



EMPLOYMENT TRIBUNALS

Claimant: Mr P Josen

Respondent: Serco Limited

Heard at: Norwich Employment Tribunal (in private; by video)

On: 14 May 2026

Before: Employment Judge Gordon Walker

Appearances:

For the claimant: represented himself

For the respondent: Mr D West, solicitor

JUDGMENT having been given orally at the hearing on 14 May 2026 and sent to the parties on 11 June 2026 and written reasons having been requested on 14 June 2026 in accordance with Rule 60(4) of the Employment Tribunals Rules of Procedure 2024, the following reasons are provided.

FULL REASONS

The application for interim relief

1. The claimant presented a claim to the Tribunal on 18 March 2026. Appended to the claim was a written application for interim relief made pursuant to section 128-129 Employment Rights Act 1996 ("ERA") in relation to his claim for automatic unfair dismissal contrary to section 103A ERA.
2. The claimant was employed by the respondent as a fire and security engineer from 4 April 2025 to 13 March 2026. The application for interim relief was presented within 7 days of dismissal.
3. On 26 March 2026 a legal officer rejected the claim, as it did not contain an early conciliation number. That decision was reconsidered following an application by the claimant of 26 March 2026. The claim was accepted on the date originally presented by order of 31 March 2026. Notice of the claim

and the interim relief hearing was sent to the respondent on 31 March 2026. The response form was presented on 15 April 2026.

Documents

4. The respondent prepared a file of 122 pages, including the index.
5. The claimant prepared a file of 90 pages, including a chronology, index and skeleton arguments.
6. I read the documents that the parties took me to during the hearing or within their written arguments.

Procedure

7. My task was to conduct a summary or review type assessment of the materials available to me, consistent with the approach suggested in **Raja v Secretary of State for Justice** UKEAT/0364/09/CEA (paragraph 25); **Dandpat v University of Bath** UKEAT/0408/09/LA (paragraph 17) and **London City Airport v Chacko** [2013] IRLR 10 (paragraph 23); and **Parsons v Airplus International Ltd** UKEAT/0023/16 (paragraph 8).
8. I therefore heard submissions but I did not hear witness evidence or make findings of fact.

Parties' submissions

9. The parties made oral submissions. The claimant made submissions first and then again in response to the respondent's oral submissions. In his response to the respondent's submissions, the claimant addressed the respondent's submissions about the statement of Mr T Wood.
10. The claimant's case is that he made protected disclosures pursuant to section 43B(1)(d) and section 43C ERA as follows:
 - 10.1 Orally to his line manager in early January 2026 about health and safety concerns regarding the relocation and positioning of an intercom system; and
 - 10.2 On 22 January 2026 in two documents at B1 and B2 in the claimant's file of documents (at the following pages of the claimant's file of documents: pp.20-23 electronic / pp.10-13 as written on the page).
11. The claimant also made written submissions which speak for themselves and are contained in:
 - 11.1 The application for interim relief dated 18 March 2026;
 - 11.2 The skeleton argument dated 18 March 2026;
 - 11.3 The skeleton argument dated 9 April 2026.

The law

12. ERA sections 122-129 state:

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(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(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.

13. As explained in **Al Qasimi v Robinson** [2020] IRLR 345 at paragraphs 11-14, where relief is sought in a whistleblowing case the claimant must show that it is likely that the Tribunal will find for the claimant on all elements of the whistleblowing claim i.e. (1) that he made the disclosure of information to the employer, (2) that he believed that disclosure tended to show one or more of the things itemised in ERA section 43B(1)(a)-(f), (3) that he believed that the disclosure was made in the public interest, (4) that those beliefs were reasonable, and (5) that the disclosure was the principal cause of the dismissal.

14. The meaning of the word “likely” in this context is as set out in *Taplin v CC Shippam Ltd* [1978] ICR 1068 at 1073H:

Having considered all these matters which have been urged before us, we are unanimously of the view that the test proposed by Mr. Hands of a “reasonable prospect of success” is not one which should be adopted. The phrase can have different shades of emphasis, the lowest of which we do not think is sufficient. We do not consider that Parliament intended that an employee should be able to obtain an order under this section unless he achieved a higher degree of certainty in the mind of the industrial tribunal than that of showing that he just had a “reasonable” prospect of success. The employee begins with a certificate from the trade union official certifying that there appear to be reasonable grounds for supposing that the reason for his dismissal was the one alleged. We consider that the tribunal is required to be satisfied of more than that before it can appear “that it is likely” that a tribunal will find that a complainant was unfairly dismissed for one of the stated reasons.

On the other hand we are not persuaded that there is a dichotomy between “probable” and “likely” as expressed by the chairman of the industrial tribunal. We find it difficult to envisage

something which is likely but improbable or probable but unlikely and we observe that the Shorter Oxford English Dictionary definition does define “likely” as “probable.” Nor do we think that it is right in a case of this kind to ask whether the applicant has proved his case on a balance of probabilities in the sense that he has established a 51 per cent. probability of succeeding in his application, as has at one stage been contended before us. Nor do we find Mr. Hand’s alternative suggestion of a real possibility of success to be a satisfactory approach. This again can have different shades of emphasis. It seems to us that the section requires that the employee shall establish more clearly that he is likely to succeed than that phrase is capable of suggesting on one meaning. On the other hand it is clear that the tribunal does not have to be satisfied that the applicant will succeed at the trial. It may be undesirable to find a single synonym for the word “likely” but equally, we think it is wrong to assess the degree of proof which has to be established in terms of a percentage as we have been invited to do.

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.

Although the chairman of the industrial tribunal expressed the burden of proof differently from the way which we have done we do not consider that there is any real difference of emphasis. He thought that “likely” meant more than “probable” and he regarded “probable” as being “51 per cent. or more.” Accordingly we are not satisfied that he erred in law in his interpretation of the section.

15. **Taplin** was reaffirmed in **Dandpat** (paragraph 20), in **Raja** (paragraph 26) and in **Ministry of Justice v Sarfraz** [2011] IRLR 562 paragraph 16.
16. I have reminded myself of the Court of Appeal’s decision in **Kilraine v London Borough of Wandsworth** [2018] ICR 1850 as to what amounts to a disclosure of information within the statutory language. A disclosure needs to have sufficient factual content and specificity as to be able to be deemed to be capable of showing one of the matters listed in section 43B(1) ERA. I am entitled to have regard to the relevant context in determining this.
17. To have the requisite reasonable belief it is not necessary for the claimant to be right or correct in what he believes: **Babula v Waltham Forest College** [2007] ICR 1026. The belief must be subjectively genuinely held and objectively reasonable **Chesterton Global Limited v Nurmohamed** [2018] ICR 731.
18. The meaning of the public interest requirement is explained in **Chesterton** and **Dobbie v Felton (t/a Feltons Solicitors)** [2021] IRLR 679.
19. A dismissal is automatically unfair if the reason or principal reason for the dismissal is that the claimant made a protected disclosure. This is a different legal test on causation to that applied to claims for detriment under section 47B ERA where the material influence test is adopted.
20. In determining whether a dismissal was by reason of the employee having made a protected disclosure, for the purposes of section 103A ERA, there can be a distinction between the protected disclosure and conduct associated with or consequent on the making of the disclosure, where the protected disclosure was the context for the impugned treatment, but was not itself the reason for the dismissal: **Kong v Gulf International Bank (UK) Ltd** [2022] ICR 1513.

21. Where an employee is employed for less than two years, it is for them to prove that the reason or principal reason for dismissal was that they made a protected disclosure: **Smith v Hayle Town Council** [1978] ICR 996.

Conclusions

22. It is likely that the Tribunal will find that the claimant made at least one protected disclosure in writing on 22 January 2026. I have seen the written documents dated 22 January 2026 said to be protected disclosures. Based on what is written in those documents, it is likely that the Tribunal will conclude that:
- 22.1 The written documents disclose information. The documents refer to the position of the intercom system and explain that the position of this affects other matters such as the carrying of equipment (and associated risks and hazards) and the impact on residents.
- 22.2 The claimant genuinely believed that the disclosure of information tended to show endangerment to health and safety, because the claimant expressly asserted this in writing. However the Tribunal may form a different conclusion at trial based on the claimant's evidence under cross examination.
- 22.3 The claimant believed that the disclosure was made in the public interest, as the claimant said the position of the intercom affected the safety of others, namely staff and residents. However the Tribunal may form a different conclusion at trial based on the claimant's evidence under cross examination.
- 22.4 These documents were sent to claimant's employer (this does not appear to be disputed). Therefore, if they qualified for protection pursuant to section 43B ERA, they would be protected disclosures pursuant to section 43C ERA.
23. The claimant does not have a pretty good chance of establishing that he made disclosures orally in early January 2026. There will need to be witness evidence from the parties about what the claimant said, which will be tested by cross examination. Absent this evidence I cannot conclude that the claimant is likely to win this point at trial.
24. The claimant does not have a pretty good chance of proving that the reason or principal reason for the dismissal was that the claimant made protected disclosures.
25. The claimant makes plausible arguments on causation, which may succeed at trial:
- 25.1 The claimant submits that the chronology shows that he was dismissed because he made protected disclosures. He submits that the alleged misconduct was part of the making of the protected

disclosures and it would not have taken place absent the making of protected disclosures.

- 25.2 The respondent's evidence and/or submissions must be rejected because (1) the respondent has not provided CCTV evidence and (2) the respondent made contradictory statements about Mr T Wood: the claimant was told that Mr Wood did not provide a statement but the respondent now submits that Mr Wood did provide a statement and relies upon this in support of its submissions.
26. However, these submissions do not persuade me that the claimant is likely to succeed at trial. A distinction can be made between a protected disclosure and the conduct associated with it, as explained in **Kong**.
27. There is evidence that the claimant was dismissed by reason of conduct which is separate from the alleged protected disclosures. Indeed one of the emails I was shown predated the written alleged disclosures of 22 January 2026. I was taken to documents (emails, complaint statement, grievance/complaint) of 21 to 23 January 2026 about the claimant's conduct which is described therein as aggressive.
28. Even absent the alleged statement of Mr Wood and CCTV evidence, there is therefore evidence of the claimant's alleged misconduct which is potentially separable from the alleged disclosures.
29. The claimant may succeed at the final hearing.. However I cannot conclude that he is likely to do so. There are important factual disputes to be decided at trial. These issues will be determined based on full disclosure and witness evidence tested by cross examination.
30. The application for interim relief made pursuant to section 128 ERA is therefore refused.

Approved by:

Employment Judge Gordon Walker

Date: 15 June 2026

REASONS SENT TO THE PARTIES ON

15 June 2026

FOR THE TRIBUNAL OFFICE

Notes

All judgments (apart from judgments under Rule 51) and any written full 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/