Case Number: 6020104/2025

EMPLOYMENT TRIBUNALS

Claimant: **Dr Sheila Samsatli**

Respondent: **Energy Systems Catapult Ltd**

Heard at: **West Midlands Employment Tribunal**

On: **23 September 2025**

Before: **Employment Judge A Smith**

Representation

Claimant: Represented herself with support from her husband, Dr Samsatli

Respondent: Mr Hignett (Counsel)

JUDGMENT

1. The claimant's application for interim relief is refused.

REASONS

Introduction

1. This is an application for interim relief made by the claimant on 29 August 2025. The application is opposed by the respondent.

2. I have before me, three bundles from the claimant and one from the respondent. The claimant objected to me considering the respondent's bundle and skeleton argument as they were served late.

3. On review it was clear the respondent was raising a jurisdictional point, which both parties agreed needed to be considered prior to the application in full. The claimant withdrew her objections to me reviewing the respondent's skeleton in relation to this point. I did not therefore consider the witness statements at this stage.

4. The claimant herself with support from her husband Dr N Samsatli. The respondent was represented by Mr R Higgins of counsel. Present was his solicitor Ms Kate Attwood and, two observers from the respondent, Mr Virdee and Ms Hughes.

5. I heard from both parties on the point and read Mr Hignett's skeleton. I also allowed breaks where necessary to allow the claimant to digest the submissions and prepare a response.

Submissions

6. The following is a summary of what the respondent said in a skeleton argument and in oral submissions:

    a. The whistleblowing detriment claim was filed on 29 May 2025.

    b. The key thing about that was that the claimant was still in employment when she filed the claim. It didn't talk about dismissal.

    c. On the 29 August, after the claimant was dismissed on 28 August, the claimant submitted an application for interim relief.

    d. The claimant will say the application begun within the 7 day time limit in the rules.

    e. It is right to say in the interim relief application that the claimant said she was dismissed as a result of blowing the whistle.

    f. This is about the pure waters of statute: it creates a condition precedent. There has to be an unfair dismissal claim submitted in

parallel with an application for interim relief. One cannot present a standalone application for interim relief.

g. EJ Bansal considered this on 10 September. The claimant suggests this Tribunal is bound by his determination. We take a point on this. Accepting EJ Bansal was entitled to take route he did in effectively allowing an amendment to the extant claim, to add to it a complaint of automatic unfair dismissal - there is a timing issue.

h. The case of Galilee deals with this very scenario. Amendments to the pleadings were made by the Tribunal in same way as happened here. This case says that the time permission is given to amend is the relevant date. Applying Galilee to the facts here: the claimant's complaint takes effect on 10 September: the very day EJ Bansal gave permission to amend.

i. It is after the expiry of the 7 day time limit in s128(1).

j. The cart has been presented on 29 August but the horse did not follow until the 10 September.

k. This Tribunal does not have jurisdiction to consider this.

l. The claimant will say that the EJ Bansal letter was determinative. But it is a jurisdictional point. You either have it or you don't. A Judge cannot decide the Tribunal has jurisdiction when it does not.

m. The letter from EJ Bansal is not a decision but is a position taken in correspondence.

n. I am applying for reconsideration if the Tribunal is not with me.

o. The claimant chose not to produce a separate ET1 for automatic unfair dismissal on 29 August or shortly thereafter. She did it the way she did it, which carried a risk that permission to grant an amendment may be outside time limit.

7. The claimant said in submissions and in response to my questions:

    a. The respondent argues that I have no ET1 for dismissal, but EJ Bansal already ruled on the application to amend which therefore asserts dismissal under s103A of the Employment Rights Act 2010.

    b. This means jurisdiction is confirmed.

    c. I was dismissed on 28 August. And I applied for interim relief on 29 August. This is well within the 7 day period.

    d. Where dismissal follows an ET1 it is routine to allow amendments and the Tribunal has already done so. The substance is clear.

    e. The application is in time.

    f. In relation to the case law the respondent uses. How they use it is a stretch. Galilee is about amendments in ordinary unfair dismissal cases. It is not for automatic unfair dismissal cases. As long as it is asserted as a fact that there is a dismissal it is allowed.

    g. EJ Bansal has already ruled that the application to amend asserts dismissal under s103A.

    h. The Tribunal also has to look at the rules. Rules 69-72 are relevant. EJ Bansal has to reconsider his own decisions, not this Tribunal.

    i. Writing an application for reconsideration in a skeleton a few hours before a hearing is not enough to satisfy r69. The respondent has not applied to reconsider that decision.

    j. The Tribunal has not listed it for a reconsideration. If it listed it I would have had 7 days to consider the application and to put together arguments.

k. The finality of case management order is important. In the Secretary of Secretary of Health v Rance the Employment Appeal Tribunal confirmed that parties should not be released from complying with orders unless there is a proper application or a compelling reason.

l. Simpson v Fitzgerald 2001 stressed finality in tribunal directions and that it is a part of natural justice.

m. Harvest v McCaffrey 1999 says that the Tribunal looks at substance not form. The question is whether there is an arguable dismissal which qualifies for interim relief. The Tribunal should be treating ET1 as amendment, just as EJ Bansal has done.

Law

8. S128(1) ERA states

> (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 100(1)(a) and (b), 101A(1)(d), 102(1), 103 or 103A, or
>
> (ii) paragraph 161(2) of Schedule A1 to the Trade Union and Labour Relations (Consolidation) Act 1992, or
>
> (b) that the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was the one specified in the opening words of section 104F(1) and the condition in paragraph (a) or (b) of that subsection was met
>
> 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.

9. Rule 94 of the Employment Tribunal Rules states that:

> When the Tribunal hears an application for interim relief (or for its variation or revocation) under section 161 or 165 of the Trade Union and Labour Relations (Consolidation) Act 1992[1] or section 128 or 131 of the Employment Rights Act 1996[2], rules 52 to 54 (preliminary hearings) apply to the hearing and the Tribunal must not hear oral evidence unless it directs otherwise.

10. In Galilee v Commissioner of Police of the Metropolis 2018 ICR 634, EAT, HHJ Hand held that there is no doctrine of 'relation back' in employment tribunal proceedings: amendments to pleadings that introduce new claims or causes of action take effect for the purpose of limitation at the time when permission to amend is given.

11. The Galilee case was also approved in Szymoniak v Advanced Supply Chain (BFD) Ltd EAT 0126/20, where HHJ Auerbach stated:

> "The tribunal is… not obliged to determine the time point at the same time as determining the amendment application. There is no doctrine of relation back, and sometimes the tribunal can, or indeed should, leave the time point to be resolved at the full hearing… However, a time point of this sort is a factor that can be properly weighed in the balance when deciding whether to allow the application to amend."

12. The Secretary of Secretary of Health v Rance 2007 IRLR 664: is an Employment Appeal Tribunal case about whether you can reopen concessions at an appeal stage. It is not relevant to this application.

13. The case of Simpson v Cantor Fitzgerald Europe 2021 IRLR 238 is about substantive case law on whistleblowing detriment and whether the Tribunal set out the law sufficiently in its judgment. It is not relevant to this application.

14. The case of Harvest v McCaffrey 1999 IRLR 778 is about the interpretation of the word danger under s100(1)(d) Employment Rights Act 1996. It is not relevant to this application.

15. The points the claimant seeks to make in the case law was about: finality of case management orders, finality in tribunal directions are part of natural justice and the Tribunal should look at substance not form. I accept the first two are accurate principles I should consider and take into account where relevant. The latter will be applicable in certain situations, but I reject that as a general submission in relation this this application.

Conclusions

16. The claimant served an ET1 on 29 May 2025. She did not tick the box for unfair dismissal or reference it in any way in the claim form. There was certainly no ref to automatic unfair dismissal.

17. The reason for that is simple: the claimant was still employed at that date. Indeed, her claim form specified her employment was continuing.

18. There is a procedural history of an application by the respondent to present a late response to the claim, which was accepted by Tribunal. This is not directly relevant here. But the point being: a claim was accepted as being several complaints of whistleblowing detriment which was responded to as such.

19. On 28 August 2025 the claimant was dismissed by the respondent.

20. On 29 August 2025 the claimant emailed the Tribunal saying:

> "Dear Tribunal, please find attached my application for Interim Relief under section 128 ERA 1996, together with supporting documents."

21. It goes on to say:

> “1. Statutory Basis of Application I apply for interim relief under section 128 of the Employment Rights Act 1996, on the basis that my dismissal by the Respondent on 28 August 2025 was automatically unfair under section 103A ERA 1996 (dismissal for making protected disclosures).”
>
> …
>
> “The Respondent has sought to characterise my dismissal as arising from “conduct” and “loss of and confidence”. In truth, the principal reason was my protected disclosures and the time-limited boundaries I requested in connection with them and my ET1 claim.”
>
> …
>
> “I respectfully submit that there is a pretty good chance the Tribunal will find my protected disclosures were the principal reason for dismissal.”
>
> …
>
> “This application is made within 7 days of dismissal, as required by section 128 ERA.”

22. This email was considered by Employment Judge Bansal who wrote to the parties on 10 September 2025 via the Tribunal office. The letter stated:

> “Employment Judge Bansal has considered and on applying the Employment Tribunal's powers/discretion to amend, I determine the application does assert her dismissal was automatically unfair under s103A ERA 1996 - that can be read as making a claim for unfair dismissal to which she has made an application for Interim Relief. I would therefore agree that this application should be accepted as a claim for automatic unfair dismissal and list for an Interim Relief hearing. The Claimant has complied with the time limits to do this. The claim form also includes a complaint of unfair dismissal, which will be dealt with separately. You are not required to enter a separate response to the interim relief application. A notice of hearing of the interim relief application is attached. You will be given a copy of the application and any supporting documentation at least 7 days before the hearing.”

23. Employment Judge Bansal clearly considered that the was making an application to amend her claim to include a claim of automatic unfair dismissal and granted that application. The respondent accepts that.

24. The question is when that took effect as a matter of law.

25. I find that there is no relation back principle.

26. It is irrelevant as to whether Employment Judge Bansal took the Galilee approach and left time limits to the final hearing or determined them substantively. Albeit I consider it to be the former, due to an absence of that finding. This does not, however, bind a future Tribunal on that point.

27. I also consider it to be irrelevant that Employment Judge Bansal stated the claimant had complied with the time limits to make an application for interim relief. I don't consider this to be a full Judgment on time limits in the context of this specific jurisdictional point. I consider this to be a factual finding of an Employment Judge that the application was made within 7 days of the dismissal alone.

28. The relevance is whether or not, in granting the application to amend on 10 September 2025, the new automatic unfair dismissal claim as a matter of law exists only as of 10 September 2025.

29. The claimant says I ought not to apply Galilee to this case as Galilee is about ordinary unfair dismissal and not about interim relief applications. Whilst I understand her point, I find that Galilee has a wider application than just for ordinary unfair dismissal claims. It determined a principle, as set out above, which is applicable to all applications to amend, regardless of the head of claim (with the only exception being name of the respondent). Further whilst it is not a case on interim relief, it remains a principle of law I am bound to apply to applications to amend.

30. I am required in this case to make this finding as it impacts directly on whether the application for interim relief was made when a claim for automatic unfair dismissal existed.

31. I find that, applying Galilee in granting the application to amend on 10 September 25, the new automatic unfair dismissal claim, as a matter of law, exists only as of 10 September 2025.

32. The claimant's application for interim relief was made on 29 August 2025. That is a clear fact.

33. Therefore, at the time of the application, there was no unfair dismissal claim existing.

34. I consider the statutory procedure for interim relief to be strict and unyielding. I do not have the power to change the date of the automatic unfair dismissal claim. I do not have the power to extend the 7 day time limit for bringing the application, and therefore consider it fresh today. I am bound by the dates.

35. Therefore, I conclude that the Tribunal does not have jurisdiction to consider the application for interim relief as there was no claim unlocking the right to make such an application in statute as of the date it was made.

36. I appreciate this is a technical point, and one which will cause frustration for the claimant, but I find I have no discretion to adapt any of the procedural or stat requirements of such an application in these circumstances.

37. I refused the application for interim relief.

38. The application therefore ends there. I do not need to consider any points about reconsideration.

Approved by:
Employment Judge A Smith

5 November 2025

Notes

All judgments (apart from judgments under Rule 51) and any written reasons for the judgments are published, in full, online at *https://www.gov.uk/employment-tribunal-decisions* shortly after a copy has been sent to the claimants and respondents.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings and accompanying Guidance, which can be found here:

www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/