



EMPLOYMENT TRIBUNALS

Claimant: Ellis Dixon-Smith

Respondent: Red Everywhere (Lincolnshire) Ltd

Heard: by Cloud Video Platform **On:** 3 September 2026

Before: Employment Judge Ayre, sitting alone

Representation

Claimant: did not attend and was not represented

Respondent: Nicholas Tudor, consultant

JUDGMENT

1. The name of the respondent is amended to Red Everywhere (Lincolnshire) Ltd.
2. The claim for interim relief fails and is dismissed.

REASONS

Introduction

Background

3. On 3 August 2026 the claimant presented a claim to the Employment Tribunal. In the claim the claimant asserts that she was employed by the respondent as a Lead Teacher from 1 September 2025 until 1 August 2026. She claims that she was dismissed because she made protected disclosures and also makes an application for interim relief.

4. The respondent resists the application for interim relief. It asserts that the claimant was dismissed due to capability.
5. On 7 August 2026 a Notice of Hearing was sent to the parties listing the claim for an interim relief hearing today.
6. On 2 September 2026 the claimant applied for a postponement of the hearing, writing that: *"I am still awaiting legal support, as I'm having to wait for confirmation that I'm eligible for support with payment under my home insurance. I am not willing to face Marcus without representation. Additionally, I have just began a new employment, and would not be able to attend at this time."*

The hearing

7. The claimant did not attend the hearing and was not represented. The start of the hearing was delayed to give the claimant time to join, in case she was experiencing technical difficulties. The clerk telephoned her twice and on both occasions was not able to speak to her. The clerk left a message on the claimant's answerphone asking the claimant to join the hearing, but the claimant did not do so. The claimant was not present at any point during the hearing, which lasted until 10.55 am.
8. At 10.20 I started the hearing and invited Mr Tudor to make representations on behalf of the respondent.
9. Having considered those representations, I decided to refuse the claimant's application for a postponement of the hearing for the following reasons:
 1. Section 128(5) of the Employment Rights Act 1996 provides that: *"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"*.
 2. The claimant has not demonstrated that there are exceptional circumstances which would justify a postponement. Attending work is not a special circumstance, nor is the lack of legal representation. There are plenty of claimants who appear before tribunal without legal representation and who represent themselves in hearings.
 3. Notice of this hearing was sent to the parties on 7 August 2026. The claimant waited until 2 September, the day before the hearing, to apply for a postponement. The claimant has had ample opportunity to make an earlier application but chose not to do so.
 4. Rule 47 of The Employment Tribunal Procedure Rules 2024 provides that: *"If a party fails to attend or to be represented at a hearing, the Tribunal may dismiss the claim or proceed with the hearing in the absence of that party. Before doing so, it must consider any information which is available to it, after any enquiries that may be practicable, about the reason for the party's absence."*

10. I decided, in the circumstances, to proceed with the hearing in the absence of the claimant. The respondent had produced a bundle of documents running to 156 pages, and which included a draft response to the claim. I heard submissions from Mr Tudor on behalf of the respondent and then adjourned to make my decision.
11. Having delivered judgment on the interim relief application, I invited representations on whether to issue a strike out warning to the claimant and, for the reasons set out in a separate document, have issued that warning.

Amendment to the name of the respondent

12. The claimant issued her claim against Marcus Isman-Egal. The respondent says that the claimant was not employed by Mr Isman-Egal, but was employed by Red Everywhere (Lincolnshire) Ltd. The name of the respondent is amended by Red Everywhere (Lincolnshire) Ltd.

The application and response

13. In the claim form the claimant asserts that she was automatically unfairly dismissed on 1 August 2026 *“solely because I made protected disclosures (whistleblowing) regarding the safety of vulnerable students and staff on site”*.
14. The claimant also asserts that on 30 June 2026 she sent an email to Marcus Isman-Egal about the *“lack of response to my safeguarding concerns regarding a particular student who I did not feel was safe at our site”* and that after she raised a complaint, a meeting was arranged for 2nd July, during which Mr Isman-Egal became aggressive and questioned her teaching skills, resulting in her leaving the meeting in tears. The claimant says that she took the remaining two weeks of the term off sick with stress, and that on 1 August 2026 she received a P45 backdated to 18 July 2026.
15. The respondent resists the application for interim relief. In its draft response to the claim the respondent asserts, in summary, that:
 1. it had already commenced a formal investigation into safeguarding concerns before the claimant sent her email on 30 June;
 2. the claimant was not dismissed, but resigned on 6 July 2026 because she had secured a full-time job in a school from September 2026; and
 3. the claimant returned her company property on 15 July.

Law

16. Section 128 of the Employment Rights Act 1996 (“the ERA”) contains the right for employees to apply for interim relief:

“(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....

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 or an application for interim relief except where it is satisfied that special circumstances exist which justify it in doing so. “

17. Section 129 of the ERA sets out the procedure to be followed where an application is made for interim relief, and includes the following:

“(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....

(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.....”

18. Rule 94 of The Employment Tribunal Procedure Rules 2024 provides that when a Tribunal hears an application for interim relief “*rules 52 to 54 (preliminary hearings) apply to the hearing and the Tribunal must not hear oral evidence unless it directs otherwise.*”

19. Interim relief is “*an exceptional form of relief granted pending a determination of a complaint of unfair dismissal*” (***Taplin v C Shippam Limited [1978] ICR 1068***). The test for the Tribunal in an application for interim relief is whether it appears likely that, when deciding the unfair dismissal claim, the Tribunal will find that the reason or, if more than one, the principal reason for dismissal, was the prohibited reason, in this case the alleged protected disclosure(s).

20. 'Likely' has been held to mean 'a pretty good chance' (*Taplin v C Shippam Limited [1978] ICR 1068* and approved in *Raja v The Secretary of State for Justice UKEAT/0634/09* and *Dandpat v University of Bath and another UKEAT/0408/09*) or 'having a case that looks like a winner' (*Derby Daily Telegraph Limited v Foss EAT/631/91*). It is not sufficient for the Tribunal to simply conclude that it is more likely than not that the claim will succeed.
21. The Tribunal must apply the same test to all the elements of the automatic unfair dismissal claim that are disputed by the respondent (*Hancock v Ter-Berg and another UKEAT/0318/19*).
22. In *Ministry of Justice v Sarfraz [2011] IRLR 562*, Mr Justice Underhill noted that interim relief could only be awarded if it was likely that, at the final hearing, a Tribunal would find five things, namely that:
 1. The claimant made a disclosure to her employer;
 2. The claimant believed that the disclosure tended to show one or more of the matters within section 43B(1) of the Employment Rights Act 1996;
 3. The claimant's belief was reasonable;
 4. The disclosure was made in good faith; and
 5. The disclosure was the principal reason for the claimant's dismissal.
23. The burden of proof is on the claimant in an interim relief application, and the Tribunal should not grant interim relief if it considers that it is probable that the reason or principal reason for the dismissal is not the protected disclosure (*Bombardier Aerospace (t/a Short Brothers Plc) v McConnell [2017] NICA 2017* and *McConnell v Bombardier Aerospace (No 2) [2009] IRLR 201*).
24. In *London City Airport Ltd v Chacko [2013] IRLR 610* the Employment Appeal Tribunal held that the Tribunal is required, during an interim relief hearing, to make as good an assessment as it can of whether the claimant is likely to succeed, but that this will involve a far less detailed examination of the parties' cases than will take place at the final hearing of the claim. In *Al Qasimis v Robinson EAT 0283/17* HHJ Eady summarised the task of an Employment Judge dealing with an interim relief application as follows:

"By its nature, the application had to be determined expeditiously and on a summary basis. The [tribunal] had to do the best it could with such material as the parties had been able to deploy at short notice and to make as good an assessment as it felt able. The employment judge also had to be careful to avoid making findings that might tie the hands of the [tribunal] ultimately charged with the final determination of the merits of the points raised. His task was thus very much an impressionistic one: to form a view as to how the matter looked, as to whether the claimant had a pretty good chance and was likely to make out her case, and to explain the conclusion reached on that basis; not in an over-formulistic way but giving the essential gist of his reasoning, sufficient to let the parties know why the application had succeeded or failed given the issues raised and the test that had to be applied."

25. Where there is a significant conflict of evidence in relation to key issues, it is open to the Tribunal to conclude that the conflict cannot be resolved at an interim relief hearing, and to refuse the application for interim relief for that reason.

26. In June 2026 the Presidents of the Employment Tribunals in England and Wales and Scotland issued Presidential Guidance on applications for interim relief. I have considered that Guidance when reaching my decision on the claimant's application, and in particular the following provision:

"24....the tribunal must not hear oral evidence unless it directs otherwise. It is highly unusual for a tribunal to direct that it will hear oral evidence. This is because the tribunal is not making factual findings. Instead, it is carrying out an expeditious summary assessment of the prospects of success based on the material which has been deployed at short notice: Al Qasimi v Robinson EAT/0283/17....

....

39.the claimant will need to show that there is a pretty good chance the tribunal will find that the protected disclosure caused the dismissal. The employer usually disputes this. If an employer identifies an apparently good reason for dismissing the claimant that is unrelated to a protected disclosure, this is usually something the tribunal will need to decide at the final hearing on the basis of full evidence. It is difficult to see how the claimant will show that they have a pretty good chance of success, unless they have clear evidence that was not the real reason.

40.the more hurdles the claimant faces in order to succeed with the claim, the more difficult it will be to persuade the tribunal that there is a pretty good chance of success. For example.... a dispute about whether the claimant's resignation should be construed as a dismissal, will make it even less likely that interim relief will be granted...."

Conclusions

27. In determining the claimant's application for interim relief, the question I have had to consider is whether the claimant is likely to succeed in establishing, at the final hearing of this claim, that she made protected disclosures and that the reason or principal reason for her dismissal was the disclosures. The application does not require me to make any findings of fact at this stage, and I do not do so. I am required to determine the claimant's application for interim relief by making a broad assessment on the material before me today.

28. The starting point is the claim form itself. The claimant does not set out in the claim form why she says the alleged disclosure(s) were in the public interest.

29. Of equal importance, the respondent's position is that the claimant was not dismissed but that she resigned. To succeed in a claim for automatic unfair dismissal the claimant will need to establish that she was actually or constructively dismissed, and that the reason for that dismissal was a protected disclosure or protected disclosures. There is quite simply not enough material before me today

to conclude that the claimant is likely to be able to show that that was the case. This is, in my view, a case falling squarely within the situation envisaged by paragraph 40 of the Presidential Guidance.

30. The respondent has set out in its draft response to the claim what appears to be an arguable and credible defence to the claim made by the claimant.
31. The burden of proof in an interim relief application is a high one. The claimant has not discharged that burden. She has not persuaded me that she is likely to be able to establish at final hearing that she made protected disclosures and was dismissed for making protected disclosures.
32. The application for interim relief is therefore refused.

Approved by:
Employment Judge Ayre

Date: 3 September 2026
JUDGMENT SENT TO THE PARTIES ON

03 September 2026

Ana Ciuraru
FOR THE TRIBUNAL OFFICE

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