



EMPLOYMENT TRIBUNALS

Claimant: Mr. Sherif Ekram

Respondent: Optical Express Ltd

Heard at: London South by CVP

On: 5 February 2026

Before: Employment Judge Martin sitting alone

REPRESENTATION:

Claimant: Mr Chima Umezuruike (counsel)

Respondent: Ms Erin Moncur - solicitor

RESERVED JUDGMENT ON ITERIM RELIEF APPLICATION

The Claimant's application for interim relief is not successful and is dismissed

RESERVED REASONS

1. This hearing concerned an application for interim relief made by the Claimant in his claim form presented on 23 December 2025. The date of termination of the Claimant's employment was 22 December 2025.
2. It is the Claimant's case that he made two protected disclosures which were relevant to his dismissal (although there are many more relating to other detriments) on 22 May 2025 and 10 June 2025 and that his dismissal was as a result of making them. He asks for a continuation of contract order to be made, or reinstatement.

The Hearing

3. I had before me a bundle from the respondent and a bundle from the claimant. The respondent also provided written submissions and its draft grounds of

resistance. As yet the claim form has not formally been served on the respondent. I also a statement from the Claimant replying to paragraph 20 of the draft grounds of resistance. Submissions were given orally by both parties. I reserved judgment so I could consider the documents in more detail in order to be able to make an assessment on the likelihood of success at a final hearing. The parties' submissions and documents were considered in some detail.

4. To determine the claimant's application, I need to undertake a predictive exercise as to the likely outcome of the final hearing. I have not made any determinations on factual issues as these are for the final hearing. The application and consideration of it is based on the pleadings, documentary evidence and the submissions and arguments of the parties. Rule 95 of the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013 states that in considering an Interim Relief application "*the Tribunal shall not hear oral evidence unless it directs otherwise*". I did not direct that oral evidence be given and none was heard.

Issues

5. The issue for the Tribunal was whether under section 129 of the Employment Rights Act 1996 it appeared that it was likely that on determining the complaint to which the application related, the Tribunal will find that the reason (or if more than one the principal reason) for the dismissal was specified in section 103A - namely that the Claimant had made a protected disclosure under section 43B of the same Act.

The law

6. Section 128 of the Employment Rights Act 1996 provides that an employee who presents a complaint to an employment tribunal that he has been unfairly dismissed and that the reason (or if more than one the principal reason) for the dismissal is one of those specified in - section 103A....may apply to the tribunal for interim relief.
7. Section 43B provides that a qualifying disclosure means any disclosure of information which, in the reasonable belief of the worker making the disclosure, tends to show one or more of the matters listed in sub-sections (a)-(f). Section 43C of the ERA requires the disclosure to be made in good faith.
8. Section 43B of the Employment Rights Act sets out the types of disclosure qualifying for protection:
 - (1) In this Part a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure, 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, or is likely to be deliberately concealed.
9. An application for Interim Relief will be granted where, on hearing the application, it appears to the tribunal that it is likely that on determining the complaint to which the application relates, a tribunal will find that the reason for dismissal is the prohibited reason relied on (s163 TULRCA)
10. The case of **Taplin v Shippam Ltd (1978) ICR 1068 EAT** defines “likely” in this context as a “*pretty good chance of success*”. That test has recently been re-affirmed in the case of **Dandpat v The University of Bath and Others UKEAT/0408/09/LA**
11. The standard of proof required is greater than the balance of probability test to be applied at the full hearing. The EAT recognised in **Dandpat** that such a high burden of proof is necessary as the granting of such relief will prejudice a Respondent, who will be obliged to treat the contract as continuing until the conclusion of the proceedings. Such a consequence should therefore not be imposed lightly.
12. The word “likely” goes beyond a finding of reasonable prospects of success. As Underhill J (as he then was) set out in **Ministry of Justice v Sarfraz [2011] IRLR 562**: “*In this context ‘likely’ does not mean simply ‘more likely than not’ – that is at least 51% - but connotes a significantly higher degree of likelihood*”.
13. In this case Mr Justice Underhill when President of the EAT set out guidelines for the Tribunal to consider in this type of application.

“I have to decide that it was likely that at the final hearing the Tribunal will find five things: That the Claimant had made a disclosure to his employer; That they believed the disclosure tended to show one or more of the things itemised at (a) to (f) under section 43B(1); 1. That the Claimant had made a disclosure to his employer; 2. that the belief was reasonable; 3. that the disclosure was made in good faith; and 4. that the

disclosure was the principal reason for his dismissal.”

14. Cavendish Munro Professional Risks Management Limited –v- Mr Geduld [2009] UKEAT/0195/09 deals with what amounts to a protected disclosure.

15. My role is not to make findings of fact but to make a broad assessment on whether the Claimant’s claim as presented to me in this hearing has a pretty good chance of success. I followed the approach set out in **Al Qasimi v Robinson EAT 0283/17**:

“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 his 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”.

The parties’ positions and my conclusions

16. The claimant’s counsel clarified what disclosures were relied on in relation to the termination of the claimant’s employment. There are two relied on one dated 10 June 2025 and one dated 22 May 2025. Other disclosures referred to in the particulars of claim relate to other detriments and not the claimant’s dismissal.

10 June 2025 disclosure

17. The Claimant’s statement of facts appended to his claim form says in relation to the disclosure itself:

“On 10 June 2025, Dr Ekram formally reported a patient safety concern at the Cambridge clinic. He raised that the operating environment was not suitable for safe surgery and that the surgical machine, configured with his individual settings, was malfunctioning and producing unstable fluidics”.

18. In his statement responding to the respondent’s draft grounds of resistance the claimant says:

“3.1. The Disclosure

On 10 June 2025, I filed a formal Incident Report via the EMR hospital system and sent direct emails to Colin Berry, Stuart Logan, and David Cooper.

3.2. Substance of Disclosure

I disclosed that the surgical machine at the Cambridge clinic—configured with my specific settings—was producing unstable fluidics. This created an immediate, critical risk to patient safety (IOP instability) and rendered the equipment unsafe for surgery”.

22 May 2025 disclosure

19. In the claimant's statement of facts appended to his claim form he said:

“On 22 May 2025, Dr Sherif Ekram raised a formal clinical safety concern in relation to a patient whose first eye surgery demonstrated signs of pre-existing capsular weakness. Based on his expert assessment, Dr Ekram advised that surgery on the fellow eye should be undertaken by a vitreoretinal (VR) surgeon due to the significantly increased risk of repeat capsular rupture.

This advice was provided in good faith, grounded in objective clinical judgment, and communicated for the sole purpose of protecting patient safety.

Despite this clear warning, the Respondent disregarded Dr Ekram's recommendation and re-allocated the patient to him for second-eye surgery. Dr Ekram again expressed his concerns, documented the risk, and informed the patient that the procedure carried a high likelihood of the same complication occurring.

As predicted, the posterior capsule ruptured intra-operatively in the second eye, necessitating urgent referral to a vitreoretinal specialist — precisely the outcome Dr Ekram had sought to prevent.

This incident is legally significant because:

- Dr Ekram's expert safety warnings were ignored on two occasions despite accurately predicting harm.*
- The patient suffered avoidable injury to both eyes as a direct result of managerial override of clinical judgment.*
- It establishes an early instance in which Dr Ekram was compelled to manage high-risk cases after raising safety concerns”.*

20. In his statement responding the respondent's draft grounds of resistance the claimant said:

“2.1. The Disclosure

On 22 May 2025, I made a formal written disclosure via email regarding a patient exhibiting objective signs of pre-existing capsular weakness. I explicitly warned that:

- Standard surgery carried a high probability of capsular rupture.*

- *Expert opinion mandated that the second eye be operated on by a Vitreoretinal (VR) Surgeon.*
- *Re-allocating this patient to me (a non-VR surgeon) against medical advice was negligent”.*

The parties submissions

Claimant

21. The Claimant made oral submissions. In his submissions he referred to the two disclosures relied on as set out above. It was submitted that the Claimant had demonstrated clearly and strongly that he has pretty good chance of success. This was because in the respondent's response at paragraph 20 they say there is no evidence of how the disclosures were made and that this cannot be correct as they were made orally to and email to Respondent and by entries in electronic records on the respondent's systems.
22. His second submission is that respondent's failure to respond to the allegations contained in letter the claimant's representative sent on 16 December 2025 lends weight to the submission that the Claimant has a pretty good chance of success. The respondent made no reply to that letter when it should explain and answer each of the allegations in the letter. The failure to do so lends weight to claimant having a pretty good chance of success.
23. The claimant's submission is that the respondent has no defence to these allegations and if what the claimant says is true it is likely to establish auto unfair dismissal for making two protected disclosures.

Respondent

24. The respondent provided written submissions which I read prior to the hearing starting. These submissions state in summary that the claimant does not have a pretty good chance of success because there is insufficient evidence to be able to make an assessment of the disclosures in that there is no evidence of what was actually said. Secondly, it was submitted that the reason for dismissal was the claimant's conduct and that the respondent had witness statements from three witnesses which showed the misconduct he was dismissed for. The Claimant chose not to attend either the investigation meeting or disciplinary hearing despite being given the opportunity to attend and did not provide written submissions which he was invited to do if he was not going to attend.
25. In response to the claimant's submissions, the respondent submitted that the claimant referred to the respondent failing to respond to his representative's letter written on claimant's behalf which was sent shortly before first disciplinary hearing. This, the claimant says lends weight to his application. However, it

was submitted that respondent was entitled to continue to communicate with the claimant directly as he was still an employee and that the misconduct allegations were being dealt with in line with the respondent's disciplinary procedure. That procedure does not provide for legal representatives to participate in it.

Final submissions

26. The Claimant submitted that paragraph 9 of the grounds of resistance, regarding statement from different people the nurse who told Claimant he was a rubbish surgeon faced no disciplinary action which lends weight to claimant's assertion that he was dismissed for making two protected disclosures. He also submitted that the detrimental acts taken against claimant culminating in dismissal were not denied in grounds of resistance or dealt with in the respondent's submissions lends weight to the Claimant assertion that he was dismissed because he made protected disclosures.
27. The respondent responded that it understands there is an ongoing investigation with the nurse which she is participating in. There was no outcome yet. Secondly, the respondent highlighted there was an obvious disparity in conduct, in that whilst the comments made by the nurse may be unprofessional, this was different to the physically aggressive behaviour exhibited by the claimant.

My conclusions

28. When considering whether a disclosure is a qualifying disclosure I must consider what was said to establish whether there was a pretty good chance that a tribunal conducting the final hearing would find that they were qualifying disclosures. Although the claimant has said what the disclosures were about, I do not know what was said or written this makes it impossible for me to make an assessment as whether the claimant has a pretty good chance of showing at a final hearing that what was said was an allegation or the disclosure of information. The Claimant's role is technical in nature. Safety and other concerns were part and parcel of his day-to-day work. There would need to be analysis of whether what the Claimant said (once that had been determined) was any more than what was required of him in his role with the respondent on routine basis.
29. On a broad assessment of the Claimant's claim. I cannot conclude that the Claimant has shown that he pretty good chance of success at a full merits hearing that he made qualifying protected disclosures. The claimant has not met the threshold which is higher than more likely than not.
30. I also considered what my assessment would be on the hypothetical basis that the disclosures were protected qualifying disclosures. The next step would be to consider whether the Claimant had a pretty good chance of showing that the

reason for dismissal was because he made the disclosures. I note that the disclosures were made in May and June 2025 and that the dismissal was not until December 2025 some six months later.

31. There is clear evidence in the papers before me that there were incidents which were reported to the respondent which it investigated. The investigation led to the disciplinary hearing at which the claimant was dismissed.
32. In submissions, the claimant says that the fact that the respondent failed to respond to a letter his representative sent just before the disciplinary hearing lends weight to his arguments. I disagree. The respondent failure to respond is neither her nor there. This document in itself if not a protected disclosure, it simply refers to the two disclosures relied on for the purposes of this hearing.
33. The allegations against the claimant were set out in the investigation outcome which was sent to the claimant. The investigation report said:

“Given the seriousness and credibility of the allegations, the consistency across multiple witness statements, and the potential breaches of company policy and professional conduct standards, there is sufficient evidence to proceed to a formal disciplinary hearing for potential gross misconduct, including but not limited to:

- *Aggressive and threatening behaviour towards a colleague*
- *Physical intimidation and restricting a staff member from leaving a room*
- *Unprofessional behaviour in front of a patient during surgery*
- *Conduct likely to bring the organisation into disrepute*
- *Failure to follow expected behaviours and leadership standards for Consultant Surgeons”*

34. The letter dated 23 December 2025, terminating the Claimant’s employment said:

“You were advised that if you failed to attend the rescheduled disciplinary hearing, then it may be held in your absence. The meeting was conducted in your absence, and unfortunately, the decision was made to summarily dismiss you on the grounds of Gross Misconduct without notice or payment in lieu of notice under Optical Express’s Disciplinary Policy. Your final day of employment with the Company was the 22 December 2025”.

35. The Claimant refused to engage with the disciplinary process. He refused, despite encouragement from the respondent to attend an investigatory meeting and also refused to attend the disciplinary hearing and did not provide written representations. He had been warned in correspondence that he if he did not attend then a decision would be made in his absence. He did not appeal his dismissal.

36. My broad assessment is that the Claimant has not shown he has a pretty good chance of showing a causal relationship between any disclosure (on the basis that he proves they were protected disclosures) and the termination of his employment. The evidence I was shown, points to there being another potential reason for dismissal, namely conduct. The allegations made against the claimant were serious and the respondent responded to them by conducting an investigation and had three witness statements on which to base their decision. Whether or not the disciplinary process was carried out fairly is not of concern to me in considering the claimant's application for interim relief. I am only considering the likelihood of the claimant being able to show the reason for dismissal was because he made protected disclosures.
37. To make a continuation of employment order is a serious matter and I have to be convinced that the Claimant has shown he has a pretty good chance of success. Whilst what I have set out above may not address each and every point made by the Claimant, what is set out above is sufficient for me to conclude on a broad assessment, that the Claimant has not shown a pretty good chance of success either in showing he made protected qualifying disclosures or showing that he was dismissed because of them.
38. In all the circumstances the claimant's application for interim relief is dismissed.

Approved by:

Employment Judge Martin

5th February 2026

Judgment sent to the parties on:
10th March 2026

For the Tribunal Office

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