



EMPLOYMENT TRIBUNALS

Claimant: Mr A. Smith

Respondent: ROC Group Limited

On: 24 April 2026

At:- Newcastle upon Tyne Employment Tribunal via video

Appearances:

Claimant: In person

Respondent: Mr. G. Graham (counsel)

Before: Employment Judge T.R. Smith

Judgement

The claimant's claim for interim relief pursuant to section 128 Employment Rights Act 1996 is not well founded and is dismissed.

Written reasons supplied pursuant to the claimant's request

1.Documentation.

1.1. For the purpose of this hearing the tribunal had before it a bundle from the claimant consisting of 192 pages. It contained the claimants' authorities and submissions (32 to 77 and 186 to 191). Within the bundle was statement of the claimant dated 20 April 2026. Documents from the claimant's bundle have been preceded with the letter "C"

1.2. There was considerable repetition throughout the bundle. Mr Smith frankly accepted he had some help from artificial intelligence

1.3. The respondent produced a bundle totalling 122 pages. Documents from the claimant's bundle have been preceded with the letter "R"

1.4. The tribunal also had before it a skeleton argument from Mr Graham and a witness statement from Mr Clayton Moore.

1.5. The tribunal indicated that whilst it had read the documents, formal witness evidence and cross-examination would not be undertaken, given the nature of the application.

1.6. If the tribunal has not referred to a specific contention or submission it did not mean the tribunal did not take it into account in reaching its judgement.

2. Abbreviations

2.1. ERA96. The Employment Rights Act 1996.

3. Introduction

3.1. The claimant sought an order for interim relief.

3.2. He alleged that he was automatically unfairly dismissed and the reason or principal reason for that dismissal was that he made a protected disclosure or disclosures. That was a claim under s103A ERA 96.

4. Interim Relief: The Relevant Statutory Provisions

4.1. The relevant statutory provisions are found in s.128 – s.132 ERA. 96 The critical provision is found in s.129(1) which states:-

“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... “

4.2. The central issue for the tribunal was whether it was likely that at the final hearing the tribunal would uphold the claimant’s s.103A ERA 96 claim.

4.3. What this involved in practice was explained in **London City Airport v Chacko [2013] IRLR 610** by the EAT at para. 23 namely *“...an expeditious summary assessment by the first instance employment judge as to how the matter looks to him on the material that he has.”*

5. What is meant by “Likely” ?

5.1. A helpful summary was set out by H.H.J. Eady QC in **H.H. Sheikh Khalid Bin Saqr Al Qasimi v Robinson UKEAT/0283/17** at paragraphs 5-18.

5.2. The EAT in **Robinson** stated that it must be shown that the claimant has a pretty good chance of succeeding, not merely that the claimant could possibly win. It was this test that had to be applied rather than just the balance of probabilities. The EAT recognised that this set a relatively high bar for a claimant. Similar guidance was found in **Ministry of Justice v Sarfraz [2011] IRLR 562**, where Underhill P, stated at paragraph 16, that *...‘likely’ does not mean simply ‘more likely than not’ - that is at least 51% - but connotes a significantly higher degree of likelihood... “*

5.3. It followed the standard of proof on an interim relief application was greater than that at the final hearing, where the claimant only had to establish his case on the balance of probabilities. It followed that it was perfectly possible that a claimant failed in seeking interim relief but succeeded at the substantial hearing.

6.Application of the likely test to all elements of the claim

6.1.In **Robinson** the EAT stressed that a summary assessment involved looking at all elements that needed to be established to succeed. It followed the tribunal had to examine both the issue of whether there had been a protected disclosure or disclosures within the meaning of section 43A of the ERA 96 and also the law in relation to automatic unfair dismissal under section 103A ERA 96.

6.2.The tribunal was guided by the judgement of H.H.J .Eady in **Sarfraz** which dealt with the issue of interim relief applications involving a section 103A ERA 1996 claim.

6.3.She indicated that a judge had to decide that it was likely that the tribunal at the final hearing would find five elements namely –

- One that the claimant had made a disclosure to the employer. (although see below, the situation may be nuanced))
- Two that the employee believed that disclosure could show one or more of the things itemised at (a) to (f) under section 43B (1).
- Three that the belief was reasonable
- Four that the disclosure was made in the public interest
- Five that disclosure was the reason or principal reason for dismissal.

6.4.Whilst the claimant took the tribunal **Kuzel -v- Roche Products Ltd 2008 EWCA Civ 380** that case assumed two years continuous service. Here the claimant did not have two years qualifying service.

7.Pleadings

7.1.The starting point was the claim form. A claim form must be readily understood by both the other party and the Judge at first reading, see **Moustache -v- Chelsea and Westminster Hospitals NHS Foundation Trust 2025 EWCA 185**. It was a self-contained document which had to set out the essentials of the claim. The essentials of a claim that the tribunal had to determine were not found by reference to a bundle of documents.

8.The evidence and submissions.

8.1.The tribunal reminded itself that at an interim relief hearing it was not the function of the tribunal to make findings of fact, see **Ryb -v- Nomura International Ltd plc ET/3202174/09** and it should avoid making any findings that might tie the hands of the tribunal ultimately charged with a final determination of the merits of the points raised. What followed must be read through that prism.

8.2.It was however necessary for the tribunal to refer to the documentation and matters raised before it, in order to explain its judgement.

8.3.The claimant applied for employment with the respondent as a facilities coordinator.

8.4.In the claimant's claim form he stated he started employment with the respondent on 09 March and it ended on 11 March 2024. The claim form was presented on 12 March 2026. That was clearly a typographical error and Mr Graham conceded as much.

8.5.The claimant's case was pleaded as follows: –

"I received a conditional offer from Roc Group Ltd which I accepted on the 9th March 2026. I was informed on the 11th March their offer was retracted due to not obtaining my last employer reference.

Originally I provided full disclosure that I was taking my former employer to employment tribunal under protected disclosures "Whistleblowing" detriment (Emails to support) and in receipt of my early reconciliation number " R304522/25/19" and have until /around the 8th May 2026 to submit my ET1 which is currently being worked on by myself and legal team."

8.6.The tribunal should add that the claimant now said in accompanying documentation that he had made five protected disclosures (C89 to 92) to the respondent, he countered in that a protected disclosure to his former employer as being one of those disclosures. None of the five purported protected disclosures are properly pleaded (or in some cases, at all).

8.7.The claimant's account of the chronology was that he had an interview for the post of facilities manager on 25 February 2026 when he disclosed what he described as his whistleblowing history. Mr Moore accepted that at interview the claimant said that he had "*whistleblown*" in respect of his former employer and had been "*let go*". That information did not impact on the respondent's assessment of the claimant for the post. He was made a job offer.

8.8.He was issued with a conditional offer on 06 of March 2026. (C104 to 106). The letter contained a bold heading stating "*this offer is conditional upon*" and then set out a number of matters which included "*receiving satisfactory references*"

8.9.He accepted the offer of 09 March 2026.

8.10.The offer was withdrawn on 11 March 2026 at 1.57 (R96) with the reason being given that a reference had not been obtained.

8.11.The email correspondence between the claimant and Purple Tribe Solutions Limited, ("Purple") a specialist company utilised by the respondent to take up references showed a catalogue of difficulties obtaining references and various proposals by the claimant to seek solutions.

8.12.Purple suggested there was a problem with a reference from the claimant's last employer "Waythrough".(C110).

8.13.The claimant informed Purple on the afternoon of 10 March that having spoken to ACAS he understood that his former employers would provide a reference if he dropped a tribunal claim against them. However there was no employer reference provided prior to the withdrawal by the respondent of its offer of employment. Indeed the correspondence from ACAS on 11 March showed that whilst Waythrough indicated they would provide a neutral factual reference if the claimant settled his case the claimant's position was the offer was declined. It was not for this tribunal to speculate what claim, if any, the claimant may have against his former employers.

8.14.The tribunal noted that before the offer was withdrawn there was an e-mail from Mr Havelock, a Regional Premises Partner at Waythrough, dated 09 March at 16.14 but this was a very short personal, not an employer, reference (R61). Purple rejected it on that basis and were entitled to do so.

8.15.It appeared that the decision not to offer the post to the claimant was made by Ms Lazell, the respondent's Head of Operations as evidenced in an email of 11 March 2026 timed at 1.30 (R95). The context was important. Efforts had been made to try and obtain an employer references from Waythrough but without success.. It appeared relevant personal at the claimant's previous employer(s) from 2014 to 2024 had disappeared. Some of his prior employers had liquidated.

8.16.Ms Lazell's thought process, in reaching her decision was as follows: –

We operate within a vulnerable highly regulated service where safeguarding is paramount. My view would be to end the process on unsatisfactory references. The favorable (sic) reference if drop (sic) the tribunal is also a red flag to me as this means he has possibly attempted without prejudice conversations, and this "favorable (sic) reference" could be indicative of a non-disclosure agreement and therefore we would not be aware of any safeguarding and the only way we would know if there was anything was If there was a DBS process of which could take a while. This seems a little risky to me and is completely outside our normal processes for safer recruitment."

8.17.The claimant's case was that he could still be employed as OFSTED guidance provided that it was possible in certain exceptional circumstances, in the absence of a reference, subject to significant limitations. One of those limitations was working from home which was clearly inappropriate given the nature of the role the claimant had applied for.

8.18.Nor did the tribunal consider great weight should be placed on the fact that apparently a reference was available for the claimant after the respondent had withdrawn the offer of employment.

9.Conclusion

9.1.The tribunal began by looking at the claimant's pleading.

9.2.On the claimants pleaded case any purported protected disclosure was made to a previous employer.

9.3.Does the tribunal have jurisdiction to even hear such a claim?

9.4.It is well accepted that post termination detriments made by a worker's former employer are potentially actionable, see **Woodward -v- Abbey National PLC [2006] IRLR 677(Court of Appeal)**.

9.5.The reverse situation was more nuanced. In **MacLennan -v- British Psychological Society [2025] IRLR 4** the EAT at paragraph 33 said "*a worker is protected from being subject to a detriment by his current employer for making a protected disclosure to that employer [tribunal emphasis] prior to the commencement of the employment*" In **MacLennan** there was a concluded contract.

9.6.On the claimants pleaded case the disclosure was to a former employer. Is that actionable? Arguably but it does not pass the likely test.

9.7.However if the claimant never became an employee then the tribunal had no jurisdiction, see **Sullivan -v- Isle of Wight Council [2025] EWCA Civ 379**.

9.8.The tribunal did not find the claimant's reference to section 43K ERA 96 was relevant to its determinations.

9.9.Was there a concluded unconditional contract? Here there was a dispute. It appeared common ground that the offer of employment was subject to a satisfactory references. The respondent was entitled to argue on the documents placed before the tribunal that no such reference was provided prior to the withdrawal of the offer. In other words the claimant was never its employee.

9.10.A significant question at trial was likely to be whether a reference was a condition precedent or a condition subsequent? The point was very arguable.

9.11.The tribunal was not satisfied that it was likely, applying the legal definition, that the claimant would establish he was an employee at the material time.

9.12.For that reason alone the application must be dismissed.

9.13.However if the tribunal was wrong on that point it then went on to consider the matter further.

9.14.The claimant had not pleaded the essential elements of his asserted protected disclosure or disclosures. The analysis required by **Sarfraz** cannot be undertaken unless there is a disclosure pleaded in accordance with section 43B ERA 96. That

again was a further reason to justify the refusal of the application for interim relief as the claimant could not satisfy the likely test.

9.15.Finally the application would be dismissed as it failed the likely test as to what was the reason or principal reason for dismissal.

9.16.The difficulty the claimant faced was from his own timeline. On his case he mentioned his protected disclosure on 25 February yet despite that, received an offer of employment. That pointed away from any proven protected disclosure having anything to do with the subsequent withdrawal of the offer of employment.

9.17.For the above reasons the application must be dismissed and the case will proceed to full hearing.

Employment Judge Signature

Employment Judge TR Smith

Date signed 20 May 2026

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