EMPLOYMENT TRIBUNALS

BETWEEN

Claimant		Respondent
MR R EVANS	AND	MILLFIELD SCHOOL

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT: BRISTOL ON: 30TH SEPTEMBER 2026

EMPLOYMENT JUDGE MR P CADNEY
(SITTING ALONE)

APPEARANCES:-

FOR THE CLAIMANT:- **IN PERSON**

FOR THE RESPONDENT:- **MR J ALLSOP (COUNSEL)**

JUDGMENT

The judgment of the tribunal is that:-

1. The claimant's application for interim relief pursuant s128 Employment Rights Act 1996 is dismissed.

Reasons

1. Written Reasons - The claimant has requested written reasons for the summary decision as delivered orally.

2. By this claim the claimant brings a claim for automatic unfair dismissal asserting that the reason (or principal reason) for his dismissal was that he had made public interest disclosures within the meaning of s43B Employment Rights Act 1996.

3. The application before me today is for an order for interim relief in the making of a continuation of contract of employment order (s129 ERA 1996) against the respondent. The respondent resists the application on the basis that it is not "likely" (within the meaning of s129) that the tribunal which determines the complaint will make a finding that the claimant was automatically unfairly dismissed pursuant to s103A ERA 1996.

4. The tribunal can only make one of the orders set out in section 129 if it holds that it is "likely" that the tribunal which determines the complaint will find (in this case) that the reason or principal reason fell within s103A. "Likely" in the context of s129 means that there is "a good chance" that the tribunal will find in the claimant's favour; and a good chance means something more than the balance of probabilities, indeed a significantly higher likelihood (*Ministry of Justice v Sarfraz [2011] IRLR 562 per Underhill P*). That test applies to all aspects of the claimant's claim that may be in issue.

5. In *London City Airport v Chacko [2013] IRLR 610*, the EAT set out the approach to be taken in determining an application for interim relief:

> "[23] *In my judgment the correct starting point for this appeal is 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."*

Evidence

6. The parties have supplied an agreed single joint bundle of documents; and the respondent has supplied written submissions. In addition the respondent has provided a position statement from Christy Hawksworth (Head of HR). However, and for the avoidance of doubt I have not heard any evidence, and I am not making or purporting to make any findings of fact. The matters set out below simply provide the background to enable my decision as to whether or not to make an order of reinstatement, re-engagement or continuation of contract of employment to be understood.

Background

7. The claimant was employed by the respondent from 1st September 2011 to 31st August 2026 as a languages Teacher. The claimant was purportedly dismissed by reason of redundancy; but he contends that the reason or principal reason was in fact the making of public interest disclosures as set out below.

8. He contends that by a series of emails between October 2023 and May 2024; and in a meeting with the Head of HR in May 2024 that he made a number of public interest disclosures. He contends that a decision was taken at or around that point to dismiss him, but that could not have been put into effect until, at the earliest, the start of the academic year 2024/25. However, that would have resulted in him being dismissed in the summer term 2025 before end of the academic year. The respondent would therefore have to wait until the Spring term of 2025, but that beginning the process then would be suspiciously close to the protected disclosures. The first real opportunity was the Autumn term of 2025 but it would be structurally difficult to it then, and so the respondent waited until the Spring Term in 2026, some two years later. Thus while there is an almost two year gap between the last of the disclosures and the commencement of the redundancy selection process that should not be seen as reason to discount a link between the two.

9. In addition he states:

I appreciate an ET court will consider all this very extreme measures to take to secure a redundancy; but it must be understood that the financial consequences of a member of staff whistleblowing for violations of WTRs s11 (1 and 2) and the subsequent triggering of HSWA 1974 Section 2 and 3 in relation to a fatigued staff driving pupil laden minibuses would mean a company with a revenue of £70 to £80 million per year would face significant financial penalties and more. Meaning the company had no choice but to mitigate that risk and remove the member of staff in question.

10. Redundancy Selection - The claimant makes a number of detailed allegations of unfairness in the scoring system, which will be primarily relevant to his claim for unfair dismissal, which will proceed in the event and which in my judgment are not

ones upon which it is possible for me to draw any significant conclusions at this stage and which would necessarily require evidence. Again for the avoidance of doubts his assertions regarding the scoring are addressed in Christy Hawksworth's position statement, and in my judgment and asset out below, the dispute as to the correctness and appropriateness of the scoring is not one which can be resolved in a summary assessment such as this.

Conclusions

11. As is set out above the tribunal must consider, in determining whether or not to make a continuation of contract order, each aspect of the claim that is in dispute. The first issue is whether it is "likely" that the claimant will establish that he made one or more protected disclosures; and the second whether it is "likely that the eventual tribunal will find that the reason or principal reason for dismissal was the making of a protected disclosure.

Protected Disclosures

12. The claimant relies on:

i) Email correspondence on10th October 2023;
ii) Email correspondence on 13th March 2024;
iii) The HR meeting on 14th May 2024.

13. Summary – The claimant contends in summary that the subject matter of the disclosures was:

A workload/structure which resulted in staff working for many days in a row then they were being made to drive minibuses with pupils on board to fixtures et cetera.

This represented a great responsibility risk and liability in terms of the health and safety of those involved.

It was clear the workload structure created a significant danger to staff pupils and the general public what this resulted in is direct breach of section 43B(1) (d) of the Employment Rights Act 1996.

14. In deciding an application for interim relief from whistleblowing, the Tribunal must find, for the application to succeed, that it was 'likely' that at the final hearing that the Tribunal would conclude:

a) Whether there was a disclosure of information.

b) Whether the claimant believed that the disclosure is made in the public interest;

c) Whether that belief was reasonably held;

d) Whether the claimant believed that the disclosure tended to show one or more of the matters listed in sub-paragraphs 43(1)(a) to (f) ERA;

e) Whether that belief was reasonably held

f) Whether it was made to the employer

15. The email exchange on 10th October 2023 includes the following (the specific passages relied on by the claimant are underlined below)

i) 9.18 - The claimant informs the respondent (Jo Morgan Hughes) that he has injured his leg but thinks he will be all right to drive to Bruton the next day;

ii) 9.36 – JMH replies saying there is no pressure from the school to drive the minibus and recommending that he borrow a set of keys at lunchtime, and try the bus without pupils on board, and then to make his own professional judgement;

iii) 10.43 - The claimant responds and includes the following- "<u>the other issue perhaps to flag at this stage is the whole issue with working 16 days on the trot with one day off then driving pupils to fixtures... That's one hell of a responsibility! Not complaining.. Just flagging!"</u>

iv) 11.10 am – JMH replies stating "Agreed and in a boarding school I do it all the time. That is why we are so often so fortunate with free periods afternoons with early finishes (imagine Saturday for you). If you would rather look after the under 11A girls hockey fixture at home we can do a swap and I'm more than happy to swap commitments? Just let me know?

v) 11.20 - The Clement replied stating "Perfect … not complaining Jo.. just flagging it up"

16. The e-mail exchange in relation to the asserted disclosure on 13th March starts on March the 7th 2024 (the relevant passages relied on underlined below):

i) 8.41 - Appointment begins by asking about a speeding a ticket he thinks he may have received, and asking what the process is.

ii) 9.03 – He is told that he would need to pay the fine as the driver and receive any points.

iii) 3.49pm - The claimant replied and also sought clarification on whether there was a public list of staff members who are and are not able to drive school mini buses; and staff who passed their test after a certain date being offered minibus driving courses, and if so whether that is optional.

iv) 16.12 - The claimant is told that the senior school managed the licence and training records and sets out the records they kept in respect of his driving records and giving some further details about the process for other members of staff**.**

v) 16.57 - The claimant confirms his understanding that until a member of staff does an optional light minibus course they cannot drive the school minibus on a standard car driving licence.

8th March

vi) 8.08 a.m. – The claimant is sent further information in respect of who may drive the school minibus and as to responsibility for fines incurred whilst driving.

vii) 8.55 a.m. – The claimant responds dealing with his understanding of the process in respect of a potential speeding ticket

viii) 9.07 – There is a further response.

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11th March

ix) – 09.00 a.m. - The claimant repeats the request for a list of drivers and minibus driving policy.

13th March 2024

x) 3.32 - The claimant emails firstly asking for clarification because he asserts that there is an unfair distribution of minibus driving workload. He goes on to say" I also feel I need to again raise the issue with driving a minibus after many days on the trot after a Sunday duty on Wednesday it was day ten in a row as driving staff we are again exposing ourself ourselves to a huge risk and liability which other non-driving staff are not. This is not a complaint but me flagging this up as I feel vulnerable and require clarification"

24th April 2024

xi) 17.29 p.m. - The claimant received a lengthy response from Ben Hilton which included the following "Many staff drive to and from school in the morning and evenings, but if you felt that you were too tired or too fatigued then I would have hoped you could have raised this in a timely way before placing yourselves or any pupils at risk, if you did feel even they were at risk on that specific day."

17. 14th May 2024 Meeting - There are in the bundle notes of a meeting between the claimant and Christy Hawksworth Head of HR on the 14th May 2024. There is no reference in it to any disclosure of the type referred to by the claimant. In his oral

submissions the claimant asserted that he raised the same points as in the emails above.

18. The claimant contends that his disclosures fall specifically with s43B (1) (d) but also appear to engage (b) in that the claimant asserts :

i) His disclosures allege breaches of the Working Time Regulations, and/or the Health and Safety at Work Act 1974. The claimant accepts that in neither email nor in the meeting did he specifically allege those breaches; and accepts that he was not aware at the time of the specific pieces of relevant legislation;

ii) However, he contends that it is abundantly clear that he was making the assertions that by requiring teachers to work for between ten to seventeen days without a break, and then drive a minibus with the students when at least potentially fatigued presents an obvious risk to the health and safety of the member of staff and the students;

iii) Whilst there was no specific reference to any particular piece of legislation the recipients of the emails and the Head of HR would have understood that he was making allegations that its working practices were unsafe;

iv) This is necessarily in the public interest as it was not personal to him and affected other members of staff , the students and the wider public if the driver was not safe to be driving on public roads.

19. Respondent's Submissions - The respondent contends that it is not likely that any of the alleged disclosures will be held to be public interest disclosures**:**

i) Firstly the comments made must be seen in the context of being part of two chains of emails in which he is making complaints about his own workload and are personal to himself;

ii) That the allegations are insufficiently precise and do not identify the statutes or regulations allegedly broken with any or any sufficient precision (see *Blackbay Ventures v Gahir* and/or *Eiger Securities LLP v Korshunova*);

iii) Even with the benefit of hindsight it is not possible to identify how or why the information tends to show a reasonable belief in the specific breaches alleged, which the claimant accepts he was not aware of at the time in any event,

iv) Whilst it is not impossible that the claimant's disclosures might be held to be protected disclosures, it cannot be said at this stage that it has meet the "likely" threshold.

20. Conclusions - In my judgement the issues are quite finely balanced, in that there is a clear possibility that the disclosures may be held to be protected disclosures.

However, equally there are contra-indications, in particular the complete failure to identify the statutes or regulations allegedly broken, as outlined by the respondent above, and I am not quite persuaded at this stage that the claimant has met the high threshold of meeting the likelihood test.

21. It follows that in respect of this point, that I am not persuaded that the threshold for making an order for interim relief has been reached.

22. However in case I am wrong in that conclusion I have gone on to consider the issue of dismissal.

Reason/ Principal Reason for Dismissal

23. The second dispute in this case is the reason for dismissal.

24. The claimant contends that the fact that he was targeted for dismissal, and not genuinely and reasonably selected for redundancy, is clear from his self-evident underscoring in the consultation process; and that if one accepts his assertions as to the timeline, then the difficulty of a two year gap between the disclosures and the dismissal falls away; and what is left is a clear case of a whistleblower being engineered out of employment.

25. The respondent relies on the evidence, as set out in Christy Hawksworth's position statement, which is that the school was facing significant financial pressure, and undertook a detailed analysis of its finances and prospective pupil numbers. The consequence was a restructure that involved redundancies across a number of departments, and not just the claimant's or the claimant himself. In addition the claimants points as to scoring are addressed. All of these points are set out in detail in the statement, and whilst I am not making any findings of fact, it is apparent that there is a wealth of evidence that it will be able to produce that the redundancy selection process was entirely genuine, and that it is not at all clear, at least at this stage that the claimant will be able to establish that there was any unfairness in the scoring. Moreover, and as set out in the specific submissions set out below, in the light of that evidence it is simply not possible to hold that it is likely that there is any link between any disclosure and his dismissal by reason of redundancy two years later.

26. In its detailed submissions, the respondent submits firstly that the claimant's convoluted submissions simply do not match the reality as shown in the e-mail chains. Firstly the response to the first email in October has an offer to swap tasks; and the second received a detailed response together with the specific advice that if the claimant felt too tired to drive he had an obligation to raise it. There is no suggestion that the respondent ever took the position that a member of staff should drive if they were not fit to do so, but explicitly that they should not. The claimant's contention that the respondent must have understood that he was making fundamental disclosures about the safety of its working practices of sufficient gravity

that they should engineer his dismissal and is not borne out by, or consistent with, contemporaneous documentation.

27. Secondly the respondent submits the claimant necessarily has substantial difficulties with causation in any event. There are three possibilities; firstly the respondent is correct and there is no factual / causal link between the disclosures and the redundancy selection exercise and/or the claimant's selection. Secondly the redundancy process is entirely genuine, but the selection of the claimant as part of it was causally linked to the disclosures. Thirdly the redundancy selection process as a whole was a sham designed to secure the dismissal of the claimant.

28. The respondent submits that each possibility gives the claimant significant difficulties. The final tribunal may conclude that the first is correct, in which case the claim for automatic unfair dismissal is bound to fail. If the second is being considered, that here was a genuine redundancy situation and process, the claimant comes up against the problem he is trying to avoid in this application, of the difficulty of explaining why he should have been selected for redundancy in relation to disclosures that had not been repeated or acted upon for two years. If the third is alleged, which is the claimant's primary position, it forces him into a convoluted and implausible ("absurd" according to the respondent) account that the respondent waited for two years and then embarked on a redundancy selection exercise involving many members of staff simply to dismiss the claimant.

29. Conclusions – In my judgement this aspect of the claim is much clearer. There is nothing before me at present that would allow me to hold that there is a sufficient causal link to hold that it is likely that the claimant will establish that the reason or principal reason for his dismissal was making one or more of the protected disclosures.

30. It follows that the application for interim relief is dismissed.

31. Any further directions in respect of the claim will await the presentation of the respondents ET3/Response.

Approved by
Employment Judge Cadney
Dated: 8 October 2026

Sent to the parties on
3 November 2026