



EMPLOYMENT TRIBUNALS

Claimant: Nabeel Hussain

Respondent: Rexel UK Ltd

Heard at: Bristol Employment Tribunal (by video) **On:** Tuesday, 21 July 2026

Before: Employment Judge M. Salter

Representation:

Claimant: In person

Respondent: Ms. Hodgetts, of counsel

JUDGMENT

It is the judgment of the tribunal that on the material before the Tribunal at this summary stage, it does not appear that it is likely that, on determining the complaint of unfair dismissal to which this application relates, the Tribunal will find that the reason (or principal reason) for the Claimant's dismissal was the reason specified in section 103A of the Employment Rights Act 1996.

REASONS

References in square brackets below are unless the context suggests otherwise to the page of the bundle. Those followed by a with a § refer to a paragraph on that page and references that follow a case reference, or a witness' initials, refer to the paragraph number of that authority or witness statement.

References in round brackets are to the paragraph of these reasons or to provide definitions.

INTRODUCTION

1. The Employment Tribunal is required to maintain a register of all judgments and written reasons. The register must be accessible to the public. It has recently been moved online. All judgments and reasons since February 2017 are now available at: <https://www.gov.uk/employment-tribunal-decisions>. The

Employment Tribunal has no power to refuse to place a judgment or reasons on the online register, or to remove a judgment or reasons from the register once they have been placed there. If you consider that these documents should be anonymised in any way prior to publication, you will need to apply to the Employment Tribunal for an order to that effect under Rule 49 of the 2024 Rules. Such an application would need to be copied to all other parties for comment and it would be carefully scrutinised by a judge (where appropriate, with panel members) before deciding whether (and to what extent) anonymity should be granted to a party or a witness.

2. These reasons have been prepared at the request of the Claimant after a hearing on 21 July 2026 when this matter came before me for the hearing of the Claimant's application for interim relief made under section 128 of the Employment Rights Act 1996 ("ERA 1996"). The application was listed pursuant to rule 94 of the Employment Tribunal Procedure Rules 2024 ("the 2024 Rules"), which applies rules 52 to 54. In accordance with rule 94 and the Presidential Guidance on Applications for Interim Relief, no oral evidence was heard; I determined the application on the documents and the parties' submissions. These are summary reasons. What follows records the parties' positions and my summary assessment; it does not contain concluded findings of fact.
3. The Claimant appeared in person. The Respondent was represented by Ms. Hodgetts, of counsel. The hearing was conducted by video under rule 46. I considered the interim relief hearing bundle, which extended to 116 pages, in excess of the 100-page limit directed in the notice of hearing; the Claimant's submissions; the witness statement of Ms. Sarah Cole, the Respondent's People Business Partner; and the Respondent's outline submissions. No party gave oral evidence.

The Application and the parties' positions

4. The Claimant was employed by the Respondent as a driver at its Bristol (Kingsland) site from 3 February 2025 until the effective date of termination. The written contract records a start date of 3 February 2024, which the Respondent says is an administrative error, the onboarding record showing February 2025 [4-16, 86; SC/5]. On either date the Claimant does not have two years' continuous service, and he brings his claim as one of automatic

unfair dismissal by reason of protected disclosure under section 103A of the ERA 1996.

5. The Claimant relies on two matters as protected disclosures:
 - (a) first, a written grievance of 27 May 2026 concerning the operation of a forklift truck without use of its horn and the risk to pedestrian safety [17, 78]; and
 - (b) second, a disclosure of 8 June 2026 made through the Respondent's SafeCall channel concerning the reuse of packaging said to expose other customers' personal data [33-34, 79].

6. The Respondent's case, in Ms. Hodgetts' outline submissions and Ms. Cole's statement, is that the application is misconceived and the complaint is unlikely to succeed. Its essential points are these.
 - (a) first, the Claimant is unlikely to establish the reasonable belief a qualifying disclosure requires, in particular as to the first (forklift) matter: the complaint named a colleague and alleged he was acting intentionally [17]; the Claimant accepted in the grievance process that using a horn 'isn't law' [19, 43]; the CCTV was said to show a safe distance [19-20]; and the grievance investigation found no substance to the complaint [65-67; SC/17].
 - (b) fecond, there is no evidence that the second (SafeCall) disclosure was known to any relevant decision-maker before the dismissal [SC/14].
 - (c) third, the reason for the dismissal was not the disclosures but a breakdown of trust and confidence and conduct concerns, separable from any disclosure: following the grievance outcome of 26 June 2026 (of 27 points, 8 upheld and 18 rejected, with aspects characterised as vexatious and a breakdown in working relationships recorded) [55-71; SC/17-19], Ms. Caroline Park, Head of Financial Control, reviewed the position on 29 June 2026 and considered the Claimant's continued employment untenable [98; SC/20].

The Respondent also contends that the Tribunal lacks jurisdiction over any separate detriment complaint for want of ACAS early conciliation.

7. The Claimant's case is that the disclosures were the reason, or principal reason, for his dismissal: the dismissal followed closely on the disclosures and the grievance; the dismissal letter identified only unparticularised 'conduct' [74]; and he had raised, during the grievance process, his belief that the Respondent wished to dismiss him before he acquired two years' service [45-48].

The Law*Jurisdiction and the seven-day time limit*

8. Interim relief is available only where the claim is one of automatic unfair dismissal on a ground listed in section 128(1) of the ERA 1996. Section 128 provides, so far as material:

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

...

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).

9. There is no power to extend the seven-day limit. The effective date of termination is in issue: the Respondent's letter of 29 June 2026 states that the dismissal took effect on 30 June 2026 [74; SC/5], while the Claimant says he was notified only on 3 July 2026 [76, 81]. The application was presented on 7 July 2026 [99]. On either date it was presented within the seven days required by section 128(2).

Is success 'likely'?

10. Section 129 provides, so far as material:

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

11. The word 'likely' sets a high threshold. In Taplin v C Shippam Ltd [1978] ICR 1068, decided under the predecessor provision, it was held to mean that the Claimant must show a 'pretty good chance of success' at the final hearing, higher than a real possibility and higher than the balance of probabilities. In Ministry of Justice v Sarfraz [2011] IRLR 562 the test was described as 'nearer to certainty than mere probability'. A 'good arguable case' is not enough: Parsons v Airplus International Ltd UKEAT/0023/16/JOJ. The threshold is deliberately demanding because interim relief is exceptional: Taplin; Dandpat v University of Bath UKEAT/0408/09/LA. The burden is on the Claimant throughout, and on each element the complaint will require, including that the reason for the dismissal was the listed ground: His Highness Sheikh Khalid Bin Saqr Al Qasimi v Robinson UKEAT/0283/17/JOJ.

Procedure: a summary assessment

12. The application is determined summarily. I make a broad assessment of the untested material before me: London City Airport Ltd v Chacko [2013] IRLR 610; Wollenberg v Global Gaming Ventures (Leeds) Ltd UKEAT/0053/18/DA. I do not hear oral evidence, and I am careful not to resolve conflicts of evidence or to make concluded findings of fact or credibility that would tie the hands of the Tribunal charged with the final determination: Al Qasimi. That summary approach, under which oral evidence is not heard save where the Tribunal directs otherwise, is reflected in the Presidential Guidance. My assessment is provisional and made only for the purpose of assessing likelihood.

The reasons required

13. The reasons for a decision on interim relief are summary. In Al Qasimi HHJ Eady, as she then was, described the task at §59:

“By its nature the application had to be determined expeditiously and on a summary basis. The ET 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 ET ultimately charged with the final determination of the merits of the points raised. His task was 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 succeeded or failed given the issues raised and the test that had to be applied.”

14. Dandpat is to the same effect at §17: the Tribunal is required to indicate the essential gist of its reasoning. Both passages were set out and applied in Duffy. What follows is intended to give that essential gist and no more.

Protected disclosure: section 103A

15. A protected disclosure is a qualifying disclosure under section 43B: a disclosure of information which, in the reasonable belief of the worker, tends to show one of the relevant failures, and which the worker reasonably believes is in the public interest. The information must have sufficient factual content and specificity, though information and allegation are not mutually exclusive: Kilraine v London Borough of Wandsworth [2018] EWCA Civ 1436; [2018] ICR 1850. The belief need not be correct, only reasonably held: Babula v Waltham Forest College [2007] ICR 1026. On public interest, the question is whether the worker held a reasonable belief that the disclosure was in the public interest: Chesterton Global Ltd v Nurmohamed [2018] ICR 731. For a section 103A dismissal the causation question is the reason why the employer dismissed, that is the reason operating on the mind of the decision-maker: Salisbury NHS Foundation Trust v Wyeth UKEAT/0061/15/JOJ.
16. As the Claimant lacks two years' service, it is for him to show that the reason (or principal reason) for his dismissal was the protected disclosure. Where the employer advances a different reason and the Tribunal rejects it, it does not follow that the employee's asserted reason is established; the Tribunal must decide the reason on the evidence: Kuzel v Roche Products Ltd [2008] ICR 799. On an application for interim relief the onus in any event rests on the Claimant on each element the complaint will require: Sarfraz; Al Qasimi.
17. Those elements, on this application, are that the Claimant made the disclosure to the Respondent; that he believed it tended to show one or more of the matters in section 43B(1)(a) to (f); that his belief was reasonable; that he believed the disclosure to be in the public interest; and that the disclosure was the reason, or principal reason, for his dismissal. He must show a pretty good chance on each. That element-by-element approach comes from Sarfraz and was adopted in Duffy at §7. I have stated the elements as the statute now provides: the requirement of good faith which appeared in section

43B(1) when Sarfraz was decided was replaced by the public interest test with effect from 25 June 2013, and good faith now bears only on remedy.

Where the employer identifies an apparently good reason for the dismissal

18. The Presidential Guidance addresses the position where the employer puts forward a reason unrelated to any disclosure. At §39 it states:

“Second, 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 this was not the real reason.”

Separability: where the asserted reason is conduct associated with the disclosure

19. The Respondent's case is that the reason was conduct and a breakdown of trust and confidence, separable from any disclosure. The separability principle is not a rule of law but a label identifying what may in a particular case be a necessary step in determining what was, as a matter of fact, the real reason for the treatment. A feature of the claimant's conduct genuinely separable from the disclosure may be the real reason, the disclosure being the context in which the reason arises rather than the reason itself.

20. Were the Claimant to say that the decision-maker was innocent but manipulated by another who knew of the disclosure, the approach in Royal Mail Group Ltd v Jhuti [2019] UKSC 55 would arise; that approach does not extend to a section 47B(1A) detriment (Henderson v GCRM Ltd and Others [2025] EAT 136).

Summary assessment and conclusion

21. The question for me is whether the Claimant has shown a pretty good chance of establishing, at the final hearing, that the reason (or principal reason) for his dismissal was a protected disclosure, rather than the separable conduct and breakdown of trust and confidence on which the Respondent relies. A subsidiary question, on the first matter, is whether he has a pretty good chance of establishing that it was a qualifying disclosure at all.

22. The points in the Claimant's favour, on the untested material, are

- (a) the close sequence between the disclosures of 27 May and 8 June 2026, the grievance, and the dismissal decision of 29 June 2026;
- (b) that the dismissal letter identified only unparticularised 'conduct' [74]; and
- (c) his contemporaneous articulation that he believed the Respondent wished to dismiss him before he gained two years' service [45-48].

23. The points in the Respondent's favour are

- (a) the grievance investigation's finding of no substance to the forklift complaint [65-67];
- (b) the Claimant's own acknowledgement that horn use 'isn't law' [19, 43];
- (c) the absence of evidence that the SafeCall disclosure reached a decision-maker [SC/14]; and
- (d) the contemporaneous record of a breakdown of trust and confidence and of conduct concerns as the stated basis of Ms. Park's decision [55-71, 98]. Those matters, if made out, go to whether the reason was separable conduct within Kong.

24. Taking the subsidiary question first, I am not satisfied that the Claimant has shown that it is likely he will establish that the grievance of 27 May 2026 was a qualifying disclosure. The points the Respondent advances on that question, which I have summarised above, have real force on the untested material before me. If that grievance were a qualifying disclosure there could be no doubt that it was also a protected disclosure. The Claimant's difficulty arises at the prior stage.

25. I turn to the reason for the dismissal. The Respondent has identified a reason unrelated to either disclosure: a breakdown of trust and confidence together with conduct concerns. That reason is not merely asserted. It is recorded in the contemporaneous documents, in the grievance outcome of 26 June 2026 and in the account of Ms. Park's review of 29 June 2026 [55-71, 98; SC/17-20]. On the material before me it is an apparently good reason, in the sense in which §39 of the Presidential Guidance uses that expression. Whether it was in truth the operative reason is a question for the final hearing on full evidence. The consequence at this stage is that the Claimant needs clear evidence that it was not the real reason. I am not satisfied that he has it.

26. The Claimant's strongest points are that the disclosures of 27 May and 8 June 2026, the grievance, and then the dismissal decision of 29 June 2026. Proximity in time is capable of supporting an inference, and I have weighed it. But on this sequence is equally consistent with the Respondent's account,

because the grievance outcome of 26 June 2026 intervenes between the disclosures and the decision, and it is that outcome which the contemporaneous record identifies as what prompted Ms. Park to review the position three days later. The second point is that the dismissal letter identified only unparticularised 'conduct' [74]. That is a point of some force, and at a final hearing the Respondent may have to explain it. It does not, at this stage, displace a contemporaneous record which does give a reason.

27. There is also the Claimant's own view of the employment relationship which coincides with the Respondent's view. That bears on the separability question, because it is consistent with the Respondent's account that the working relationship had broken down.
28. There is no evidence before me of any influence on the dismissing officer. That is not unusual on an application of this kind, and I do not treat its absence as decisive on its own. But there is nothing in the material from which I could infer an improper influence on Ms. Park's decision of the kind that would engage the approach in Jhuti, still less anything that would make it likely that the Claimant will succeed in his claim.
29. I record that there is a real dispute of fact between the parties. There is a degree of agreement about some of the underlying events, and the dispute concerns their interpretation and their extent. The desk incident is an example: both parties agree that there was an incident, and they disagree about its extent and the surrounding facts. I have not resolved that dispute, and it would be wrong to do so without oral evidence. I make clear that I do not refuse this application because such disputes exist. I refuse it because, having assessed the material in the way set out above, the Respondent has identified an apparently good and unrelated reason for the dismissal which the contemporaneous documents support, and the Claimant has not shown clear evidence that it was not the real reason. That a Tribunal may in due course prefer his account does not convert that position into a pretty good chance of success.
30. I remind myself that the threshold is a pretty good chance of success, and not the balance of probabilities. On the material before me at this summary

stage I am not satisfied that it is likely that the Tribunal will find the reason (or principal reason) for the dismissal was a protected disclosure.

Disposal

31. It follows that the application for interim relief is refused. The claim will proceed to a final hearing in the ordinary way.
32. The Respondent contends that the Tribunal lacks jurisdiction over any separate complaint of detriment for want of ACAS early conciliation. That contention was not the subject of the application before me and I have not determined it. It falls to be addressed at a case management hearing, at which directions for the final hearing can also be given.

Employment Judge M. Salter

Date: 22 August 2026

JUDGMENT & REASONS SENT TO THE PARTIES ON
17 September 2026

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.

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.