



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr T Hancox – In Person

**Respondent:** National Farmers Union – Ms J Shepherd - Counsel

**Heard at:** On: 27 August 2020  
Birmingham

**Before:** Employment Judge Hindmarch

## RESERVED JUDGMENT ON AN APPLICATION FOR INTERIM RELIEF

The judgment of the Tribunal is that the application for interim relief is dismissed.

### Reasons.

1. This is a claim which involves dismissal on the grounds of making a public interest disclosure under s47B Employment Rights Act 1996 (ERA) and s103 A in respect of dismissal. The effective date of termination is 7 February 2020 and the claim was issued on 14 February 2020. The application for interim relief is made under s128 ERA.
2. The hearing was held by Cloud Video Platform. In advance of the hearing I received
  - a. An agreed bundle running to 581 pages.
  - b. A bundle of witness statements; 1 for the Claimant and 5 for the Respondent. Where I refer to the Respondent's witnesses (and other connected parties) I do so by initial.

- c. A Skeleton Argument and bundle of authorities from the Respondent's Counsel.
3. The Claimant is a litigant in person and represented himself. The Respondent was represented by Counsel Ms J Shephard and the Respondent's solicitor Ms Boyle and a trainee solicitor Ms Foster were also present at the hearing.
  4. At the outset of the hearing I established that the parties had access to all of the documents. I explained, as this was a summary application, that under Rule 95 Employment Tribunal (Constitution and Rules of Procedure Regulations) 2013, schedule 1, it was not usual to hear witness evidence but that I had read the 6 witness statements and the bundle.
  5. We agreed that the Respondent's Counsel would make submissions first so that the Claimant could understand the Respondent's objection to the application. We then had a break of two and a half hours to allow the Claimant to prepare his submissions. I allowed the Claimant over two hours to make his submissions.
  6. My role was to consider the paperwork before me and the submissions of both parties and to make a broad assessment as to whether the Claimant's application for interim relief should succeed. My role was not to attempt to decide the issues as if it were the final substantive hearing. This is the approach endorsed in *Raja v Secretary of State for Justice* UKEAT/0364/09/CEA.

### **Issues**

7. The issue for the Tribunal was whether under s129 ERA it appeared that it was likely that on determining the complaint to which the application related, the Tribunal will find that the reason ( or if more than one the principal reason) for dismissal was specified under s47B of the same Act.

### **The law**

8. The Respondent's Skeleton Argument helpfully set out the law. The Claimant did not address me on the law but in an email he sent to the Tribunal on the evening before the hearing he accepted he had a "high bar" in making his application.
9. S128 ERA 1996 provides

“An employee who presents a complaint to an employment tribunal that he has been unfairly dismissed and-

a. that the reason for dismissal (or if more than one the principal reason) for the dismissal is one of those specified in:

(i) Section 103 A

may apply to the tribunal for interim relief.”

10. Section 47B ERA sets out the type of disclosure which may qualify for protection.

“In this Part a “qualifying disclosure” means any disclosure of information, which in the reasonable belief of the worker making the disclosure, tends to show one or more of the following:

a. That a criminal offence has been committed, is being committed or is likely to be committed,

b. That a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject;

c. That a miscarriage of justice has occurred, is occurring or is likely to occur;

d. That the health and safety of any individual has been, is being or is likely to be endangered;

e. That the environment has been, is being or is likely to be damaged; or.

f. That information tending to show any matter falling within any one of preceding paragraphs has been or is likely to be destroyed.”

11. It appears the Claimant is relying on a, b and/or d above.

12. An application for interim relief will only be granted if “it appears to the tribunal it is likely that on determining the complaint to which the application relates the tribunal will find that the reason (or if more than one, the principal reason) for the dismissal is one of those specified in...” section 103 A, S129 ERA.

13. The meaning of likely as meaning “a pretty good chance of success” was decided in Caplin v Shippam Ltd (1978) 1CR 1668 EAT. That test was

reaffirmed in *Dandpat v University of Bath and Others UK EAT 0408/09/LA. London City Airport Limited v Chacko (20) 1RLR 610* confirmed the test is higher than the balance of probabilities.

14. *Dandpat* above established that a higher burden of proof than the standard of proof of balance of probabilities is required in an application such as this as the granting of relief will prejudice the Respondent who is obliged to treat the contract as continuing until the conclusion of proceedings. That is not a consequence that should be imposed lightly.
15. Mr Justice Underhill, then President of the EAT, laid out guidance for cases such as these. He confirmed that Claimants must persuade a tribunal in relation to all the elements that fall to be considered at the substantive hearing. In that case *Ministry of Justice v Sarfraz (2011) 12LR S62* he stated "In order to make an order under Ss 128 and 129 the Judge had to have decided that it was likely that the Tribunal at the final hearing would find five things; (1) the Claimant had made a disclosure to his employer; (2) the disclosure tended to show one or more things itemised at section 47B; (3) that the belief was reasonable; (4) that the disclosures were made in good faith (now whether the Claimant believed the disclosure to be in the public interest) and (5) that the disclosure was the principal reason for his dismissal.
16. The Claimant relies on two disclosures which are set out in as follows:
  - a. In writing on 13th of January 2020.
  - b. Orally at a meeting on 14 January 2020.
  - c. The disclosure(s) concern an alleged rodent infestation at the Respondent's premises and the alleged in effectiveness of the Respondents heating ventilation and air conditioning contractors MCES.
17. Although it is not the function of the Tribunal at the hearing for interim relief to bind any future hearing it is useful to set out some background information to understand the parties positions.
18. The Claimant began working for the Respondent through agency working in September/October 2019. On 7 November 2019 the Respondent made an offer of direct employment to the Claimant and this was subject to a probationary period of 6 months. His employment began on 18 November 2019 and the Claimant was employed as a facilities services handyperson.

19. The disclosures appear to concern rodent infestation at the Respondent's premises and the alleged ineffectiveness of the Respondent's heating ventilation and air conditioning contractors, MCES.
20. The Respondent's heating and ventilation contract was with an organisation called MCES. The relationship between the Respondent and MCES was managed by a consultancy agreement between the Respondent and Boarder Consultancy through its agent CJ.
21. It appears that before joining the Respondent the Claimant had (and possibly still has) his own business. This was /is called Midlands HVAC (heating, ventilation and air conditioning) and it is common ground the Claimant has contacts in the area and that he made introductions of such contacts to the Respondent during his employment as he believed his contracts might be able to give a better service to the Respondent than MCES and/or CJ.
22. The Claimant was initially line managed by VJ the Respondents health and safety manager. On 6 January 2020 TT joined the Respondent and became the line manager. On 14 January 2020 it was decided to allow the Respondent's Head of Compliance to become the line manager of the Claimant.
23. After the Claimant made what he relies on as a protected disclosure on 13 January 2020 the Respondent's then commercial services manager BC was appointed to investigate the subject matter of the disclosure. BC met with the Claimant to discuss further on 14 January 2020 accompanied by SH, HR advisor.
24. On 17 January 2020 the Respondent suspended the Claimant from duty. KS the Respondent's director of finance and business services had received communications from TR on 15 February 2020 reporting concerns for her safety in the presence of the Claimant. Before suspending the Claimant KS took statements from TR, TT and VJ regarding the Claimant's conduct and behaviour. The letter of suspension sent by KS to the Claimant dated 17 January 2026 releases gives the reasons for or suspension as:

“That you displayed threatening, intimidating behaviour with TR that made her feel vulnerable, upset and threatened during week 13th of January 2020.

That you displayed threatening, intimidating behaviour with TT during week commencing 6 January 2020

The allegations constitute a breach of the NFU bullying and harassment policy and Procedure”

The suspension letter further stated

“You should not contact any member, employee, or supplier other than your appointed representative, SH, HR Adviser or myself.”

25. Despite the above during suspension the Claimant sent text messages to a colleague SE. In one such message on the 20 January 2020 he stated” they have had it mate. I've lined them up like skittles”.
26. The Claimant also sent emails to colleagues whilst suspended.
27. On 27 January 2020 BC prepared a report into the investigation into the Claimant's alleged disclosures. He concluded there was no wrongdoing. It is unclear whether his report was shared with the Claimant at the time (he was of course suspended) although he had seen it by the time of this hearing.
28. On 7 February 2020 following a disciplinary hearing the Respondent dismissed the Claimant for conduct issues within the probationary period, citing an irretrievable breakdown in working relations. The Respondent provided witness statements from VJ, TT and TR, evidencing what it says were the Claimant's aggressive and demanding behaviours, and from KS who was the decision maker who concluded that the Claimant should be dismissed. KS accepted he was aware of the Respondent's separate investigation by BC into the Claimant's alleged disclosure(s) but that he disregarded that matter when coming to his conclusions regarding the Claimant's conduct and his decision to dismiss.

### **Submissions**

29. The Claimant did not address me on the law but made lengthy submissions concerning his belief that as the disclosures came at the start of the week in which he was suspended, effectively the conduct allegations against him were trumped up to remove him from the business. He referred at length to what he believed to be inconsistencies between his positive relationships with colleagues prior to the disclosures and the changing tone after such disclosures were made.
30. The Claimant raised concerns about the nature and timing of the investigations carried out by KS. The Claimant pointed to circumstances where he demonstrated good relations with female colleagues. The

Claimant accepted texting and emailing colleagues whilst suspended but said he was signed off sick at the time.

31. The Claimant believed there were genuine concerns about rodent infestation and the performance of MCES. He informed me there were issues with flies due to decomposing rats and that persons had suffered breathing difficulties. The Claimant believed BCs report into his disclosures was flawed and that there had been a cover up by TT, in cahoots with CJ.
32. After the hearing the Claimant sent a number of emails to the Tribunal which were forwarded to me and which I considered. These were emails that clarified matters he referred me to in his submissions but do not change my findings.
33. In the Respondent's submissions the Claimant could not meet the threshold for any application for interim relief because he could not demonstrate he had a "pretty good chance" of establishing that the sole or principal reason for dismissal was that he had made disclosures. Instead the Respondent contended the only reason for dismissal was the Claimant's conduct. The Respondent relied on its witness statements and some contemporaneous documentation. The Respondent had to accept that suspension and investigation into the alleged conduct occurred after the alleged disclosures, but contended there is ample witness evidence and documentary evidence to demonstrate the Claimant was inappropriate towards colleagues before the disclosures were made and afterwards. The dismissal also concerned the Claimant's refusal to follow what the Respondent said was a reasonable management instruction during suspension (by contacting colleagues).
34. The Respondent does not accept the Claimant's alleged disclosures disclosed information which in his reasonable belief tended to show one of the matters in section 47B (a) to (f). The Respondent argued the test of reasonable belief applies to each strand of the test, so that the Claimant must establish that a relevant criminal offence, legal obligation or health and safety obligation actually existed.
35. In the Respondent's submission the disclosure related to the MCES contractors was made by the Claimant purely because he was motivated by obtaining work instead for his friends or contacts and that he was motivated by a desire to discredit MCES. The Respondent points to the Claimant reporting concerns about MCES and introducing his contacts to the Respondent from very early on in the employment relationship.
36. As regards the Claimant's alleged disclosure regarding the rodent infestation the Respondent accepts that rat droppings were located on its premises in November 2019. The Respondent said it was not overly

concerned as the droppings were not said to be new and it engaged a pest controller to attend its premises regularly. On 6 December 2019 the Claimant reported a decomposed rat carcass located on the premises. The Respondent obtained a quotation from Rentokil and on 23 December 2019 TR emailed the Claimant instructing him to make arrangements to engage Rentokil. The Claimant did not it appears contact Rentokil. Instead he reported the rodent issue to the local authority on 14 January 2020. The Respondent contends the Claimant cannot have had a reasonable belief in the health and safety issue having been tasked only the previous month to resolve it.

37. The Respondent contends the Claimant's disclosures were disingenuous, particularly in light of the text he sent to SE on 27 January 2020 and referred to at paragraph (36) above.

### **My conclusions**

38. My first consideration is whether it is likely the tribunal at the substantive hearing would find the Claimant had made protected and qualifying disclosures.
39. The Claimant came across as passionate about health and safety matters in making his submissions but that this is not enough. The Respondent raises legitimate arguments about the Claimant's reasonable belief, and asserts ulterior motives may have been at play. Having looked all the evidence before me I cannot find the Claimant has met the higher standard of proof required. I cannot say he has "a pretty good chance".
40. Turning to the reason for dismissal I have some sympathy with the Claimant's position that the allegations leading to dismissal came after he made what he says are protected and qualifying disclosures. Nevertheless these matters should be tested at trial. The Respondent has put forward substantial evidence as to the Claimant's behaviours, conduct and demeanour really from the outset of his employment which gave it cause for concern and which it says lead to his dismissal.
41. I therefore do not find the Claimant has proven before me at this juncture that he has met the higher burden of proof required. Even where the Claimant may be able to persuade me there is a "pretty good chance" that any disclosures he made were protected, I do not find there to be "a pretty good chance" of showing the disclosures were the sole or principal reason for dismissal.
42. I therefore dismiss the application accordingly.



Case number: 1304294/2020

**Employment Judge Hindmarch**

**Date: 27 August 2020**