



EMPLOYMENT TRIBUNALS

Claimant: Mr C Ekpechi

Respondent: APCOA UK

Heard at: London South (remotely by CVP)

On: 31 July 2025

Before: Employment Judge Heath

Representation

Claimant: In person

Respondent: **No attendance**

JUDGMENT having been sent to the parties on 8 August 2025 and written reasons having been requested in accordance with Rule 60 of the Employment Tribunals Rules of Procedure, the following reasons are provided:

REASONS

Introduction

1. By an ET1 presented on 2 July 2025, the claimant claims automatically unfair dismissal under section 103A Employment Rights Act 1996 ("ERA"). The ET1 also contained an application for interim relief.

Procedure

2. The claimant attended the hearing, but there was no attendance by the respondent. The address for the respondent set out in the ET1 was Apcoa Parking Uk Ltd, Belmont House, Belmont Road, Uxbridge, England. I checked on the Companies House website and found that the address given there was 2nd Floor, Belmont House, Belmont Road, Uxbridge, England, UB8 1HE. I was satisfied that the omission of "2nd Floor" in the ET1 would have made no material difference, and I am satisfied that the respondent was validly served with a copy of the application, ET1 and Notice of Hearing at that address. I asked for the tribunal inboxes to be checked again before the start of the hearing, and there was no correspondence from the respondent. In the circumstances I considered

that it was in the interests of justice to proceed in the absence of the respondent.

3. The claimant provided a 78 page bundle. He attended with two colleagues. I explained to him at the start of the hearing that I would not be hearing evidence, but that he would be given the opportunity to make representations to me, and that I would read the evidence he had provided. I took some time at the start of the hearing to read the entirety of the bundle, and then I heard his representations. I delivered an oral decision. I explained that, having given oral reasons, written reasons would not be provided unless requested, and that he could request them at the hearing, or within 14 days of the judgment being sent out. No request was made at the hearing. A written judgment was sent to the parties. On 8 August 2025 the claimant emailed the tribunal requesting written reasons. This request was not forwarded to me immediately and, because of my own annual leave and other commitments, I was not able to attend to this as promptly as I would have liked, and for which I apologise.

The law

Interim relief

4. The relevant provisions of the ERA are as follows:

Section 128(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) ... 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).

5. Section 129 provides:

(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

6. Section 129 goes on to set out the consequences of it appearing to the tribunal that it is likely that the tribunal on determining the complaint finding that the dismissal was automatically unfair.
7. The meaning of the word “likely” in section 129(1) ERA has been considered in number of authorities. In *Taplin v CC Shippam Ltd* [1978] ICR 1068 the EAT set out that it meant a “*higher degree of certainty in the mind of the tribunal than that of showing that he just had a “reasonable” prospect of success*”. It went on to suggest that the tribunal “*should ask themselves whether the applicant has established that he has a “pretty good” chance of succeeding in the final application to the tribunal*”.
8. In *Ministry of Justice v Sarfraz* [2011] IRLR 562 the EAT stated “*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*”.
9. The likely-to-succeed test applies to all elements of the claim (*Hancock v Ter-Berg* UKEAT/0138/19). In a claim of automatic unfair dismissal under section 103A ERA, this means satisfying the test in respect of all the elements relating to protected disclosures in part IVA ERA.
10. The tribunal is to carry out an “expeditious summary assessment” of the material put before it, doing as best it can with the untested evidence advanced by each party. This will necessarily entail a less detailed scrutiny than would happen at final hearing. My task is to assess how the matter appears to me, and Rule 95 Employment Tribunals Rules of Procedure 2013 states that the tribunal shall not hear oral evidence unless it directs otherwise. I am also to avoid making findings of fact that could cause difficulty to a tribunal hearing the final hearing of this matter (*Raja v Secretary of State for Justice* UKEAT/0364, *Dandpat v The University of Bath* UKEAT/0408/09/LA and *London City Airport v Chacko* [2013] IRLR 610, *Al Qasimi v Robinson* EAT/0283/17).

Automatic unfair dismissal

11. Section 43A ERA provides that “*In this Act a “protected disclosure” means a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H*”.
12. Section 43B ERA provides:
 - (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 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.*

13. In *Chesterton v Nurmohamed* [2017] IRL 837 the Court of Appeal set out factors to be considered by a tribunal in deciding whether a disclosure was made in the public interest. They are the numbers whose interests the disclosure serve; the nature of the interests affected; the nature of wrongdoing disclosed; the identity of the alleged wrongdoer. Where a disclosure raises questions of a personal character, the question of whether it is reasonable to regard it as being in the public interest is to be answered by considering all of the circumstances of the case. It is a two stage test requiring the tribunal to consider i) whether the worker genuinely believed at the time that the disclosure was in the public interest, and ii) if so, was it reasonable for them to hold that belief.
14. Section 103A ERA 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*”.
15. In determining the reason why the employer dismissed the employee, the tribunal is to determine the set of facts which caused the employer to dismiss, and this will involve an examination of the motivations of the person who dismissed (*Abernethy v Mott Hay & Anderson* [1974] ICR 323, *Simpson v Cantor Fitzgerald Europe* [2021] ICR 695). The “reason” for the dismissal “*connotes the factor or factors operating on the mind of the decision-maker which causes them to take the decision.*” *Beatt v Croydon Health Services NHS Trust* [2017] ICR 1240.

Narrative of events

16. As I indicated in my oral decision, a tribunal at a hearing for interim relief is not making findings of fact, and is conducting a summary expeditious assessment of the facts on the basis of the information and representations put before it. My impressions are as follows, and are not meant to bind any future tribunal.

17. The claimant was employed on 11 November 2024 by the respondent as a Civil Enforcement Officer. He was provided with a contract of employment which he signed on 28 October 2024.
18. On 13 March 2025 there was an incident when the claimant was taking a rest break, during which he took a nap. He says that his supervisor, Mr Vas approached him and told him to finish his break outside.
19. On 14 March 2025 the claimant had a further disagreement with Mr Vas. That day he emailed the respondent's HR to complain about the 13 March 2025 incident, and to seek clarification of the break policy. The emails is as follows, and the claimant confirmed at the hearing the he relied on this as containing the protected disclosures of information he relies on:

Good morning!

My name is Chuma Ekpechi, a staff at APCOA Wandsworth. I would like a clarification regarding your break time policy.

At APCOA Wandsworth, the supervisors told us we are entitled to have 1 hour break and a 15-minute tea break (together) but if we are 5 or 10 mins late to the base (for the break), we will only have 1 hour break and take the 15 minute break outside the base.

Reason I'm asking is that yesterday I was supposed to return to the base at 14:00 for my break but was delayed due to the heavy rainfall. I arrived at the base at 14:20 and commenced my break. After eating, I fell asleep due to tiredness of childcare & daily school run. I was then woken up and interrupted by one of the supervisors to go outside and finish my 15-minute tea break, that my hour break is over. I wasn't happy with this because there's no place in the policy this is mentioned. So please can you clarify about break policy because I couldn't understand why the supervisor woke me up to instruct me to go outside and finish my break when it was still raining and I haven't completed my break?

I would really appreciate your response.

20. The claimant says he chased a response but none came.
21. On 15 April 2025 the claimant made an application for flexible working. This was refused the following day on the basis that the claimant had not been employed for 26 weeks at that point. There was some further correspondence on this issue.
22. On 22 May 2025 the claimant was interviewed by Mr Morshed, Team Leader, about allegations that he had falsified his location on various

occasions. During the course of his work as an Enforcement Officer he was to report his location in activity logs. Also in the course of his work he operated a hand held computer which contained a GPS tracking system which recorded his location. It was alleged that the locations he reported himself as being in the activity logs did not correspond, on numerous occasions, with the information provided by the GPS system on the hand held computer. The meeting was minuted (and was in the bundle) and was signed by the claimant.

23. The claimant says that after the interview meeting a supervisor, Mr Da Costa Maia, said he was going to be sacked.
24. On 22 May 2025 the claimant was sent a letter informing him of his suspension from duty with pay during the course of an investigation into his alleged gross misconduct.
25. On the same day the claimant emailed HR once again. He set out his previous request for guidelines on breaks. He referred to the investigation into allegations regarding GPS/locations issues. He referred to the supervisor telling him that he would be sacked, alleging that he believed this was *"victimisation or discrimination against me because why would a supervisor say this to me when the case is still pending. So does it mean he already knows the outcome? Ever since I had the issue of break with the supervisor Wellington and I requested for flexible working, it seems like I'm being treated unfairly and victimised"*.
26. On 2 June 2025 the claimant submitted a DSAR to the respondent, which he says has not been responded to.
27. On 5 June 2025 the claimant put in a grievance to HR in which he complained about inaccurate notes of the investigation meeting, inappropriate comment by the team leader (the alleged threat of being sacked) and went on say:

I believe these actions are a direct consequence of a report I filed against Team Leader Wellington Vas, as well as my known association with a colleague involved in an ongoing grievance case. These circumstances suggest I am experiencing whistleblowing detriment and discrimination, and that my case is being prejudged before the hearing meeting. I have 2 witnesses that saw us outside and CCTV can provide evidence of my claim.
28. On 6 June 2025 the claimant was interviewed, as part of his grievance, by Ms Eso, Operation Support Manager. During the course of this interview (the minutes of which were in the bundle) he said *"I believe I am getting picked on because I have reported Wellington when he interrupted my break and also because I am close friends with Salman"*. Ms Eso responded that she would look into this, and assured the claimant that this would be nothing to do with Wellington and that she was not aware of anything he may have sent to HR as that was confidential.

29. On 16 June 2025 the claimant was invited to a disciplinary hearing on 19 June 2025 to consider the allegations of falsifying locations, breach of trust and confidence and bringing the company and client into serious disrepute which was expressed to be allegations of gross misconduct which could lead to his dismissal. He was told that he had previously been supplied with the evidence gathered during the investigation.
30. The claimant responded later that day to say that he had an ongoing grievance and so asked for the disciplinary hearing to be cancelled. The respondent replied that the grievance had been dealt with and an outcome supplied, and that the disciplinary hearing would go ahead.
31. On 17 June 2025 Ms Eso wrote to the claimant. She did not uphold his grievance.
32. On 19 June 2025 the claimant appealed his grievance outcome. This appeal included him saying *"I maintain my assertion regarding whistleblowing detriment. The indications of being unfairly targeted and discriminated against ever since I reported Wellington Vas (a supervisor) to HR for interrupting my break and ordering me to take my 15 minutes tea break outside should be reassessed for a fair evaluation of my current work environment"*.
33. On 24 June 2025 a disciplinary hearing took place chaired by Mr Shaw, Contract Manager. The claimant was accompanied by a colleague. The disciplinary charges were discussed and the claimant was given the opportunity to set out his account.
34. On 1 July Mr Shaw sent the claimant an outcome letter. This set out the allegations, set out the procedure of the disciplinary hearing, set out the evidence considered (which essentially appeared to show numerous discrepancies between the claimant's location on his activity reports and the locations recorded for those times on the hand held computer), set out the claimant's account (essentially that there were GPS errors). Mr Shaw set out his conclusion that he reasonably believed the GPS locations recorded were correct, and that it was unlikely that 4 different handheld computers used by the claimant would all be malfunctioning. He observed that discrepancies all seemed to occur at the end of the claimant's shifts and appeared to be in locations outside the respondent's enforcement zone. Mr Shaw concluded that the claimant had deliberately falsified his activity reports on 4 different dates to give the impression that he was patrolling streets when he was not in fact doing so. He considered this dishonest and destroyed trust and confidence and that the allegations amounted to serious gross misconduct. He considered that summary dismissal was warranted.

Conclusions

35. As set out above, I am to determine whether it is likely that the claimant will succeed in establishing all elements of his claims.

36. He relied on his disclosures of information on 14 March 2025 as being protected. He appeared to be saying in this email that he wanted clarification of the break policy and was asserting that he was told to go outside to finish his break.
37. Although the claimant told me at the hearing that he believed others were having difficulties with their breaks, this was not information that he was disclosing at the time.
38. I do not, on an expeditious summary assessment, conclude that it is likely, to the requisite standard, that the claimant will establish that he was disclosing information that in his reasonable belief was in the public interest, and which tended to suggest a breach of a legal obligation. This does not appear to be a matter of public concern, but rather a private disagreement about the respondent's break policy.
39. To grant interim relief I must be satisfied that it is likely that the claimant will establish that the reason, or principal reason, for the claimant's dismissal was because he had raised the issues he did in the 14 March 2025 email (on the assumption that it is likely that he will establish the disclosure was protected).
40. In considering an application for interim relief the tribunal cannot subject the information to intense scrutiny. However, it appears clear from the information available to me that the respondent, in dismissing the claimant for gross misconduct, was relying on evidence that appeared to suggest that the claimant falsified information on a number of occasions. He ran the line that 4 different handheld computers must have been malfunctioning. It may be that a more intense scrutiny of the evidence at a final hearing may tend to show that. But that will be a matter for evidence at the final hearing.
41. I am not able to determine at this hearing that it is likely that the claimant will establish that the reason, or principal reason for his dismissal was for having made protected disclosures in the email of 14 March 2025.
42. The application for interim relief is dismissed.

Approved by:

Employment Judge Heath

5th September 2025

Judgment sent to parties on:
5th September 2025

For The Tribunal Office