



EMPLOYMENT TRIBUNALS

Claimant

Mr M Ferjani

Respondent

Alaraby Television Network Limited

PRELIMINARY HEARING

Heard at: Watford Employment Tribunal

On: 9 June 2017

Before: Employment Judge Skehan

Appearances:

For the Claimant: Mr N Clarke, Counsel

For the Respondents: Mr T Croxford, Counsel

ORDER

The claimant's application for interim relief under s128 of the Employment Rights Act 1996 is unsuccessful and dismissed

REASONS

1. A tribunal can only grant interim relief if it decides that the claimant is likely to establish at a full hearing that the prohibited reason was the reason, or a principal reason, for the dismissal. 'Likely' in this context means more than just a reasonable prospect of success. While there is no need to establish that the claimant will succeed at trial, the tribunal should consider whether the claimant has a pretty good chance. The employment judge is required to make as good an assessment as he or she is properly able as to whether or not the claimant is likely to succeed and, by necessity this involves a far less detailed scrutiny of the respective cases of each of the parties and the evidence that will ultimately be undertaken at a full hearing. With this in mind I turn to the claimant's case.
2. I had the benefit of the claimant's ET1, a bundle of documentation and heard submissions from both counsel. First of all, did the claimant make the protected disclosure? In his ET1 at paragraph 20, he says as authorizing officer the claimant considered that he had a duty to inform the CEO of his concerns in writing and wrote to him on 19 February but received no response. The documents produced at the hearing suggest that this is perhaps not as it first

appears. There is a question over whether or not the claimant reasonably believed himself to be, or was the authorizing officer. The claimant omits from his ET1 the context that the CEO at that time was suspended and that the claimant had expressly asked the CEO to keep the email containing the disclosure confidential. There is a question as to whether disclosing information to an individual who is known to be suspended is a disclosure to the employer as required under s.43C of the Employment Rights Act 1996. The claimant's subsequent letter to the Home Office is at page 92 of the hearing bundle and I refer to the first paragraph. It states:

“I, [the claimant], the authorising officer for [the respondent's] Sponsor License..... I would like to report three individuals working in our office without the consent of myself and the CEO of [the respondent] Mr Eslam Lofty, Entrepreneur Visa Permit Holder while we were out of the office for three days. Three individuals have been discovered actively working without passing a right to work check.....”

3. This letter does not say that the CEO has been suspended and there is an argument on the respondent's part that this letter misrepresents the context in relation to the background to the issue. The respondent argues that the disclosure may have been made for direct personal gain.
4. In addition, in relation to dismissal, we have a scenario where the claimant resigns and on various occasions he extended his notice by agreement. The claimant says that there was a discussion in early February where he revoked his notice and he was thereafter dismissed in May. The respondent has contemporaneous documentation in the form of a letter signed by Mr Islam Lofty appearing to show that there was an agreement in early February to extend the claimant's notice to May, although I have seen nothing to suggest that this was confirmed in writing with the claimant. However, in light of the documentation, I can see an obvious argument from the respondent that the claimant's contract expired at the end of his extended notice period and there was no dismissal. Alternatively, the respondent's argument is that the respondent, even mistakenly, considered that to be the case. There appears to be a real issue in respect of whether the claimant was dismissed and, if so, what the reason for that dismissal was. The respondent has referred to supporting documentation to back up its contention that they had performance issues with the claimant and this may give some credibility to its decision simply to allow the claimant's notice to expire. If this is the case, there was no dismissal.
5. Serious credibility issues on the claimant's part have also been raised. The claimant said within his ET1 at paragraph 18 that he was admitted to hospital on 16 February. The claimant sent an email to the respondent on 17 February at 9:12 am at page 87 of the bundle, making reference to a TB bone infection and doctors testing to see if it was contagious. The claimant said that he could not be around staff for their safety. However, the respondent has produced text messages casting doubt on the truth of this statement. The claimant sent a text message to Mr Lofty, the suspended CEO, at 2am on 17 February, seven hours before the above email saying, “*We are in Regis, Himayat is cleaning up everything*”. The claimant gave no explanation for these discrepancies and they will need to be addressed at the final merits hearing.

6. In light of the evidence, this is not a case that I can reasonably conclude that the claimant is likely or has a pretty good chance of succeeding at trial. For all of the reasons set out, above the application is refused and is dismissed.

Employment Judge Skehan

Date: 7 August 2017

Sent to the parties on:

7 August 2017

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For the Tribunal:

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