EMPLOYMENT TRIBUNALS

Claimant: Mr M Rahman

Respondent: Egnaro Limited

Heard at: Watford via CVP

On: 13 November 2025

Before: Employment Judge Bartlett

Appearances

For the claimant: in person
For the respondent: Mr Fuller

JUDGMENT

The claimant's application for interim relief is refused.

REASONS

Background

1. By a claim form presented on 8 September 2025 the claimant made an application for interim relief under section 128 Employment Rights Act 1996 (ERA). The claim also contained a complaint of automatically unfair dismissal under section 103 ERA which is a claim that he was dismissed because of having made a protected disclosure.

2. This hearing to decide the application for interim relief was initially scheduled for 23 October 2025. The claimant's request for this hearing to be adjourned was granted on the basis that the claimant had a flight already booked for that date. The hearing was rescheduled for today's date 13 November 2025.

3. At the start of the hearing I told the claimant that this was a hearing to consider his application for interim and the orders the Tribunal could make were for re-instatement or re-engagement. The claimant was surprised by this. I read out sections 128 and 129 of the ERA, the latter clearly sets out the orders the Tribunal can make.

4. These sections set out the following:

   SS.128 to 130 ERA make provision for interim relief. This is a remedy for (certain types of) unfair dismissal. These sections set out the following:

   '*128 Interim relief pending determination of complaint.*

   (1)An employee who presents a complaint to an employment tribunal that he has been unfairly dismissed and—
   (a)that the reason (or if more than one the principal reason) for the dismissal is one of those specified in—
   (i)section…. 103A…
   may apply to the tribunal for interim relief.
   (2)The tribunal shall not entertain an application for interim relief unless it is presented to the tribunal before the end of the period of seven days immediately following the effective date of termination (whether before, on or after that date).
   (3)The tribunal shall determine the application for interim relief as soon as practicable after receiving the application.
   (4)The tribunal shall give to the employer not later than seven days before the date of the hearing a copy of the application together with notice of the date, time and place of the hearing.
   (5)The tribunal shall not exercise any power it has of postponing the hearing of an application for interim relief except where it is satisfied that special circumstances exist which justify it in doing so.

   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, or

   […]

   (2)The tribunal shall announce its findings and explain to both parties (if present)—
   (a)what powers the tribunal may exercise on the application, and
   (b)in what circumstances it will exercise them.
   (3)The tribunal shall ask the employer (if present) whether he is willing, pending the determination or settlement of the complaint—
   (a)to reinstate the employee (that is, to treat him in all respects as if he had not been dismissed), or

(b)if not, to re-engage him in another job on terms and conditions not less favourable than those which would have been applicable to him if he had not been dismissed.'

5. The claimant stated that he had thought interim relief meant that he would get paid until the final hearing and that he did not want to work for the respondent again. He confirmed that he was withdrawing the application. I have therefore dismissed the application.

6. For completeness, I have also set out below the decision I would have made if I had heard the application.

7. The claimant did not have any documents in support of his application.

The law

Interim Relief

8. Rule 95 provides that the hearing should be conducted as a Preliminary Hearing within Rules 53 to 56. The proper approach is as follows (Parsons v. Airplus UKEAT/0023/16/JOJ 4 March 2016 at para [8]):

'*On hearing an application under section 128 the Employment Judge is required to make a summary assessment on the basis of the material then before her of whether the Claimant has a pretty good chance of succeeding on the relevant claim. The Judge is not required (and would be wrong to attempt) to make a summary determination of the claim itself. In giving reasons for her decision, it is sufficient for the Judge to indicate the "essential gist of her reasoning": this is because the Judge is not making a final judgment and her decision will inevitably be based to an extent on impression and therefore not susceptible to detailed reasoning; and because, as far as possible, it is better not say anything which might pre-judge the final determination on the merits*.'

9. Interim relief should be ordered only if it appears that it is likely that on determining the complaint the Tribunal will find that the reason or principal reason for the dismissal was a proscribed ground: s.129 ERA. There is judicial guidance on the meaning of 'likely' in this context:
   9.1 A "pretty good chance of success": Taplin v. C Shippam Ltd [1978] IRLR 450 [23]; Wollenberg v. Global Gaming Ventures (Leeds) Ltd (UKEAT/0053/18));
   9.2 "*something nearer to certainty than mere probability*": Ministry of Justice v. Sarfraz [2011] IRLR 562 at [19]; and

9.3 a "*good arguable case*" is not sufficient: Parsons v. Airplus UKEAT/0023/16/JOJ 4 March 2016.

10. The hurdle which the Claimant must clear is set relatively high. There is good reason for this. As the EAT noted in Dandpat v. University of Bath UKEAT/0408/09, 10 November 2009 unreported:

'20. … We do in fact see good reasons of policy for setting the test comparatively high, in the way in which this Tribunal did, in the case of applications for interim relief. If relief is granted the respondent is irretrievably prejudiced because he is obliged to treat the contract as continuing, and pay the claimant, until the conclusion of proceedings: that is not [a] consequence that should be imposed lightly'.

11. The Tribunal cannot be criticised for concluding that matters are not sufficiently clear cut at the interim relief stage for it to have sufficient confidence in the eventual outcome to grant interim relief: Parsons at [18].

12. Recently, in Al Qasimi v Robinson EAT 0283/17 (a case involving a claim for automatic unfair dismissal under s103A ERA) HHJ Eady QC (as she then was) summarised the approach tribunals should take in interim relief applications as follows:

"*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."*

Substantive Law - Protected disclosures

13. To establish a dismissal complaint relating to protected disclosures, an employee must first prove on the balance of probabilities that he made a protected disclosure. The requirements to establish this are set out S43B of the ERA. First, the employee must prove that he made a qualifying disclosure under s.43B of the ERA. 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 six categories set out at s.43B (a-f).

14. What is relevant to establishing a qualifying disclosure is if the employee has a reasonable belief in its having happened, happening or the likelihood of its happening. A belief may still be objectively reasonable even where the belief is wrong or does not on its facts fall within one of the categories outlined about.

15. If the employee establishes that he made a qualifying disclosure, he must prove that it was a protected disclosure. This can be done in a number of ways in accordance with s.43C-43H of the ERA. A disclosure made to an employer, as set out in s.43C, is one such way in which a qualifying disclosure can be a protected disclosure.

16. If all the above is established, the employee has made a protected disclosure.

17. For an automatically unfair dismissal claim under s103A ERA to succeed, the protected disclosure must be the sole or principal reason for dismissal.

Decision

18. There is no clear assertion as to the disclosure that the claimant is said to have made. On what has been provided by the claimant, I cannot identify the disclosure, when it was made or to whom. I can identify that the claimant was unhappy with the situation whereby his phone was taken, damaged and then returned by an irate customer. It is not disputed that the claimant was dismissed but the respondent has said this was due to other reasons including lateness and attitude.

19. The parties will be notified separately of the next steps in the case.

Approved by:

Employment Judge Bartlett

14 November 2025

JUDGMENT SENT TO THE PARTIES ON

5 December 2025

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FOR THE TRIBUNAL OFFICE