



EMPLOYMENT TRIBUNALS

Claimant: Mr A Breedon

Respondent: Full Fat Productions Limited

RECORD OF A PRELIMINARY HEARING

Heard at: Birmingham (in private by telephone) **On:** 23 October 2025

Before: Employment Judge Robin Broughton

Appearances

For the claimant: in person

For the respondent: Mr Adams, Director

Interim Relief Reasons

The claimant's application for interim relief was refused.

1. At this hearing, I was asked to consider the claimant's application to amend his claim to include claims for unfair dismissal and automatic unfair dismissal under section 103A of the Employment Rights Act 1996, having previously raised a claim that included alleged whistleblowing detriments prior to his dismissal.
2. In that original claim, the claimant was suggesting that he suffered payroll delays because he had made protected disclosures. This was despite acknowledging that most employees suffered similar delays. Accordingly, that aspect of his claims is likely to be withdrawn.
3. In a further development of the claimant's narrative, he appears to accept that the respondent, in the person of Mr Adams, had no knowledge of his alleged disclosures until 12 August 2025. This appeared necessary as the claimant said he had been protected from redundancy prior to this date, despite having made his first alleged disclosures 2 months earlier.
4. The amendment application was brought promptly after the claimant was given notice of termination. In fact, he remains employed on garden leave until 11 November this year and, therefore, there is no issue regarding time limits.
5. The application to add those claims was, rightly, largely unopposed, although the respondent made it clear that the claims themselves are strongly defended and disputed.

Background

6. We spent a significant amount of time establishing the background and the factual matters that could be agreed between the parties regarding the claimant's application for interim relief. Nothing that follows, however, is intended to amount to a finding of fact, nor does it — it is merely a record of the discussions held this morning that were not sworn evidence. It is not intended to be binding on the parties or on any future tribunal hearing the full merits of the claims.
7. It appeared largely undisputed that the claimant was employed by the respondent as, initially at least, a Game Designer, from 22 May 2017. The claimant states that, at some stage, he became the actual or de facto Lead Game Designer. There was no dispute that he was the longest-serving and highest-paid designer, with some additional responsibilities.
8. The company appeared to lose an important client towards the end of 2024 and more in June 2025 and was, it was suggested, experiencing financial difficulties, albeit the extent and cause is potentially disputed.
9. There were regular payroll delays for the claimant and many of his colleagues in 2025, whether as a result, or otherwise. There may be a dispute about the nature and extent of the cause, but not that there were both financial challenges and payroll delays.
10. At a group meeting in early June 2025, these matters were discussed between Mr Adams, the company's director, and many of the staff. The discussions also covered whether the company's pension contributions and employee deductions were being properly paid over to the pension provider.
11. The claimant covertly recorded that meeting and, indeed, many subsequent meetings. It was acknowledged that such recordings were made without consent and may have been unlawful.
12. The respondent objects to the admission of those recordings or their transcripts as evidence at the final hearing. Admissibility will need to be determined at a future hearing. For today's purposes, I have simply noted the dispute and the likelihood that the claimant's evidence will reflect the alleged content of those recordings as presented.
13. The claimant states that in the days following that meeting, he raised what he believed to be an issue of pensions fraud with the Pensions Regulator and Action Fraud. He identifies these as his first alleged protected disclosures although further particulars are required.
14. Further, he says he informed the respondent of this in an email on 10 June, when chasing his pay for the month. It appeared to be common ground that, for whatever reason, this email was not read or received by Mr Adams.
15. Further references to the issue were made by email in July, again when the claimant was chasing payment. It appeared likely to be agreed that this email went into Mr Adams' spam folder and also was not read at the time.
16. Across the same period, there were at least two proposed redundancy rounds which were subsequently aborted. In both, the claimant says he was ring-fenced along with 4 others, as an essential member of staff. This did not appear to be in dispute.
17. In August 2025, the claimant's pay was again delayed, and on 12 August, when chasing Mr Adams, he referred to himself as a whistleblower.
18. This appeared to surprise Mr Adams at the time and, seemingly, raised questions for him, including regarding what the claimant meant. In further exchanges, after the initial response, the

claimant explained that he had contacted the pensions regulator — although without providing full detail — and Mr Adams appears to have located the July email in his spam folder. The claimant asserts that this was sufficient for the respondent to know that he had made one or more specific protected disclosures, given that the pension issue had, on his case, been widely aired.

19. In those subsequent exchanges, the claimant asserts that he also made further potential protected disclosures, for example, alleging that the company was trading while insolvent and / or that Mr Adams was in breach of directors' duties.
20. Returning to Mr Adams's initial reply on 14 August, he expressly stated that being a whistleblower would not protect the claimant from redundancy.
21. The claimant relies on this as a "smoking gun", interpreting it as a threat of redundancy due to his alleged disclosures. I would agree that is a possible interpretation of the email, although the respondent disputes it and additionally says he was not even aware of the specific alleged disclosures at that time.
22. The respondent, however, suggested that Mr Adams perceived the claimant's self-description as a whistleblower as, perhaps, an attempt to force payment of the claimant's wages and safeguard his own job, due to an awareness of likely pending redundancies.
23. It seems to me that both explanations are plausible.
24. After a collective pay grievance around 29 August, the respondent again proposed redundancies on 1 September, and this time the exercise went ahead. The respondent saying that the redundancy process was commenced on the advice of an insolvency practitioner.
25. At that time, the company had between 18 and 20 staff. Seven employees were on this occasion ring-fenced as essential — more than in the previous aborted exercises — but the claimant was not among them, nor were any other designers. At least one of the other previously deemed essential employees was also not ring fenced.
26. Mr Adams decided that only one designer was required and pooled the claimant with the other four designers for selection, a pooling and process the claimant alleges was unfair.
27. One designer was retained. The claimant and three other designers were made redundant. Three further staff were also dismissed as redundant, totalling more than a third of the workforce.
28. The claimant appealed his dismissal but has not, as yet, received a substantive response.
29. Those were the outline circumstances that I was able to provisionally establish.
30. The application for interim relief must be presented before the end of the period of seven days immediately following the effective date of termination. Whether the application is made before or after the termination date does not matter. As the claimant remains employed until 11 November 2025, there is no issue regarding time limits. There had, apparently, been a potential concern about this at a previous hearing, but it was not an issue before me.
31. The requirements under section 103A Employment Rights Act 1996 (ERA) are that, firstly, there must be a dismissal which is not in dispute here.
32. As the claimant has qualifying service, it will be for the respondent to show a potentially fair reason for dismissal, and they will be relying on redundancy in this case.

33. If unable to show such a reason, the tribunal will need to consider if the reason or, if more than one, the principal reason, was that the claimant had made protected disclosures. This requires an actual disclosure, usually to the employer, and there may have been one or more such disclosures in this case. Although there remains some uncertainty at this stage, the claimant principally relies on his disclosures to the Pensions Regulator and Action Fraud. He says these were brought to the attention of Mr Adams — which, if proven, can be equally effective, but it adds the further hurdle of demonstrating employer knowledge.
34. There are, therefore, several hurdles regarding the protected disclosures themselves.
35. There were, potentially, further disclosures, albeit after the alleged “smoking gun” email of 14 August.

The Issues and Law

1. The complaint in respect of which an interim application is brought, is that under the procedure of Section 129 of the Employment Rights Act 1996.
2. The Claimant asserts that he has brought a claim pursuant to Section 103A ERA 1996 and he makes an application for interim relief pursuant to Section 128(1)(A)(i) ERA 1996.
3. In short, the issues to be considered are whether it appears that it is likely that on determination of the complaint to which the application relates the Tribunal will find: -
 - i. that the Claimant has been dismissed
 - ii. the reason for the dismissal, (or if more than one, the principal reason for the dismissal) was that the employer made a protected disclosure as described at Section 43B of ERA 1996?
4. In particular, that it is likely the Tribunal at the final hearing would find that:
 - a. the Claimant had made a disclosure to his employer or to a recognised alternative body with the knowledge of the employer;
 - b. he believes that the disclosure tended to show one or more of the things itemised at (a)-(f) under Section 43B
 - c. that belief was reasonable;
 - d. the disclosure was made in the public interest;
 - e. the disclosure was the principal reason for his dismissal.
5. In considering an application for interim relief, I am required to undertake a predictive exercise as to the likely outcome of the full hearing. In undertaking that exercise, I seek to avoid making determinations of factual issues as if mine is a final determination of the matter. In the circumstances, the application stands on the pleadings, documentary evidence and the submissions and arguments of the parties. In this decision, I have recorded what I have been told or shown, but that is not intended to be anything more than a preliminary observation on the case, the documents and the merits.
6. Having regard to the provisions of the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2024 in considering an Interim Relief application “the Tribunal shall not hear oral evidence unless it directs otherwise”. This was not a case in which I considered it appropriate to hear oral evidence from either party, albeit I was provided with information from both sides that were not subject to cross-examination or questioning.

7. I took the case of the claimant in respect of Interim Relief as set out in his amended claim, but allowed considerable latitude in relation to what we could call further particularisation of the same, written and oral submissions and several documents.
8. The leading cases on the test to be applied by an Employment Tribunal hearing an application for interim relief were, under the old law, those of Taplin -v- C. Shippam Limited [1978] ICR1068 and the Ministry of Justice -v- Sarfraz [2011] IRLR 562.
9. An application for interim relief is for a brief urgent hearing which is to make a broad assessment of the application and in particular the question whether the Claimant is likely to succeed under Section 103A.
10. In the case of Sarfraz, we received the following guidance at paragraph 14:-

“in order to make an Order under Sections 128-129 the Judge had to have decided that it was likely that the Tribunal at the final hearing would find five things:

 - (i) That the Claimant had made a disclosure to the employer;
 - (ii) That he believes that the disclosure tended to show one or more of the things itemised at (a)-(f) under Section 43B (1);
 - (iii) That that belief was reasonable;
 - (iv) [That the disclosure was made in good faith (no longer required)];
 - (v) That the disclosure was the principle reason for his dismissal.”
11. Further guidance was given by the EAT in London City Airport Limited v Chacko [2013] IRLR610 and in particular the correct approach to be applied to the meaning of “it is likely”, following the authority of Taplin it must “be established that the employee can demonstrate a pretty good chance of success”.
12. The correct starting point for that appeal was to

“fully appreciate the task which faces an employment judge on an application for interim relief. The application falls to be considered on a summary basis. The employment judge must do the best he can with such material as the parties are able to deploy by way of documents and argument in support of their respective cases. The Employment Judge is then required to make as good an assessment as he is promptly able of whether the claimant is likely to succeed in a claim for unfair dismissal based on one of the relevant grounds. The relevant statutory test is not whether the claimant is ultimately likely to succeed in his or her complaint to the Employment Tribunal but whether “it appears to the tribunal” in this case the employment judge “that it is likely”. To put it in my own words, what this requires is an expeditious summary assessment by the first instance employment judge as to how the matter looks to him on the material that he has. The statutory regime thus places emphasis on how the matter appears in the swiftly convened summary hearing at first instance which must of necessity involve a far less detailed scrutiny of the respective cases of each of the parties and their evidence than will be ultimately undertaken at the full hearing of the claim.”
13. The Claimant who is a litigant in person, was aware of the summary nature of an interim relief application and hearing.
14. In considering whether or not it is likely that at a Final Hearing a Tribunal will find that the principal reason for the dismissal was on the grounds of whistle-blowing, without making binding Findings of Fact, an initial assessment must be made of whether, if a breach of a legal obligation is asserted by the Claimant, it is likely to found the Section 103A application.
15. The source of the obligation which the Claimant believes applies, should be identified and capable of verification by reference to statute or regulation. In Blackvev Ventures Limited (t/a

Chemistree) -v- Gahir [2014] IRLR416 the EAT commended the approach to be taken by Employment Tribunals

- a. "Each disclosure should be identified by reference to date and content.
 - b. The alleged failure or likely failure to comply with a legal obligation, or matter giving rise to the Health & Safety of an individual having been or likely to be endangered or, as the case may be, should be identified.
 - c. The basis upon which the disclosure is said to be protected and qualifying should be addressed.
 - d. Each failure or likely failure should be separately identified.
 - e. Save in obvious cases if a breach of a legal obligation is asserted, the source of the obligation should be identified and capable of verification by reference for example to Statute or Regulation."
16. Eiger Securities LLP -v- Korshunova [2017] IRLR 115 at paragraph 46 confirmed that the identification of the source of the legal obligation "does not have to be detailed or precise but it must be more than a belief that certain actions are wrong." Actions may be considered to be wrong because they are immoral, undesirable or in breach of guidance without being in breach of a legal obligation.
17. Ultimately, I must be satisfied that it is likely that, at the final hearing, the tribunal would find that the claimant made a protected disclosure. That disclosure must have been made either to the employer or to a third party with the employer's knowledge, and it must tend to show one or more of the matters set out in section 43B — which, in this case, appear to be illegality or breach of legal obligation — and the claimant's belief must be reasonable. Finally, the disclosure must have been the principal or sole reason for dismissal. As established in Chako, "likely to succeed" means having a pretty good chance of success — a fairly high bar. It is a difficult task for the tribunal on a summary basis, working only from limited material.
18. I have done what I can with the evidence and bundles provided by the claimant, which the respondent received (albeit they claim only recently). I remind myself that the test is not merely whether the claimant is likely to succeed, but whether it appears likely that he will — on the limited information and in the time available. That is the approach I have adopted.
19. I have also considered the case of Blackvev Ventures in relation to whistleblowing claims. In such cases, each disclosure must be identified by its date and content, and the alleged failure or likely failure to comply with a legal obligation must be set out, as well as the basis on which it is said to be protected and qualifying. Some further work may be required in this case to identify those matters clearly. That is not intended as criticism but is simply a factor I must bear in mind in the context of this interim relief application.

Decision

20. Having done so, it seems to me that there is at least a reasonable chance the claimant will be able to establish that he made protected disclosures, and that, by mid-August, the respondent became aware that something had been said to a regulator or third party. Whether that is sufficient for the first part of the test remains to be seen, but it seems to me there is at least a reasonable chance the claimant may succeed on that issue.
21. In relation to the email of 14 August, as I have already highlighted, it is at least possible that this is the "smoking gun" perceived by the claimant in relation to causation. However, alternative explanations for the language used are also possible, as is often the case in matters such as this.

22. There remain significant disputes of fact, notwithstanding the matters I have outlined as undisputed. Many of these disputes were aired today, but I do not need to go into them in detail at this stage. The claimant has some arguable points regarding the removal of ring-fencing of his role, the selection pool and method, and the scoring process — all of which may go to fairness and, potentially, to causation in relation to the automatic unfair dismissal claim.
23. However, it is also possible that the claimant will not be able to establish that one or more protected disclosures were made, or that his interpretation of the alleged “smoking gun” email is correct. The bar for interim relief is high. On the limited information available, I am not satisfied that it is likely that the claimant will succeed on all necessary points.
24. It appears to me to be at least as likely that the principal reason for dismissal was redundancy, given the economic circumstances and the fact that the workforce reduced by more than a third.
25. It may be that the redundancy was tainted by whistleblowing detriment, or that it falls within section 105 of the Employment Rights Act 1996, which I allow to be treated as a relabelling of the claim, in the alternative, since it is clearly part of the claimant’s case.
26. That is before consideration of the fact that it remains possible that the respondent may be able to establish both a redundancy situation and a fair process and decision.
27. Accordingly, while it is possible the dismissal may fall under section 105 or there may be other claims of a whistleblowing detriment, neither gives rise to an entitlement to interim relief.
28. As a result, I cannot say that the section 103A claim meets the high threshold of being likely to succeed, even if that, or one or more of the other claims, might ultimately do so.
29. For those reasons, the application for interim relief is refused. However, the claimant’s substantive claims — including for unpaid wages, ordinary unfair dismissal, automatic unfair dismissal under section 103A, and automatic unfair dismissal under section 105 — will all proceed to the next stage. Any further applications to amend will need to be fully particularised and considered in due course.

Employment Judge Broughton
25 November 2025