understand or respond to any allegation' and that he would 'not attend any meeting or process relating to this matter until he has received full disclosure of the reasons evidence and communications underpinning the alleged site ban at Boots Maidstone.'

21. At that, the investigation meeting did not go ahead but Mr Franklin was suspended. That led to a good deal of correspondence and he eventually attended an investigation meeting, by Teams, on 30 May. The minutes of that meeting are available from page 185 onwards.

22. By then another issue had arisen. It is said that on 17 May, after working his shift at Maidstone – from which I gather that he had not at that stage been removed - he went to visit his former colleague at the Boots store in the Bluewater Shopping Centre, where he had worked in the past. He went into the CCTV room and helped his former colleague there with a password issue.

23. That was of concern to the respondent because Boots would not be happy to learn that a member of Lodge Security staff had gone into the CCTV room there and watched footage, without any permission or entitlement to be there.

24. The investigation meeting focused on this new issue and there was no dispute that Mr Franklin had been there and attended the CCTV room, or that he had done so in the past while working for Lodge. His position was essentially that he was allowed to have a chat with an old friend and help with the password issue

25. Following that investigation meeting Mr Franklin was invited to a probationary review meeting and was ultimately dismissed. The dismissal letter is at page 210 and refers to a breakdown in trust and confidence. He was given one week's notice

Legal Tests

Protected disclosure?

26. Section 43A Employment Rights Act 1996 provides that:

> In this Act a "protected disclosure" means a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H.

27. Then by section 43B:

> (1) In this Part a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following—
>
> (a) that a criminal offence has been committed, is being committed or is likely to be committed,
>
> (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,
>
> (c) that a miscarriage of justice has occurred, is occurring or is likely to occur,
>
> (d) that the health or safety of any individual has been, is being or is likely to be endangered,
>
> (e) that the environment has been, is being or is likely to be damaged, or
>
> (f) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.

28. The only one that appears to be apply in this case is (b) - a failure to comply with a legal obligation. The legal obligations in question are related to data protection and procedural fairness under the Employment Rights Act 1996 and the ACAS Code of Practice.

29. But the disclosure must be of some information. The mere making of an allegation is insufficient unless some concrete factual information is also conveyed. In the case of **Cavendish Munro Professional Risk Management Limited v Geduld** [2010] IRLR 38 it was explained that saying: "you are not complying with health and safety requirements" discloses no information, but adding, "because the wards have not been cleaned for two weeks" does.

30. More recently, in **Kilraine v London Borough of Wandsworth** [2018] ICR 846, the Court of Appeal stressed that 'information' and 'allegation' are not mutually exclusive and that Tribunals should consider instead whether the disclosure has "a sufficient factual content and specificity such as is capable of tending to show one of the six relevant failures".

31. It is unclear to me on the material I have seen in what way the respondent was in breach of any legal obligation by inviting Mr Franklin to an investigation meeting. On this first issue therefore my initial view is that Mr Franklin is in fact ultimately unlikely to succeed.

Public interest

32. A public interest test also has to be met. Without going into any cases on the public interest test, it is also not clear why inviting him to an investigation meeting would have any wider implications and affect other members of staff. So again, on the second issue, it appears that Mr Franklin is unlikely to succeed.

Causation

33. The final, and usually the key question, relates to causation. Was Mr Franklin ultimately dismissed for making a protective disclosure or was the principal reason that he made a protected disclosure?

34. As already noted, the concerns on the part of the company originated from their client, Boots, and pre-dated the protected disclosures in question. Mr Franklin has argued in written submissions that the timing of his dismissal, following closely after his email of 20 May, shows that he is likely to succeed, but that only follows if no other issue had arisen, and the concern here about his previous conduct appears serious and genuine.

35. In the circumstances, there appears nothing sinister or out of the ordinary about that invitation to a meeting, and it was that invitation that prompted the alleged disclosures.

36. On the material that I have before me, the concern about attending the Bluewater shopping centre on May 17 was not known to the company when he was first invited to an investigation meeting and that is perhaps the main reason for his dismissal, but again that offers a plausible alternative explanation for that decision and on that basis I cannot see at present how he is likely to succeed on this issue either.

Conclusion

37. On each of these three issues then the overall prospects of success appear to less than even. Not only is the test for interim relief not met but on the face of it the whistleblower claim appears to have little reasonable prospect of success, and on that basis I propose to make a deposit order. Mr Franklin will need to be consulted in writing about his financial circumstances before a figure is set.

38. The claim form also refers to victimisation, which is a similar claim to whistleblowing but it involves a ‘protected act’ - generally a complaint about a breach of the Equality Act 2010 such as an allegation of discrimination. None of the boxes for discrimination on the ET1 are ticked and no protected act has been identified beyond the email of 20 May 2025, which does not mention discrimination, so the victimisation claim also appears to have little reasonable prospect of success.

39. Since a deposit order is made, the time for submission of a response to the claim is extended to 4 pm on **19 September 2025**.

Employment Judge Fowell

Date 3 July 2025