EMPLOYMENT TRIBUNALS

Claimant: Brian Smith

Respondent: Cotswold Estates and Gardens Limited

Heard at: Bristol (in public, by video) **On:** 6 October 2026

Before: Employment Judge Walters

Appearances
For the Claimant: In person
For the Respondent: Ms. Bibi, Representative, Peninsula

JUDGMENT

The Claimant's application for interim relief is refused.

REASONS

INTRODUCTION

1. The Claimant was employed by the Respondent from 5 May 2026 to 8 September 2026 as a Landscape Construction Worker in Gloucestershire. The Claimant was allegedly summarily dismissed on the grounds of misconduct. He claims that he made a protected disclosure to the Respondent on or about 29 August 2026 and that the principal or sole reason for his dismissal was that he had made the alleged protected disclosure. He seeks interim relief pursuant to s.128-129 Employment Rights Act 1996.

THE PROCEEDINGS

2. The proceedings were commenced on 13 September 2026. The Claimant indicated in his claim form that he sought interim relief. The matter was listed for the application to be determined. The application is resisted by the Respondent proceedings were defended by the Respondent.

3. The application was heard on 6 October 2026 by CVP in Bristol.

4. The Tribunal had regard to the claim form, the documents in the bundle, and The Tribunal also considered the skeleton argument from the Respondent, the submissions of the Claimant and the Respondent's representative.

5. The Tribunal has considered the application in accordance with ss.128–132 ERA 1996, the relevant case law, and the Presidential Guidance on Interim Relief Applications (June 2026).

THE RELEVANT LEGAL PRINCIPLES

Automatic Unfair Dismissal – s.103A Employment Rights Act 1996

Statutory Framework

6. Section 103A ERA 1996 provides that an employee is unfairly dismissed if the reason, or principal reason, for the dismissal is that they made a protected disclosure. This protection applies regardless of length of service; the usual two-year qualifying period does not apply.

Protected Disclosure

7. A protected disclosure is defined by ss.43A–43L ERA 1996. The Claimant must establish:

    a. a disclosure of information;
    b. tending to show one of the matters in s.43B(1) (e.g., breach of legal obligation, health and safety risk, etc.);
    c. made to an appropriate person under ss.43C–43H;
    d. with a reasonable belief in the information's truth and that the disclosure was in the public interest.

Burden and Standard of Proof

8. The Tribunal must determine the reason or principal reason for the dismissal. The burden is on the employer to show the reason once a prima facie case is established.

Causation Test

9. The protected disclosure must be the reason or principal reason for the dismissal. The Tribunal assesses the mental processes of the decision-maker(s). A disclosure need not be the sole reason, but it must be the operative or principal reason.

10. However, the Supreme Court in **Royal Mail Group Ltd v Jhuti [2019] UKSC 55** held that where the decision-maker is manipulated, misled, or fed false information by another manager, and that manager's hidden motive is the real reason for dismissal, the Tribunal must attribute the hidden motive to the employer.

11. The principle is that an employer cannot rely on the ignorance or innocence of the formal decision-maker where another manager has engineered the dismissal for a prohibited reason.

12. The Tribunal must therefore determine:

    a. whether the decision-maker acted on false or misleading information;
    b. whether another manager knew of the protected disclosure;
    c. whether that manager's true motive was to procure dismissal because of the protected disclosure;
    d. and whether that motive should be imputed to the employer.

13. The **Jhuti** exception applies only where the decision-maker is kept in ignorance of the true facts and is manipulated into dismissing for a reason that is not the real reason. It does not apply where the decision-maker simply forms their own mistaken or unreasonable view.

Interim Relief applications

14. Section 129 ERA 1996 states that an application for interim relief can succeed where it is 'likely' that the Tribunal will ultimately find that the reason or if more than one the principal reason is the making of a protected disclosure i.e. a

s.103A dismissal.in the claimant's favour, i.e. that the principal reason for dismissal was that he had made a protected disclosure.

15. Under s.129 ERA 1996, the Tribunal must determine whether the Claimant has a "*pretty good chance of success*" at the final hearing of establishing that the reason or principal reason for dismissal was the making of a protected disclosure.

16. The Claimant must show:

(a) one or more protected disclosures within ss.43A–43L ERA 1996;

(b) that the Respondent dismissed the Claimant; and

(c) that the protected disclosure was the reason or principal reason for dismissal (s.103A).

17. The Tribunal's task is a provisional merits assessment, not a mini-trial. Evidence is typically limited and contested.

The Legal Test: "Pretty Good Chance of Success"

18. What does 'likely' mean in the context of interim relief applications? The matter has been considered by appellate tribunals. 'Likely' is to be interpreted to mean that the Claimant has a pretty good chance of success at the final hearing. The test of "pretty good chance of success" derives from **Taplin v Shippam Ltd [1978] ICR 1068**, requiring the Claimant to show a case which is nearer to certainty than mere probability.

19. In **Ministry of Justice v Sarfraz [2011] IRLR 463** it was confirmed that in interim relief applications 'likely' does not mean simply 'more likely than not' but connotes a 'significantly higher degree of likelihood', i.e. something nearer to certainty than mere probability.

20. The Tribunal must consider the Claimant's case as presented, but also the Respondent's evidence where it undermines the Claimant's ability to meet the high threshold.

21. In **Al Qasimi v Robinson EAT 0283/17** Her Honour Judge Eady QC explained the correct approach: '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.'

22. In **Duffy v BXTR 3 Limited 2026 EAT 119** the EAT stated that "Presidential Guidance on interim relief came into effect from 22 June 2026, which obviously post-dates the tribunal's decision in this case. The Guidance was produced because, despite interim relief being an emergency measure which places a high threshold for claimants to meet before an order is made, there has been a significant increase in applications for interim relief before the tribunal. In relation to protected disclosures, the Guidance states at paragraph 39:
"*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."

23. In **Duffy** at para 18 of the judgment the EAT reminded tribunals that it is important to ensure that a summary assessment of the prospects is in fact made and that the mere existence of a factual dispute is not sufficient.

THE ASSESSMENT

24. The agreed position is that the Claimant was subject to a contract of employment which contained an initial probationary period of six weeks. The contract provides that the probationary period is extended if there is no express indication that the employee has passed it. There is no evidence before the Tribunal of any confirmation that he had passed his probationary period.

25. The Claimant explained that on 12 August 2026 he had assisted his line manager, Natasha, to take plants from the Respondent's nursery. She had taken plants previously without any reason to doubt her right to do so. The Respondent permitted staff to acquire plants from its nursery subject to payment. However, the Claimant became suspicious because on this occasion she had done so when the yard manager, Colin and her line manager, Luke Gunner, was not present. The Claimant claimed that Natasha had taken two varieties of plants totalling twenty plants. He took a photograph of the plants due to his suspicions. It is likely he did so because he was suspicious. He then reported this to Mr Gunner on or about 19 August.

26. The Claimant told the Tribunal that Mr Gunner had said he had only given permission for four plants of each variety, not ten of each. He said he would take the matter up with Natasha.

27. The Respondent's representative had no instructions as to whether Natasha was aware of the report made by the Claimant. This could and should have been clarified.

28. The Tribunal is satisfied that the Claimant has a pretty good chance of establishing that he genuinely and reasonably believed, at the time he made the disclosure, that it tended to show that a theft had been committed. Furthermore, a report by an employee that another employee may be stealing from their joint employer is in the public interest, and the Claimant has a pretty good chance of establishing that he reasonably believed the report was in the public interest.

29. The Tribunal is satisfied that the Claimant has a pretty good chance of establishing that he made a protected disclosure.

30. It is not in issue that one of the Respondent's clients complained about the performance of the gardening team which had serviced his property on 21 August 2026. The Claimant and two colleagues had spent part of the day at the property. All of them received verbal warnings on 28 August 2026 in relation to their performance. The Claimant believes this was punishment for having made the protected disclosure. The Respondent's case is that the verbal warning was justified, and the Claimant did not appeal it.

31. It cannot at this early stage be said that the events of 28 August 2026 were related to his report of wrongdoing on 19 August 2026. While there is no evidence from Natasha, the Respondent belatedly provided instructions that Trevor Hunt, the more senior manager imposing the sanction was totally unaware of the alleged protected disclosure. The Tribunal is mindful of the **Jhuti** principle, and although this is not a claim of dismissal but of potential detriment, it is potentially relevant to Natasha's mindset. However, it cannot be said on the information provided that the Claimant's belief that Natasha inflicted the punishment because of his protected disclosure is well-founded. The Tribunal cannot at this time say that the verbal warning formed part of a hostile animus towards him by Natasha.

32. By 7 September 2026 the Respondent had become concerned about the level of absences from work by the Claimant and also about the complaint from the client. Natasha and Trevor Hunt met with the Claimant and it is not in dispute that they discussed the level of absenteeism. They also discussed the earlier client concern matter.

33. The Tribunal considers that the wholly unreasonable resurrection of the verbal warning issue could give rise to an inference that this meeting was designed to punish the Claimant for his protected disclosure. However, in circumstances where the likely evidence is that Mr Hunter, the more senior manager, knew nothing about the earlier disclosure, it is not tenable for the Tribunal to find that the Claimant has a pretty good chance of establishing that the sole or principal reason was his disclosure. This is particularly so when one has regard to the number of absences in the 17 weeks of employment.

34. On 8 September 2026 the Claimant's employment was terminated. **[78-79]** After his employment had been terminated, the Claimant asked for a meeting which was held on 15 September 2026. The Tribunal notes that the Claimant does not dispute the content of the meeting note. **[87-88]** The Tribunal considers that Mr Watson, who met with the Claimant, was very concerned by the absences**.[86]** In any event, this occurred after the Claimant had been dismissed and, whilst it might be said to be a review of the decision, it did not form part of the process of dismissal because the Claimant had no right of appeal as a probationer.

35. Overall, the Tribunal cannot be satisfied that the Claimant has a pretty good chance of establishing that his dismissal was solely or principally because he had made a protected disclosure and, therefore, the application is dismissed.

Employment Judge Walters

6 October 2026

Sent to the parties on:

19th October 2026

For the Tribunal Office