EMPLOYMENT TRIBUNALS

Claimant: Mr N Tangirala

Respondent: Global Minds Limited

Heard at: Birmingham (by video) **On:** 5 June 2024

Before: Employment Judge Maxwell

Appearances
For the Claimant: Mr Griffiths, Counsel
For the Respondent: Ms Hirsch, Counsel

REASONS

1. These written reasons are provided pursuant to the Claimant's request.

Introduction

2. Shortly before the hearing, I was provided with:

   2.1 a bundle of documents running to 489 pages;

   2.2 the Respondent's proposed grounds of resistance;

   2.3 a witness statement for the Claimant running to 21 pages;

   2.4 a witness statement from Mr Millar on behalf of the Respondent running to 5 pages;

   2.5 the Respondent's skeleton argument running to 15 pages;

   2.6 and a cast list (which I could not open).

3. I began the hearing by reminding the parties that an application for interim relief was an urgent introductory matter, listed at short notice. I was required to consider the Claimant's prospects and whether he was likely to succeed in a claim of automatic unfair dismissal pursuant to section 103A of the **Employment Rights Act 1996**. If satisfied with respect to the threshold question, I would then need to determine what particular order to make. I observed that the volume of documentation appeared disproportionate in these circumstances.

4. Whilst I had to form a provisional view, the hearing of an application for interim relief is not a mini trial of the Claimant's claim. I would look at the parties' pleaded cases and relevant documentary evidence. I could take into account witness statements as indicative of what would be put forward at a final hearing, but would hear no live evidence. Having received the parties submissions, I would make a decision on the principle of interim relief. In the event I was satisfied it was appropriate to make an order, I would need to hear from the parties on reinstatement, re-engagement or continuation. This hearing, as with most such applications, was listed for 1 day. Neither party had sought a longer listing. It would not be possible, in the time available, for me to read the bundle in its entirety, a detailed investigation in that regard was not appropriate and it was a matter for the parties to draw relevant documents to my attention in a proportionate way.

5. Both parties sought additional time in order to read the evidence or submissions they had recently received from the other side. As such, we were unable to make a prompt start.

6. I adjourned the hearing until 11 am, explaining that I would in addition to the Claimant's claim form particulars (which I had read already because it was on the Tribunal file) read the proposed grounds of resistance, the two witness statements and Respondent's skeleton argument, following which I would hear the parties representations for up to 30 minutes each. Counsel did not disagree with my proposed timetable.

7. I resumed at 11 am and received the parties oral submissions. I was grateful for their focus and brevity.

Law

8. I reminded myself of the law and took into account what the parties had put before me in this regard.

Interim Relief

9. Applications for interim relief are governed by section 129 of the **Employment Rights Act 1996** ("ERA"), which provide so far as material:

> **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**
>
> **[…]**
>
> **(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.**

10. Guidance on the threshold for whether the Claimant is "likely" (for these purposes) to succeed was provided by the EAT in **Taplin v C Shippam Ltd [1978] ICR 1068**, per Slynn J:

> **We think that the right approach is expressed in a colloquial phrase suggested by Mr. White. The industrial 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.**

11. In light of **Taplin** and subsequent authorities, it is clear that something more than a simple 51% prospect of success is necessary. See **Wollenberg v Global Gaming Ventures (Leeds) Ltd UKEAT/0053/18/DA**, per HHJ Richardson:

> **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.**

Unfair Dismissal – Section 103A

12. For the purposes of an automatic unfair dismissal claim under section 103A of the Employment Rights Act 1996 ("ERA") 1996 ("ERA) the Tribunal must be satisfied that reason or principal reason for dismissal was the making of a protected disclosure.

Protected Disclosure

13. The making of a protected disclosure involves three elements. Firstly, there must be a "disclosure". According to ERA section 43B(1) a disclosure is constituted by "any disclosure of information".

14. Secondly, the disclosure must be "qualifying" which is determined by the content of the information disclosed. Section 43B(1), as recently amended, and so far as material 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,**
> >
> > **[…]**
> >
> > **(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.**

15. Thirdly, the qualifying disclosure must be made to a specified recipient, within ERA sections 43C-H, which includes at 43C, the employer.

16. In some circumstances, disclosing information for these purposes might be distinguished from the making of an allegation; see **Cavendish Munro Professional Risks Management Limited v Geduld [2010] IRLR 38 EAT**. Caution in this regard must, however, be exercised. A single disclosure might amount to both the provision of information and the making of an allegation. Furthermore, a rigid dichotomy between giving information and making allegation is not reflected in the language of ERA section 43B. The statutory question is whether information was disclosed; see **Kilraine v London Borough of Wandsworth [2018] IRLR 846 CA**.

17. Whilst a belief need not necessarily be correct in order reasonably to be held, see **Babula v Waltham Forrest College [2007] IRLR 346 CA**, the test of reasonableness is an objective one. In **Korashi v Abertawe Bro Morgannwg University Local Health Board [2012] IRLR 4**, the EAT addressed the extent to which the reasonableness of a belief may be informed by the circumstances of the person blowing the whistle. Accordingly, the insider, who will be expected to be in a proper position to make a proportionate judgment about any potential wrong-doing, may need to go further in establishing the reasonableness of their belief than the uninformed outsider.

18. In **Chesterton Global Limited v Nurmohamed [2017] IRLR 837 CA**, the Court addressed the correct approach to the public interest and identified relevant factors in this regard.

19. A distinction may fall to be drawn between the making of a disclosure on the one hand, and the manner in which that disclosure is made or conduct ancillary to that on the other. In **Bolton School v Evans [2006] IRLR 500 CA** the claimant teacher was dismissed not for disclosing his concern about the security of the school's IT systems, but rather the manner in which he sought to ventilate those concerns, namely by arranging for the system to be hacked into as a demonstration of its vulnerability. A similar distinction was made in **Panayiotou v Chief Constable of Hampshire Police [2014] IRLR 500 EAT**.

Discussion

20. For the avoidance of doubt, I have not made any findings of fact. Whilst I make observations based upon the submissions and evidence put before me, none of this will bind the Tribunal at a final hearing.

21. The Respondent business is concerned with providing cloud and other digital services. There appears to be a dispute between the parties about the Claimant's position. He describes himself as having been an Executive Director. The Respondent says he was employed as an Oracle Functional Consultant. The parties are, however, agreed that he was an employee between February 2019 and his dismissal in May 2024. The position with respect to his remuneration appears to have been somewhat complicated. The Claimant says part of his pay was routed through a company he owned. The Respondent says the Claimant undertook some work separately from his employment and his company billed for this. Whilst the precise nature of his role is unclear, the Claimant appears to have occupied a senior position within the Respondent.

Protected Disclosures

22. In his claim form particulars, the Claimant says his protected disclosures are set out at paragraph 12 to 23. I note at paragraph 12 the Claimant says in October 2022 he received information from other employees raising their concerns about not being paid. That cannot have been a protected disclosure made by him. There are also various other matters referred to which do not appear to involve the Claimant giving information to anyone: such as his request for or receipt of information from a senior officer of the Respondent and efforts he made to solicit support for the Respondent company from the Member of Parliament for Telford.

23. The run of paragraphs referred to does, however, include various assertions by the Claimant of him disclosing information to a senior officer of the Respondent, junior employees of the Respondent and / or to third parties.

24. The bundle of documents includes emails the Claimant sent in February 2021 (which predates the disclosures relied upon in this claim) and October 2022. The factual issue identified in those messages is an alleged failure by the Respondent to pay wages. The Claimant asserted that may amount to a violation of the **Modern Slavery Act 2015**.

25. In his submissions, Mr Griffiths put particular emphasis on the disclosures allegedly made by the Claimant between 5 & 24 October 2023 (paragraphs 17 to 24). These include: the Clamant telling a senior officer of the Respondent it was implicating the Telford MP in misleading HMRC; him alleging that a senior officer of the Respondent was fleeing the country to avoid liability; him sending an email to all employees of the Respondent urging them to use legal means to secure their wages; him saying funds were being moved to avoid tax or paying salaries; and him notifying a third party of legal or financial compliance issues within the Respondent.

26. The October 2023 disclosures are mostly said to be oral. The Claimant's witness statement included few page references within the relevant paragraphs. He refers to letters he sent on 17 October 2023 to an Executive Director of the

Respondent and of 22 October 2023 to a third-party, neither of which is in the bundle. The Claimant says his access to email was removed.

27. The Respondent challenges the alleged disclosures, variously disputing: whether the Claimant made any disclosure at all; whether the disclosure included information; whether it tended to show an offence or breach of a legal obligation; whether the Claimant had a reasonable belief in that regard or with respect to the public interest.

28. In my view it is likely the Claimant will be able to establish having made a protected disclosure, at least an earlier point. He has a pretty good chance with respect to the email he sent in October 2022. Raising concerns about staff not being paid or being paid late would appear to involve disclosing information which tended to show the Respondent was in breach of a legal obligation to pay wages. This is not a case in which the Claimant was only complaining about the non-payment of his own wages and, therefore, his prospects of showing a belief this was in the public interest are good. The same would be true even his motivation included a desire to recover monies he considered were owed to him personally.

29. The position in October 2023 is, however, far less clear. The disclosures relied upon at that time are either said to have been oral or contained within documents I have not seen. As such, whether the Claimant will establish the disclosure of information, the content of the same and that he had the requisite belief (that it tended to show one of the relevant matters and was made in the public interest) is not easy to ascertain.

Dismissal

30. The bundle includes a screenshots of an undated message, apparently from a senior officer of the Respondent, which says:

> **Hema Kumar has gone rogue and has been writing all sorts of emails to employees and clients even, as such we have decided to remove his Email and stop all his communications and services with respect to Global Minds and associated Employees, Customers, Suppliers, partners and parties.**
>
> **Eventually, we will be terminating his services completely.**
>
> **As such, please do not communicate nor discuss any matter with Hema Kumar going forward. Please help communicate and give a complete assurance to […] and others associated with us.**

31. The Claimant says he was suspended on 27 October 2023 and told he must not contact anyone else in the company. In light of the email immediately above, however, he says the outcome was a forgone conclusion.

32. On 27 February 2023, the Claimant received a letter from an external HR consultancy, confirming his suspension for alleged gross misconduct and stating it had been instructed:

> **To clarify, some of your employer's concerns at this stage relate to communications made by you to customers, colleagues, and other third parties which:**
>
> **• Are in breach of the Company's confidentiality rules.**
>
> **• Have caused unacceptable and unnecessary losses to the Company.**
>
> **• Have brought the Company name in disrepute.**
>
> **• Have caused your employer to lose faith in your integrity.**
>
> **In addition, further allegations relate to you having abused Company rules and procedures for personal gain, with the potential for this to be considered as fraud, and which has caused financial loss to your employer. In addition, it is alleged that you have sought to solicit work from your employer's customers for personal gain.**
>
> **Finally, you have failed to attend for work or undertake any work on the Company's behalf since 22nd December 2023.**
>
> **[…]**
>
> **During your suspension you should refrain from entering Company premises, and from contacting your work colleagues, our customers, or any other external Company contacts, either during or outside of working hours, unless you are directly requested by us to do so.**

33. On 9 April 2024, Claimant received a letter from Eagle HR, a different consultancy, saying they would now investigate the matter.

34. The Claimant attended an investigatory meeting on 29 April 2024.

35. The Claimant was subsequently dismissed by the Respondent's letter of 8 May 2024, which following its summary of recent events stated:

> **We then instructed Eagle HR to take over conduct of the matter from Triangle HR, following your concerns about impartiality and you attended a fact-finding meeting with […] on 29 April 2024.**
>
> **Unfortunately, and whilst the investigation was underway, the Company became aware of your attempts to contact your work colleagues regarding the investigation and/or other work-related matters. As a result, and following the appointment of Eagle HR, you were reminded of the terms of your suspension and asked, once again, not to contact clients/customers of the business.**
>
> **The terms of your suspension are clear and the business has made reasonable efforts to bring to your attention the conditions of your suspension so that we could conduct the necessary investigation.**
>
> **However, and despite being reminded of the terms of your suspension on two separate occasions, it has come to our attention that you have recently attempted to contact various clients of the business in the UAE, in an attempt to discredit the Company and its associated companies. It is disappointing that you have continued to act in breach of your**

> **suspension terms. However, the nature of your correspondence with clients in the UAE, coupled with your earlier similar conduct, indicates that you have no intention to comply with the Company's policies and procedures.**
>
> **Eagle HR was due to conclude its investigation imminently, but what is clear from your conduct during your suspension is that there has been an irreparable breakdown in trust and confidence between the parties. Taking the above into account, the Company has taken the decision to terminate your employment on the grounds of "some other substantial reason" ie that total breakdown in the relationship between you and the Company. As a result of this decision, we have instructed Eagle HR to suspend its investigation and no further documents will be provided in connection with that investigation.**

36. As far as causation is concerned, it would be difficult for the Claimant to show that the sole or principal reason for his dismissal in May 2024 was a disclosure made in October 2022. Realistically, he will need to establish a more proximate cause. The Claimant may be able to do this by reason of protected disclosures in October 2023 but for the reasons already given, it is difficult for me at this stage to say how likely he is to succeed in that latter regard.

37. Even if one or more protected disclosure is shown in October 2023, there is still a significant delay before dismissal in May 2024. The Claimant has a good argument on that. He points to the October 2023 screenshots. They are his smoking gun. The Claimant says this shows his fate was sealed and, therefore, everything done later on was mere window dressing. This contention may succeed as a final hearing.

38. The position is not, however, clear-cut. Some six months passed before the Claimant's dismissal and during that time, the Respondent conducted an investigation. The Respondent involved two HR consultancies. The instruction of the second consultancy would appear to have been prompted by the Claimant's representations to the effect there was a conflict of interest with the first.

39. Ms Hirsch argues that the Respondent's decision to dismiss must have been because of the Claimant's behaviour during his period of suspension, as it would have been "madness" to proceed otherwise after having commissioned an investigation. The strength of that argument is likely to depend on a careful analysis of the all documentary and witness evidence with respect to that period of time. Whilst it would be surprising for the Respondent to act as alleged, there might be reasons for that such as the receipt of an unhelpful recommendation / advice from the HR consultancy or simply, the Respondent's managers decided they had already waited long enough. The explanation in the Respondent's letter may have been no more than a pretext.

40. On the other hand, the fact that several months passed before the Claimant's termination cannot be ignored. The Respondent relies on supervening conduct, including damage to client relationships, as set out its the dismissal letter. I was referred to examples of the Claimant's correspondence. He has a propensity to express himself rather strongly. This included the use of foul language. His communications also read as though they were intended to apply pressure to the Respondent. In the circumstances, the suggestion that the Claimant

communicated with clients in a way likely to damage the Respondent's relationships does not appear inherently incredible. Importantly, a single communication might both include a protected disclosure and give rise to a legitimate, separable caused for dismissal. If the Respondent were able to show that was so, then it might easily satisfy the Tribunal that was the reason for termination.

41. The evidence of any approaches made by the Claimant to third parties will require careful consideration, as will that of the Respondent's dismissal decision-makers. If the Claimant tried and failed to get important matters of public interest addressed by his employer, then it may have been entirely appropriate for him to go elsewhere and this course of action is expressly provided for in ERA sections 43C-H. If, however, the Claimant communicated in a reckless fashion with third parties, in a way likely to damage the Respondent's business relationships and reputation, this might be a separate reason for dismissal.

42. I note the evidence it is proposed will be given by Mr Millar. He says he worked with the Respondent from 1 November 2023 as Executive Business Development & Revenue Generation and then from 2 February 2024 as Acting Head of Corporate Compliance. He says he was actively involved in the decision to dismiss the Claimant. Mr Millar identifies various matters of alleged misconduct by the Claimant, which he says contributed to the decision, including: the Claimant applying for county court judgements in his favour against the Respondent and intercepting relevant correspondence so as to prevent a defence being entered; damage caused to the Respondent's relationship with third parties; the Claimant soliciting work from the Respondent's clients for his own benefit; accosting a senior officer of the Respondent at the airport when he arrived in the UK; using the Respondent's premises as the registered address of his own company; and various other matters.

43. Mr Griffiths says this "panoply" of alleged misconduct is notable by its absence from the dismissal letter and should, therefore, be treated with suspicion. It seems to me that may involve an over-simplification. Some of the matters relied upon by Mr Millar do appear to be referred to in the letter. To the extent that others do not, the Claimant may have a good point but this is a matter for cross-examination of the witness at a final hearing, weighing his evidence thereafter. The position is far from clear at this stage.

Conclusion

44. For these reasons, I am not satisfied I can say it is likely, in the **Taplin** sense, the Claimant has a pretty good chance of succeeding in his claim of automatic unfair dismissal. For the avoidance of doubt, I am not expressing a negative view about the Claimant's prospects. If his evidence of disclosures made in October 2023 is accepted and his challenge to the evidence of Mr Millar about him being dismissed because of misconduct during the period of suspension is successful, then he is likely to succeed. The position is not, however, sufficiently clear now. The relationship and history between the parties is complex. Even if he made protected disclosures, other conduct may be separable from that and have resulted in his dismissal. This case is not one where it is appropriate for an order of interim relief.

EJ Maxwell

Date: 24 June 2024