Case No: 6033336/2025

EMPLOYMENT TRIBUNALS

Claimant: Mohammed Khan

Respondent: Elutions Ltd

Heard at: **London Central (CVP)** **On:** **27 November 2025**

Before: **Employment Judge Leonard-Johnston**

Representation
Claimant: Mr V. Law (Free Representation Unit)
Respondent: Ms Niaz-Dickinson (counsel).

RESERVED JUDGMENT

1. The claimant's application under section 128 Employment Rights Act 1996 for interim relief succeeds.

Continuation of Employment Order

2. A continuation of employment order is made under section 129(9)(b) Employment Rights Act 1996. The Claimant's contract of employment shall continue in force for the purposes of pay and any other benefit derived from the employment, pension rights and other similar matters, and for the purposes of determining for any purpose the period for which the employee has been continuously employed.

3. In accordance with (2), the Respondent shall pay to the Claimant forthwith; outstanding monthly salary for August, September, October and November 2025. Thereafter, the salary will be paid on or before the normal pay date.

4. For the purposes of this order, the monthly salary for the claimant shall be determined by an hourly rate set at the national minimum wage rate, which is £12.21 per hour from 1 April 2025. This shall be calculated by reference to a working week of 37.5 hours, being the working hours between 9am-5:30pm, minus one-hour for breaks. The rate of pay will rise according to the national minimum wage rate if amended.

5. Further, in accordance with (2), the Respondent shall arrange for the Claimant to be re-enrolled into its pension scheme and shall make employer's contributions as per the Claimant's contractual entitlement together with back payment of all employer's contributions accrued since dismissal or since the last contribution, whichever is the earlier.

6. All sums under this order are subject to deduction of tax, national insurance and other normal payroll deductions.

REASONS

Background

1. This was a hearing to hear the claimant's application for interim relief pursuant to section 128 of the Employment Rights Act 1996 (ERA), which relates to the claimant's claim of automatic unfair dismissal under section 103A ERA. The claim is one of automatic constructive unfair dismissal. The claim form also included an ordinary unfair dismissal claim but that is not relevant for the purposes of this application.

2. A previous claim form (6024550/2025) was filed on 1 July 2025 relating to protected disclosure detriment at which time the claimant was still employed. This claim was brought on 9 September 2025 immediately after the claimant had terminated the contract citing constructive dismissal, and the application for interim relief was made within the claim form. The effective date of termination was 8 September 2025; accordingly, the application satisfied the requirements of section 128 ERA.

3. The Tribunal had the benefit of the following documents:

    a. Claimant's evidence bundle, and a further email containing a legible version of a snapshot of messages dated 1 September 2021 contained within the bundle.
    b. Claimant's authorities' bundle
    c. Claimant's skeleton argument (1) and (2)
    d. Claimant's witness statement
    e. Respondent's response to the claim
    f. Respondent's skeleton argument
    g. Email evidence provided by the Respondent by email to the Tribunal
        i. Email 7 March 2025 with attachments, including "Emails.pdf".
        ii. Email 28 March 2025
        iii. Email 10 June 2025
    h. A chronology provided by the parties outlining the facts that were agreed and those that were not agreed.

4. The witness statement was read but no oral evidence was heard, as is the default position in interim relief hearings (rule 94of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2024 (the Rules).

5. My task at this hearing was not to hear any live evidence or to make any findings of fact. It was to consider the relevant written documents and what the parties told me in oral submission and then to decide whether Mr Khan had established that it was likely that at the final hearing the Tribunal

would find in his favour on the automatic unfair dismissal complaint under section 103A of the Act.

6. I note that some correspondence between the parties labelled "Without Prejudice save as to costs" was included in the claimant's evidence bundle, and was relied upon by the Respondent. I sought the parties' confirmation that the disclosure of that correspondence to the Tribunal for the purposes of this hearing was consented to by both parties, and the parties confirmed they both consented to it being before me. I note that section 111A does not apply to automatic unfair dismissals by virtue of paragraph (3) of that section.

The issues

7. For the claimant to succeed at final hearing on his claim under section 103A ERA, the Tribunal will have to find each of the following:
    a. That the claimant made the alleged disclosures relied on;
    b. That they amounted to a protected disclosure within the meaning of section 43A ERA;
    c. That the respondent was in repudiatory breach of contract;
    d. That the reason, or principal reason for the respondent's actions was the claimant having made the protected disclosure(s) relied on;
    e. That the claimant resigned in response to the repudiatory breach; and
    f. That the claimant did not affirm the contract or waive any breach in the intervening period.

8. For the application of interim relief to succeed, the Tribunal needs to be satisfied, as regards each of the limbs of the claimant's claim as set out above, that it is likely that, at the final hearing, the Tribunal will find in the claimant's favour and that his claim will succeed.

The applicable law

9. Section 128 ERA reads as follows:

    (1) An employee who presents a complaint to an employment tribunal that he has been unfairly dismissed and –
    (i) that the reason (or if more than one the principal reason) for the dismissal is one of those specified in – (i) … s.103A
    may apply to the tribunal for interim relief"

10. Section 129 ERA states:

    (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 … s.103A.

11. The law on interim relief applications is well-established. The parties relied upon their skeleton arguments in respect of the legal framework to be applied, in respect of which there was no disagreement.

12. A helpful statement of the law applicable to applications for interim relief can be found in the case of Mr A Wollengberg v Global Gaming Ventures (Leeds) Limited, Mr A W Herd [2018, UKEAT/0053/18/DA] at paragraphs 24-27:

> 24. Section 103A of the ERA provides that if the sole or principal reason for a dismissal is that the employee made a protected disclosure, the dismissal should be regarded as unfair. Section 128 makes provision for an application for interim relief, which will keep the contract of employment in force for limited purposes until determination of the claim of unfair dismissal. Section 129(1) sets out the test which must be satisfied before the application is granted. It must appear to the ET that it is likely that on determining the substantive complaint the reason for dismissal will indeed be the reason alleged by the employee. The application must be made urgently and the ET must determine the application as soon as practicable after it is received; see section 128(3)-(5). The ET will not hear oral evidence unless it makes a positive decision to do so; see Rule 95 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 ("ET Rules").
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> 25. Taplin v C Shippam Ltd [1978] ICR 1068 and Ministry of Justice v Sarfraz [2011] IRLR 562 are leading cases on the tests to be applied by the ET. Put shortly, an application for interim relief is a brief urgent hearing at which the Employment Judge must make a broad assessment. The question is whether the claim under section 103A is likely to succeed. This does not simply mean more likely than not. It connotes a significantly higher degree of likelihood. The Tribunal should ask itself whether the Applicant has established that he has a pretty good chance of succeeding in the final application to the Tribunal.
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> 26. Reasons must of course be given for the decision on an application for interim relief; see Rule 62 of the ET Rules. As to reasons generally, the requirement is that reasons should enable the parties to see why they have won or lost and should enable an appellate court to see that the law has been correctly understood and applied. The nature and extent of the reasoning required will depend on the issues. Thus, Rule 62(4) provides that the reasons given for any decision shall be "proportionate to the significance of the issue and for decisions other than judgments may be very short".
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> 27. The requirement to give reasons in the context of an application for interim relief has been considered by the EAT in Dandpat v University of Bath UKEAT/0408/09, Parsons v Airplus International Ltd UKEAT/0023/16 and Al Qasimi v Robinson UKEAT/0283/17. The learning from those decisions was helpfully summarised by Her Honour Judge Eady QC in Al Qasimi in paragraph 59:
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> "59. I start by reminding myself of the exercise that the ET had to undertake on this application. By its nature, the application had to be determined expeditiously and on a summary basis. The ET 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 ET3 was only served during the course of the hearing and it is apparent that points emerged at a late stage and had to be dealt with as and when they did. The Employment Judge also had to be careful to avoid making findings that might tie the hands of the ET 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."

13. In this context "likely" means that there is "a pretty good chance of success": Taplin. In Ministry of Justice v Sarfraz [2011] IRLR 562 the Employment Appeal Tribunal said that this means "something nearer to certainty than mere probability". It is not enough if the Tribunal thinks the claimant has a better than evens chance of success. This sets a relatively high bar for the claimant.

14. Further, the test of "likely to succeed" will apply to all elements required to establish the claimant's s103 ERA claim: Hancock v Ter-Berg and Another [2020] IRLR 97 (paras 35-38).

15. More recently, Cavanagh J in Steer v Stormsure [2021]ICR 808, stated, at para 31:

> "The net effect of these provisions, therefore, is that a claim for interim relief, if successful, does not mean in practice that the tribunal will require the employer to permit the claimant to carry on working pending the determination or settlement of his or her claim. It is not the equivalent of a mandatory injunction or specific performance of the obligation to provide work. Rather, it means that the claimant will continue to receive his/her salary and other benefits in the period up to determination of claim or settlement. This is a valuable benefit, because it can take a number of months before a claim is finally determined….It means that the claimant has a financial cushion whilst s/he is waiting for his/her claim to be heard."

16. In assessing the prospects of success, I have also had to have regard to the legal framework which applies to the substantive complaints of automatic unfair dismissal and constructive dismissal, including the written submissions made by both parties.

Agreed and disputed facts

17. I remind myself that I am not making factual findings at this stage. It is nevertheless helpful to set out the facts that are agreed between the parties and those that are not, in order to assess the likelihood of the claimant succeeding at a final hearing. The facts below are a summary of the facts that are agreed and those that are not agreed, based upon the chronology provided by the parties and their submissions.

18. The claimant commenced work as an Intelligent Enterprise Solutions Engineer on 17 April 2017. His salary was £18,000 per annum. At some (disputed) point between then and November/December 2019 the Claimant became aware that he was working at hourly rates below the National

Minimum Wage (NMW) and raised concerns internally with his employer. It is agreed that the NMW complaints were raised by November/December 2019.

19. The claimant also states that on 12 January 2023 the Respondent agreed an increase of the claimant's salary to £27,000 but that it was never implemented. The Respondent disputes this, saying that the increase was contingent on a performance level that the claimant never achieved.

20. The claimant again raised his salary being below minimum wage with the Respondent on 20 July 2023 [58/121].

21. In January 2025 the claimant made what he calls a "final internal" attempt to resolve the NMW salary issues with the Respondent [54/121]. He requested a salary review on 28 January 2025 stating that "*UK minimum wage for a 37.5 hour working week equates to £23,873.60 annually. Currently my salary is £18,000 per year, which is significantly below this threshold*" [59/121].

22. The claimant raised non-payment of pensions contributions with the Pensions Regulator. The pensions regulator wrote to the claimant in January and February 2025 [80-81/121] stating that the respondent has not paid contributions which were due in 2021.

23. On 5 March 2025 the claimant made a formal complaint to HMRC regarding NMW non-compliance and failure to make pension contributions.

24. On 7 March 2025 the claimant's union representative sent an open email to the Respondent raising a formal grievance about NMW and informing the Respondent that the matter had been reported to HMRC.

25. In addition, on 7 March 2025 a Without Prejudice letter was sent to the respondent [41/121] stating that because of the gravity of the situation the claimant was looking to commence litigation and that it would be in the best interests of the parties to go their separate ways, raising the matter of a Settlement Agreement. A termination date of 31 March was proposed. The parties confirmed in submissions that no agreement was ever reached.

26. On 28 March 2025 [64/121] the Respondent acknowledged an underpayment of NMW, disputed the amount to be paid, and stated an intention to place the Respondent on a 6-week Performance Improvement Plan, stating long standing performance concerns.

27. On 1 April 2025 the respondent removed the Claimant's system access rights, preventing him from working. He was not informed that this would happen and no explanation was given at the time.

28. The Claimant says that the following occurred in April, which is not agreed by the Respondent:

    a. 5 April 2025 the claimant alleges that 13 days of annual leave was added to the system, "manipulating his employment portal records".
    b. On 9 April 2025 the claimant spoke to another employee about the failure to pay pension contributions for several years

c. On 9 April 2025 the claimant made a whistleblowing complaint to the Pensions Regulator
d. On 10 April 2025 TPR responded to the claimant noting that the respondent had not been paying over contributions due to the scheme since 2020 and had missed several bulk payments

29. On 23 April 2025 the claimant applied for ACAS early conciliation in respect of claim 6024550/25.

30. The claimant says that the respondent advertised his job on 22 May 2025, which is not agreed by the respondent.

31. On 29 May 2025 [35/121] the respondent confirmed that the system the claimants "*access to the system has been revoked temporarily as the company is concerned about what action he may now take against it, given the points below*". The points below included *"(y)our client has contacted HMRC unilaterally, and the company is now subject to an investigation*." and that the claimant had issued proceedings.

32. On 11 June 2025 a grievance meeting was held. No outcome was sent to the claimant.

33. On 1 July 2025 claim 6024550/25 was issued.

34. On 1 September 2025 the claimant says that his salary was stopped. The claimant's bank records show no salary received in September for his August pay. This was not agreed by the Respondent in the chronology but I note that in submissions the respondent agreed that it had not paid the claimant his August salary. The claimant has received no salary since his July salary.

35. On 9 September 2025 the claimant resigned (EDT), citing the non-payment of wages as the "last straw". The claimant submitted this claim form on the same day.

Conclusions

36. I remind myself that this is an assessment or overview at an early stage in the proceedings. What has been conducted is a summary assessment based upon a limited amount of time and limited documents. Full disclosure has not taken place.

37. As to whether the claimant made the alleged disclosures relied upon, that does not appear to be in dispute. It is accepted that the claimant raised the NMW issue in November/December 2019 with the respondent. It is accepted that it was raised again in January 2025. It is accepted that the claimant made a complaint to HMRC on 5 March 2025. At this stage the respondent does not appear to accept that a complaint was made to the TPR, however it is likely that the fact of disclosure to TPR is a fact that the final Tribunal will find in the claimant's favour, because of the correspondence in the evidence bundle from TRP indicating a breach. It is also accepted that the claimant raised a grievance on 7 March 2025. My assessment is that it is likely that these disclosures are disclosures of

information and that they were made both to the employer and to prescribed persons.

38. My assessment is that it is likely that a Tribunal would find that the claimant had a reasonable belief that the disclosures were made in the public interest and tended to show that the employer was failing to comply with a legal obligation. The respondent has accepted that it was not paying the claimant the NMW and that in respect of the claimant and other employees, it had not been fully compliant in making pensions contributions as required, due to a cash flow issue. The claimant says in his pleadings that he "*believed that the disclosures were in the public interest because they related to systematic underpayment of wages and pension fraud, which affects not only me but potentially other employees and the integrity of a regulated financial scheme, and this belief was reasonable*." Considering the guidance in Chesterton Global Ltd v Nurmohamed [2017] EWCA Civ 979, I consider it likely that a Tribunal would find that these disclosures were believed to be in the public interest, given that the claimant considered that they affected other employees and were serious systemic failures over a period of time. In light of the fact that the respondent had admitted failures in respect of both pensions contributions and NMW, it is likely to be held that the claimant's belief was a reasonable belief. Accordingly, I consider it likely that it will be found that the disclosures pleaded amounted to protected disclosures within the meaning of section 43A ERA.

39. Turning to the dismissal, and whether the claimant is likely to make out a claim of constructive dismissal, I find it highly likely that he will succeed in establishing that the respondent was in repudiatory breach of contract, and that he resigned because the non-payment of his August wages was the last straw. On the evidence and submissions before me I consider that the claimant is likely to be able to establish a number of repudiatory breaches of contract by the respondent. Including;

    a. failure to pay the claimant according to the NMW dating back to at least late 2019, and failure to rectify that when it was drawn to their attention, over a number of years;
    b. failure to make contributions to the claimant's pension account;
    c. suspending the claimant's access to the system without notice on 1 April 2025, removing his ability to work;
    d. failing to pay the claimant's salary for August 2025.

40. I do not make an assessment in the claimant's favour at this stage that either the failure to increase the claimant's salary to £27,000 as promised, or the statement of intent to place the claimant on performance plan are likely to be repudiatory breaches of contract to the threshold required. The evidence before me is not sufficient to meet the high threshold. However that does not mean that the claimant will not succeed on those issues before a final Tribunal.

41. I consider it likely that the claimant will be able to establish that he resigned in response to the last straw, being non-payment of wages. The timing of events supports this and the payment of wages is such a fundamental breach that it is likely to have led to the claimant considering the contract was unrecoverable. I consider it likely to be found that failure to pay wages was both a breach in and of itself, and was part of a course of conduct of

action in response to the claimant's complaints; and that the claimant, having resigned immediately after the last straw, did not affirm the contract.

42. I turn to the key issue in dispute, which is whether the reason, or principal reason, for the respondent's actions was the claimant having made the protected disclosures relied on. The evidence available to me supports a direct causal link between the claimant making the complaints to HMRC and TPR, for which the respondent was then investigated, and then being locked out of the system and ultimately his salary payments being stopped. The timing of the April suspension supports this. The respondent's own correspondence links the system lock out to his complaint to HMRC. There was no evidence available to me to substantiate the vague allegations of performance contained in that letter, which were not raised before that point.

43. The respondent argued in submission that the real reason for its actions was that the claimant was being unreasonable in negotiations over the amount of money he was owed, and that it was really a breakdown over what he was entitled to. There was a dispute about whether the claimant's working week was 42.5 or 37.5 hours. However, even taking that argument at its highest, I consider there is likely to be found to be a causal link between the respondent's actions and the claimant's disclosures about NMW and pensions contributions. The dispute over monies owed was being negotiated on a without prejudice basis, and there was a failure between the parties to agree on a settlement. In that context, if the reason why the respondent acted the way it did in suspending the claimant's access and failing to pay him was because he was not coming to a settlement in relation to the dispute about NMW and pensions contributions, then I think it likely to be found that there is a sufficient causal link to the protected disclosures.

44. It is self-evident that pre-termination discussions that do not reach an agreement do not alter the employment contract. There was a without prejudice offer from the claimant claimant to terminate the employment relationship pending payment of his outstanding debts, but this was not agreed, and the claimant had not given notice under his employment contract. The respondent characterises the removal of system access as putting the claimant on "garden leave" and says that it was reasonable to put the claimant on "garden leave" when both parties had agreed the relationship had broken down but had not agreed on financial settlement. I disagree with that characterisation. I consider "garden leave" is not the right characterisation of the action taken to lock the claimant out of the system, without notice, in circumstances where the claimant had not resigned or given notice under the contract. It is likely that a final Tribunal would find this to be more accurately regarded as putting the claimant on suspension with pay, with no reason given for the suspension and no disciplinary action commenced.

45. The respondent argued that there is no causal link between the protected disclosures in January, March and April 2025, and the failure to pay wages in August 2025. No other explanation beyond speculation was provided for the failure to pay those wages, however. In the context of the claimant being suspended and the ongoing dispute about the amount owed to the claimant, it is likely that a Tribunal would find that failure to pay wages was part of a course of conduct consisting of the respondent's handling of the claimant's complaints about his pay and pensions since at least January 2025. My

assessment on the evidence before me is that it is likely that a Tribunal will find that the real reason for action by the respondent in failing to pay the claimant his wages was that he had made protected disclosures.

46. Acknowledging that it is a high threshold, my overall assessment is that it is likely that on determining the s103A complaint the Tribunal will find that the reason or the principal reason for the constructive dismissal is that he made protected disclosures.

Interim relief

47. In accordance with section 129 ERA I explained to the parties the powers that could be exercised by the Tribunal. The respondent confirmed when asked that it was not willing to reinstate or reengage the employee. Accordingly, under 129(9)(b), having determined that it is likely that the claim would succeed, I must make an order for the continuation of the claimant's contract of employment.

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Employment Judge Leonard-Johnston

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Date 1 December 2025

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON

4 December 2025

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FOR EMPLOYMENT TRIBUNALS