EMPLOYMENT TRIBUNALS

Claimant Mr Daniel Franklin

Respondent Lodge Security Ltd

JUDGMENT

1. The application for reconsideration of the decision to refuse interim relief is dismissed.
2. The deposit order of today's date is not varied or set aside.

REASONS

Interim relief

1. Mr Franklin was dismissed on 6 June 2025 and brought this claim of unfair dismissal on the basis that he was a whistleblower. He also applied for interim relief. That application was heard on 3 July 2025. It was refused because:
   a) Mr Franklin failed to attend the hearing, having obtained other employment;
   b) the decisions to exclude him from working as a security guard at the Boots store in Maidstone and to invite him to an investigation meeting did not appear to involve any qualifying disclosure;
   c) it that was wrong, there did not appear to be any public interest involved in raising those issues;
   d) there was a plausible alternative explanation for his dismissal; and so
   e) overall it could not be said that he had a 'pretty good chance' of success in his whistleblowing claim.
2. In fact that decision also stated that a deposit order *would be made*, subject to Mr Franklin providing any evidence of his means, on the basis that the claim appeared to have little reasonable prospect of success. Mr Franklin has applied for reconsideration of both decisions.
3. The main reasons for that application were as follows:

a) A material error of law in the assessment of whether a qualifying disclosure had been made under section 43B of the Employment Rights Act 1996;

b) Failure to apply the established causation and burden of proof principles under section 103A ERA 1996, as articulated in *Kuzel v Roche Products Ltd* [2008] EWCA Civ 380; and

c) Procedural unfairness arising from the Tribunal's decision to proceed in the Claimant's absence, despite timely notification of his unavailability due to pre-arranged vocational training.

4. These points were then elaborated in the body of the application. Essentially, Mr Franklin maintains that these were protected disclosures, that they were in the public interest and that he was likely to succeed on causation.

5. However, the ACAS Code of Practice on Disciplinary and Grievance Procedures does not impose a legal obligation. It can have legal consequences in some circumstances but these concerns were raised exclusively in the context of his own disciplinary procedure.

6. Similarly, his allegation of breach of the GDPR regulations was a concern about his own data. It remains unclear how the public interest test can be met.

7. On causation, the application states, at §2.5 that:

> The Tribunal also misdirected itself in relation to section 103A ERA 1996, by failing to applying the burden-shifting principles endorsed in Kuzel v Roche Products Ltd [2008] EWCA Civ 380, per Mummery LJ at [58] –[61]. Once a prima facie case of automatic unfair dismissal by reason of a protected disclosure is established, it is for the employer to show an alternative, non-prohibited reason for dismissal. The Tribunal failed to make findings or engage in any such analysis.

8. That is not a correct statement of the law. Where an employee has less than two years' service, as here, he or she still has the burden of showing, on the balance of probabilities, that the reason for dismissal was an automatically unfair reason.

9. With regard to the refusal to adjourn the hearing, the decision explained at paragraph 13 that 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."

10. Obtaining other employment was not considered a special circumstance. In his application for reconsideration, Mr Frankin says that it was and that he had no 'feasible prospect of release' from the training he was due to take that day.

11. His application for an adjournment had previously been refused by the Regional Employment Judge on the basis that Mr Franklin has not provided any evidence to show that he had asked his new employer for time off. That remained the case on the date of the hearing, and remains the case now.

12. Accordingly, there is no realistic prospect of the decision to refuse interim relief being varied or revoked and so the application is refused without a further hearing.

Deposit Order

13. On 9 July 2025 the Tribunal wrote to Mr Franklin giving him the chance to provide any evidence of his means before setting the amount of the deposit. He was given 7 days to respond. The letter also said that if he did not respond, the amount would be set at £100. That applied to both his whistleblowing allegations and his claim of victimisation, for which no protected act has been identified.

14. No such financial information has been provided. Instead, Mr Franklin simply responded on 16 July 2025, as part of this application, to say that he was willing to provide financial disclosure. That is not the same as supplying information and so a deposit order will now be made in that sum.

15. A deposit order is a case management order, not a judgment, and so there is no right to request reconsideration in the same way. It may however be varied or set aside under the Tribunal's case management powers, as set out at rule 31 of the Employment Tribunal Rules of Procedure.

16. None of the submissions made in this application affect the overall assessment made of the prospects of success in respect of those allegations or arguments and so the decision will not be varied or set aside.

17. It does not appear that the application for reconsideration was copied to the respondent. That is no longer a requirement of Rule 69 or 70 but a copy of the application will be supplied to the respondent with this notice.

Employment Judge Fowell

Date 22 July 2025