Case Number: 6012007/2026

EMPLOYMENT TRIBUNALS

Claimant: Ms. O Nicholson

Respondent: Young & Co's Brewery PLC

Heard at: London South

On: 18 May 2026

Before: Employment Judge Cawthray

Representation
Claimant: In person, not legally qualified
Respondent: Mr. Hignett, Counsel

JUDGMENT

The Claimant's application for interim relief under section 128 of the Employment Rights Act 1996 is refused.

REASONS

Introduction and Background

1. The Claimant made an application for Interim Relief made under section 128 of the Employment Rights Act 1996 ("ERA"), pending the determination of her claim for automatic unfair dismissal for having made a protected disclosure brought under section 103A ERA.

2. By a claim form presented on 6 April 2026, the Claimant claims that she was automatically unfairly dismissed by the Respondent for making a protected disclosure pursuant to section 103A of the Employment Rights Act (the "ERA").

3. This application for interim relief was presented in the ET1 dated 6 April 2026. The Claimant, within the ET1, states the effective date of termination was 31 March 2026. An application for interim relief must

be made within 7 days immediately following the effective date of termination.

4. The Respondent has not yet submitted a response, the response is due by 3 June 2026.

5. The Claimant was sent a letter from the Tribunal stating part of her claim were rejected as the Claimant had not provided an ACAS early conciliation certificate. The letter was not entirely clear. The Claimant clarified at the start of the hearing that she only had 7 weeks service, and she was only seeking to bring an automatically unfair dismissal complaint.

Procedure

6. The Claimant provided a 66-page bundle which contained various documents and included a witness statement.

7. The Respondent provided a 78-page bundle and two witness statements, for James Wilson and Tallon Smith.

8. At the outset of the hearing, I discussed with the parties whether any reasonable adjustments were required for the hearing today, and other than regular breaks, which were taken, none were required.

9. I did not hear oral evidence, in accordance with Rule 94 of The Employment Tribunal Procedural Rules, but I read the statements.

10. Both parties gave oral submissions and directed me to the documents that they considered to be key. I read those documents.

11. I considered the basis of the interim relief application upon the claim as currently presented and as set out in the ET1.

The Issues

12. I explained at the outset of the hearing, and before the parties gave submissions, that for the Claimant's application of interim relief to succeed, I need to be satisfied, as regards each of the limbs of the Claimant's claim, that it is likely that, at the final hearing, the Tribunal will find in the Claimant's favour and that her claim will succeed.

13. For the Claimant to succeed at final hearing in her claim under section 103A ERA, the Tribunal will have to find each of the following:

a. That the Claimant made the alleged disclosure relied on;
b. That it amounted to a protected disclosure within the meaning of section 43A ERA;
c. That the reason, or principal reason for dismissal was the Claimant having made the protected disclosure relied on.

The Law

14. The Employment Tribunal Procedural Rules 2024 state:

Interim relief proceedings

94. *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 or section 128 or 131 of the Employment Rights Act 1996, rules 52 to 54 (preliminary hearings) apply to the hearing and the Tribunal must not hear oral evidence unless it directs otherwise*

Interim relief

15. The statutory provisions concerning interim relief are set out in the Employment Rights Act 1996 as follows:

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 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.
(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 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.
(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.
(4) For the purposes of subsection (3)(b) "terms and conditions not less favourable than those which would have been applicable to him if he had not been dismissed" means, as regards seniority, pension rights and other similar rights, that the period prior to the dismissal should be regarded as continuous with his employment following the dismissal.
(5) If the employer states that he is willing to reinstate the employee, the tribunal shall make an order to that effect.
(6) If the employer—
(a) states that he is willing to re-engage the employee in another job, and
(b) specifies the terms and conditions on which he is willing to do so,
the tribunal shall ask the employee whether he is willing to accept the job on those terms and conditions.
(7) If the employee is willing to accept the job on those terms and conditions, the tribunal shall make an order to that effect.
(8) If the employee is not willing to accept the job on those terms and conditions—
(a) where the tribunal is of the opinion that the refusal is reasonable, the tribunal shall make an order for the continuation of his contract of employment, and
(b) otherwise, the tribunal shall make no order.
(9) If on the hearing of an application for interim relief the employer—
(a) fails to attend before the tribunal, or
(b) states that he is unwilling either to reinstate or re-engage the employee as mentioned in subsection (3), the tribunal shall make an order for the continuation of the employee's contract of employment.

16. 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 one specified (s.129(1) ERA). The meaning of the word "likely" in section 129(1) has been considered in a number of authorities.

17. In order to determine 'whether it is likely' the claimant will succeed at a full hearing, the EAT said *in London City Airport v Chacko* 2013 IRLR 610, that this requires the Tribunal to carry out an 'expeditious summary assessment' as to how the matter appears on the material available, doing the best it can with the untested evidence advanced by each party. This will involve a less detailed scrutiny than would happen at a final hearing. My task is to assess how the matter appears to me, and Rule 94 states 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 undertaking the final hearing of the case.

18. 'Likelihood' has been interpreted to mean 'a pretty good chance of success' at the full hearing. 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*".

19. 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*".

20. The burden of proof was intended to be greater than that at a full hearing, where the Tribunal only needs to be satisfied on the balance of probabilities that the claimant has made out his/her case - or 51% or better. A pretty good chance is something nearer to certainty than mere probability.

21. The Employment Appeal Tribunal reaffirmed the proposition that a claimant for interim relief must demonstrate a 'pretty good chance' of success at trial, the Employment Appeal Tribunal remarked in *Dandpat v University of Bath* UKEAT/0408/09, at para 20.:

"We do in fact see good reasons of policy for setting the test comparatively high in the case of applications for interim relief. If relief is granted the [employer] is irretrievably prejudiced because he is obliged to treat the contract as continuing, and pay the [employee], until the conclusion of proceedings: that is not consequence that should be imposed lightly".

22. 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.

23. Claimants in complicated, long running disputes can obtain interim relief, it is not just for simple cases (*Raja v Secretary of State for Justice* EAT 0364/09).

<u>Automatic unfair dismissal</u>

24. The statutory provisions are contained in the Employment Rights Act 1996:

103A Protected disclosure.

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.

43A Meaning of "protected disclosure

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.

43B Disclosures 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, 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, is being or is likely to be deliberately concealed.

(2) For the purposes of subsection (1), it is immaterial whether the relevant failure occurred, occurs or would occur in the United Kingdom or elsewhere, and whether the law applying to it is that of the United Kingdom or of any other country or territory.

(3) A disclosure of information is not a qualifying disclosure if the person making the disclosure commits an offence by making it.

(4) A disclosure of information in respect of which a claim to legal professional privilege (or, in Scotland, to confidentiality as between client and professional legal adviser) could be maintained in legal proceedings is not a qualifying disclosure if it is made by a person to whom the information had been disclosed in the course of obtaining legal advice.

(5) In this Part "the relevant failure", in relation to a qualifying disclosure, means the matter falling within paragraphs (a) to (f) of subsection (1).

43C Disclosure to employer or other responsible person.

(1) A qualifying disclosure is made in accordance with this section if the worker makes the disclosure -

(a) to his employer, or

(b) where the worker reasonably believes that the relevant failure relates solely or mainly to—

(i) the conduct of a person other than his employer, or

(ii) any other matter for which a person other than his employer has legal responsibility,

to that other person.

(2) A worker who, in accordance with a procedure whose use by him is authorised by his employer, makes a qualifying disclosure to a person other than his employer, is to be treated for the purposes of this Part as making the qualifying disclosure to his employer.

25. Under section 103A, a dismissal is automatically unfair if "the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure". Whether the dismissal flows from the disclosure is a question of causation. In the present case, it is for the Claimant to show that the predominant causative basis for her dismissal was for making protected disclosure.

26. Section 43B ERA defines a qualifying disclosure as any disclosure of information which is made in the public interest and which, in the reasonable belief of the worker making the disclosure, tends to show one or more of the matters set out in sub-paragraphs a-f.

27. For an application for interim relief to be successful, a Tribunal needs to be satisfied on the evidence before it that it is likely that each element of the s.43B definition is likely to be met and that the final Tribunal is likely to find that the principal reason for dismissal was the disclosure.

28. In *Chesterton Global Ltd. and Anr. v Nurmohamed* [2017] IRLR 832 CA, Lord Justice Underhill said, at para 37:

> 1. *"... In a whistleblower case where the disclosure relates to a breach of the worker's own contract of employment (or some other matter under s.43B(1) where the interest in question is personal in character), there may nevertheless be features of the case that make it reasonable to regard disclosure as being in the public interest as well as in the personal interest of the worker…"*

29. In *Kong v. Gulf International Bank (UK) Ltd* [2022] WCA Civ 941 the Court of Appeal upheld the decision that it was not incorrect for a Tribunal to find that the claimant's dismissing managers were not motivated by the protected disclosure but by the view that they took of the claimant's conduct which they considered to be an unacceptable personal attack and reflective of a wider problem with her interpersonal skills.

Summary/Claimant's case/Conclusions

30. I make no findings of fact but it is helpful to set out a brief summary of the Claimant's case and what the Respondent says about it.

31. I reiterate that I have heard no oral evidence and I do not seek to make findings of fact, but to set out my expeditious summary assessment, doing the best I can with the untested evidence advanced by each party.

32. The Claimant started working at the Respondent as a bar team member on 2 February 2026. She was dismissed on 31 March 2026.

33. The Claimant alleges that she made an oral protected disclosure on 25 March 2026 in a meeting with James Wilson, General Manager. The ET1 does not clearly set out what the Claimant says she said to Mr. Wilson that she relies on as the protected disclosure. Box 8.2 of the ET1 states:

"On 25 March 2026, I made a protected disclosure (whistleblowing) regarding serious Health and Safety concerns during a meeting with my General Manager, James Wilson (GM). This followed a concurrent written report on the same matter made by my partner on 16 March 2026."

34. At paragraph 2.1 of the Claimant's witness statement it says: "*On March 25 during the informal chat regarding my progress, I raised serious safety concerns regarding a shift manager's dismissive response to reports of a man entering the ladies' toilets, and a male customer whose conduct caused me concern regarding safety. My GM was already on notice regarding one of these issues as my partner had raised this on March 16, naming me as a witness".*

35. For completeness, the relevant sections in the email dated 16 March 2026 from the Claimant's partner have been considered in full, but in summary sets out a number of concerns about Rocky's, the Assistant Manager, approach to various work matters. There is reference to a customer following the Claimant around the pub and the Claimant feeling unsafe, but there is no mention of any customer being in the ladies' toilet.

36. I was not directed to any written protected disclosure made by the Claimant. However, for completeness I noted that in the Claimant's appeal against the decision to dismiss her she wrote:

"On 25th March 2026, during a coffee chat with my GM, I made a qualifying disclosure of information under Section 43B(1)(d) of the Employment Rights Act 1996.

Specifically, I disclosed factual information tending to show that the health and safety of individuals (staff and patrons) was being, or was likely to be, endangered.

The information I conveyed included:

- A specific manager (Rocky)'s repeated failure to follow safety protocols regarding a customer suspected by another manager to be dealing drugs from within the pub, as well as refusing to take actions to remove the customer, as he was also making me feel extremely uncomfortable/unsafe to the point where I felt I had no option but to hide in the office until the man either left or was removed.

- Whilst on shift, I went to the bathroom and there was already a man in there. After using the bathroom, I reported this to Rocky, an assistant manager, we watched the man attempt to go to the grand terrace, and he was clearly drunk. Rocky decided that the man was "probably too drunk to know what toilet he was in" and took no further action."

37. Each account of what the Claimant says she said to Mr. Wilson on 25 March 2025 differs slightly.

38. The Claimant says that she dismissal was because she made the protected disclosure. The Respondent says the Claimant's employment was terminated because Mr. Wilson lost trust in the Claimant as he considered she had failed to record her breaks correctly and diverted a team tip.

39. The issue for me to determine was whether the Claimant's automatic unfair dismissal claim was likely to succeed at the substantive hearing. I considered both parties submissions in full in reaching my conclusions, and the specific documents to which I was referred.

40. I deal first with determining whether it is likely that the Claimant will show that she made a protected disclosure as defined by s.43 ERA and then go on to consider whether it is likely that she will show that she was dismissed for making a protected disclosure.

41. As noted above, the ET1 does not clearly set out what the Claimant says she told Mr. Wilson on 25 March 2026.

42. In his witness statement, Mr. Wilson states that *"The Claimant did not raise concern regarding Mr Savin's behaviour with me but I knew her to be aware of the concerns Mr. Dawson had raised."*

43. Mr. Wilson's notes of the discussion at which the Claimant was dismissed on 31 March 2026 state:

- *"Olivia expressed concern about Jake's transfer, believing it was connected to both her and Jake raising safeguarding concerns about Rocky*
- *James reiterated that those concerns were being handle separately".*

44. It is not clear whether the alleged oral protected disclosure on 25 March 2025 contains a conveyance of information of wrongdoing, as it is not entirely clear what the Claimant says she said exactly, as summarized above. There appears to be a significant factual dispute on what the Claimant said on 25 March 2026 to Mr. Wilson that I cannot determine today.

45. At this stage, it is unclear whether the alleged disclosure was made in the public interest, and whether the Claimant had a reasonable belief, but I note the disclosure is argued as generally relating to health and safety related matters.

46. My expeditious summary assessment is that I cannot reasonably conclude that it is "likely" that the alleged oral disclosure will meet the test. It may meet the test, or it may not, which is not sufficient to be grant interim relief.

47. Further, there is a dispute about whether or not the reason, or principal reason, for dismissal was because the Claimant made a protected disclosure.

48. Mr. Wilson states in his witness statement that following team members learning of his intention to promote the Claimant some raised concerns about the Claimant's behavior and he looked into the concerns. Mr. Wilson says he found evidence the Claimant had not recorded breaks as instructed and spoken to a customer about leaving a cash tip. He says these issues resulted in him losing trust in the Claimant, and given her very short period of employment he decided to terminate her employment.

49. The Claimant points out that prior to 25 March 2026 she had a good record and positive feedback from Mr. Wilson. She says there is no evidence of any reports made about her, she comments on the accuracy of the material relied on by the Respondent and the withdrawal of the tip related allegation at her appeal stage. She points towards the change in treatment of her following her alleged disclosure on 25 March 2026 but she also refers to her partner being required to change work locations.

50. There is significant factual dispute. The reason for the Claimant's dismissal is a matter that will be needed to be tested by the evidence.

51. Undertaking an expeditious summary assessment based on the untested evidence available to me, I conclude that the Claimant might show that it was the alleged disclosure that caused her dismissal or, equally, the Respondent might show that it was the view that she had acted in a manner it considered unsatisfactory in relation to taking and recording breaks and managing tips that led to termination of employment. Either reason might be correct. Not having heard any evidence, it cannot be said, at this stage of the proceedings, that it is near to certain or that the Claimant has a pretty good chance of success on this element of his claim. There is a potentially reasonable (but as yet untested) explanation by the Respondent.

52. The application for interim relief is therefore refused.

Approved by:

Employment Judge Cawthray

19 May 2026

JUDGMENT SENT TO THE PARTIES
ON 22 May 2026

FOR THE TRIBUNAL OFFICE

P Wing

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision. If written reasons are provided they will be placed online.

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/