



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

AND

Respondent

MR A YAQEEEN

UNITED PARCEL SERVICE LIMITED

Heard at: London Central, by CVP

On: 4 September, 2025

Before: Employment Judge: Mr O Segal KC

Representations

For the Claimant: In person

For the Respondent: Miss G Rezaie, counsel

JUDGMENT

The Claimant's application for interim relief is dismissed.

REASONS

1. I was provided with:
 - 1.1. An agreed bundle of 67 pages;
 - 1.2. Witness statements by the Claimant and Mr Ray Foy for the Respondent;
 - 1.3. Written legal submissions from both parties.
2. I am grateful to the Claimant and Miss Rezaie for their assistance.
3. The Claimant (C) began work for the Respondent (R) on 19 June as a driver.
4. C was summarily dismissed on 6 August 2025 after returning from some two and a half weeks' sick leave, in the middle of his probationary period, allegedly "*due to his absence from work*". It was and is not suggested by R that any part of that absence was unauthorised or not genuine.
5. The person effecting the dismissal was Ray Foy, an 'On Car Supervisor' with management responsibility for 45 drivers, but who is himself also a driver.
6. Mr Foy provided (the only) witness statement for R. It is, substantively, only a few paragraphs long. It records in the same terms as a short contemporaneous pro forma document, the reason for dismissal. It says that C "*failed to meet the company standards within his probationary period*" (without saying what those standards are); and it states that the decision was "*nothing to do with [C's] email to Pamela [an HR employee] on 18 July 2025 (something I was not aware of until 29th August 2025) and was purely due to the fact that Ayaan had been absent from work during his probationary period. This decision was discussed with the management team prior to the meeting held on 6th August 2025*".
7. C's evidence is that at that meeting Mr Foy told him that the decision had been agreed between himself, HR and the Business Manager, Raf Haaz; which is consistent with Mr Foy's evidence. R did not provide statements from Mr Haaz or Pamela Tharumalingam, the relevant HR officer.

8. C's case is that the decision to dismiss was not taken for the reason given, but in response to a number of protected disclosures he made to the company, including to Mr Foy, pointing out that the vehicle he was required to drive was in some respects not safe, in particular that one or more of the windows was so dirty/stained that visibility was impaired. C says that he raised that issue:

8.1.twice orally with Mr Foy, once in June once in July;

8.2.in writing on a Car Condition Form (**CCR**) (drivers were required to complete that form each day); and

8.3.in an email 18 July 2025 to Ms Tharumalingam, where he says had asked 'numerous times' for the vehicle to be cleaned, that the 'nearside window' was particularly dirty, and that as a result he saw a child pedestrian later than he would otherwise probably have seen him, leading to his having to brake suddenly to avoid a possible collision.

9. Ms Tharumalingam wrote to C in response on 21 July (by which date C was off sick) that she had informed Mr Haaz and told him to ensure that Mr Foy sits down with C to review the concerns he had raised.

10. The question to be considered upon an application for interim relief is set out in s.129 of the 1996 Act:

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, ...

11. At an interim relief hearing, a tribunal is normally expected to determine that issue on a broad, 'impressionistic' basis, without generally hearing oral evidence, although a tribunal may 'direct otherwise' (rule 94).

12. In this case, I was concerned at the brevity of R's evidence and the failure in Mr Foy's statement to address certain matters which I would have expected to be

addressed (even allowing for the short timetable between application and hearing). In particular, Mr Foy did not address:

- 12.1. Whether Mr Haaz had raised with him that he was required to speak to C about concerns he had raised – though, as noted above, Mr Foy does say he was not aware of C’s email of 18 July until much later;
 - 12.2. What C had written in the relevant CCRs, which R had not provided to the tribunal;
 - 12.3. Whether it was normal to dismiss drivers during their probationary period for legitimate periods of sickness absence and why in C’s case R did not simply extend his probationary period, as provided for in such circumstances in the contract of employment.
13. In those circumstances, I caused inquiries to be made whether Mr Foy could be made available to give additional oral evidence (remotely), but that did not prove possible.
14. When considering the ‘likelihood’ of the claimant succeeding at tribunal, the test to be applied is whether they have a “*pretty good chance of success*” at the full hearing: **Taplin v C Shippam Ltd [1978] ICR 1068, EAT**. That is to say that the burden of proof is higher than that at the full hearing, where the claimant only needs to prove their case on the ‘balance of probabilities’. That approach has been endorsed and applied in several subsequent appellate decisions and C accepted that I am bound to apply it today.
15. However, C argues that the test is too high, it ignores the natural meaning of the statutory language and is inconsistent with Convention rights. He reserves his right to argue those points more fully if appropriate on any appeal.
16. Section 43B ERA 1996 provides, where relevant:

“(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 of more of the following: -

- (a) that a criminal offence has been 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, ...*

(d) that the health or safety of any individual has been, is being or is likely to be endangered ...”

17. The burden is on the claimant to prove each of the necessary elements: **Western Union Payment Services UK Ltd v Anastasiou** UKEAT/0135/13/LA.

18. Section 103A provides that:

“An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure).”

Discussion

19. R contends that it is not likely that C would be able to demonstrate that he made qualifying disclosures within s. 43B (R accepts that if he did, they were ‘protected’ pursuant to s. 43C).

20. I disagree. The disclosures on which C relies – and there is no sufficient evidential basis for believing he is not likely to succeed in proving he made them – were disclosures of ‘information’ (that the windows of his vehicle were unsafely dirty). Moreover, C is likely to prove that he had a reasonable belief that information was made in the public interest (it is in the public interest that R provides its workers with safe vehicles for them to drive) and tended to show that R was failing in its legal obligation to provide safe vehicles to its workers and that the health and safety of C and/or other road users was likely to be endangered.

21. I reject R’s argument that because C had, or may have had, similar legal obligations to ensure his vehicle was safe before driving it, that negated R’s own obligations.

22. C also placed (less) reliance on another alleged qualifying disclosure relating his workload. I consider he is not likely to establish that to be a qualifying disclosure.

23. As generally, the essential point of contest is the credibility of R’s stated reason for dismissal. As almost always, R gave a lawful reason for dismissal at the time and has been consistent thereafter, including in Mr Foy’s statement, in maintaining that to be the real reason for dismissal. Is it likely that at trial C would succeed in undermining

the truth of that and proving that the principal reason for his dismissal were the protected disclosures he made?

24. Not without some hesitation, I conclude, applying the **Taplin** test, that it is not likely that C would be able to establish that.

25. In favour of C at this point in the proceedings are:

25.1. The gaps in R's evidence pointed out above;

25.2. The unusual step of dismissing a worker during their probationary period purely for taking legitimate sick leave for a limited period and then returning to work, particularly where the contract provides for an alternative response to that situation; and

25.3. The fact that, even if Mr Foy himself was unaware of the contents of the 18 July email (as opposed to the email itself), the people with whom he discussed and agreed the dismissal before implementing it, were aware of them.

26. In favour of accepting Mr Foy's evidence at this point in the proceedings are:

26.1. The fact that C was dismissed only after he had been off sick for a relatively significant period during his probation;

26.2. That Mr Foy, during that period of sickness, was corresponding normally by WhatsApp with and by C, encouraging him to comply with R's sickness absence notification procedures;

26.3. That Mr Foy has provided a signed statement testifying to the veracity of the reason given for C's dismissal; and

26.4. The perhaps inherent unlikelihood that the principal reason for the dismissal were these particular protected disclosures, which did not present any particular financial or reputational risk to R, but were rather in the nature of requests that R ensure that a particular vehicle was properly cleaned.

40. If the legal test had been on the balance of probabilities, I would have found this application less easy to determine. Applying the applicable legal test, however, the application must fail.

Employment Judge

4 September, 2025

JUDGMENT & REASONS SENT TO THE PARTIES ON

8 September 2025

FOR THE TRIBUNAL OFFICE