EMPLOYMENT TRIBUNALS

Claimant: Mr R Mapembe

Respondent: Slough Borough Council

Heard at: Reading **On: 24 June 2021**

Before: Employment Judge Gumbiti-Zimuto

Appearances
For the Claimant: In Person
For the Respondent: Not attending

JUDGMENT

ON APPLICATION FOR INTERIM RELIEF

1. The Tribunal granted the claimant's application for interim relief.

2. The Tribunal ordered the continuation of the claimant's contract of employment from the date of termination of employment (26 May 2021) until the determination or settlement of the complaint.

3. The respondent is ordered to pay the claimant the sum of £2320.25 per month, this is a net sum (being the normal pay due to the claimant) and make pension contributions of £219.72 from the 27 May 2021 until the final determination or settlement of the claim.

REASONS

1. The claimant's application for interim relief is made pursuant to section 128(1)(a)(i) Employment Rights Act 1996 ('ERA') in alleging his dismissal was automatically unfair pursuant to section 103A ERA. The claimant must satisfy me that it is likely that on determining the complaint the employment tribunal will find that the reason or principle reason for the claimant's dismissal was his protected qualifying disclosures. I remind myself that the word "likely" in this context does not mean simply 'more likely than not' -that is at least 51%- but connotes a significantly higher degree of likelihood *(Ministry of Justice v Sarfraz* [2011] IRLR 562). I must ask myself, whether the applicant has established that he has a "pretty good" chance of succeeding in the final application to the tribunal *(Taplin v. CC Shippam Ltd*

[1978] ICR 1068). I recognise that interim relief is a draconian measure, causing irretrievable prejudice to a respondent and thus not one that should be "*imposed lightly*" (*Dandpat v The University of Bath* UKEAT/0408/09/LA). The test is to be applied to all issues before the employment tribunal, not just the assessment of the section 103A claim (*Hancock v Ter-Berg and another* UKEAT/0138/19).

2. The claimant must have 'disclosed' 'information'. I am satisfied that the claimant disclosed information to the respondent's chief executive in a meeting held in July 2019 and in his grievance raised on 20 April 2020.

3. The claimant's disclosure of information concerned a breach of legal obligation. The claimant told the respondent's CEO that short cuts were being used in the department in which he worked, Highways, the claimant explained that the respondent's rules and procedures for work were not being followed and gave examples including, an example about a scheme Northam Road where the inspectors were not going on site to carry out the necessary checks in breach if the Construction Development Management Regulations 2015. The claimant also told the CEO that he believed that there were breaches of the Data Protection Regulations and breach of the respondent's IT policy in respect of the disclosure of passwords.

4. The claimant raised a grievance on 20 April 2020 about the bullying and harassment perpetrated against him by his line manager, Kam Hothi (Team Leader). The grievance included allegations linked to the claimant's disclosures to the CEO in July 2020 and also included further allegations that outside contractors were being paid for work that had not been completed.

5. The claimant states that these were protected disclosures for the purposes of section 43A (1). The qualifying disclosure, for the purposes of section 43A (1) ERA can be made orally or in writing.

6. I am satisfied that it amounts to information and was not merely a series of allegations, complaints or comments. The information disclosed must, in the claimant's reasonable belief, tend to show one of the matters listed in section 43B(1) Employment Rights Act 1996. The claimant relies on section 43B(1)(b), namely, that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject. The claimant has satisfied me that he has a "pretty good" chance of showing that he made a qualifying disclosure.

7. I have considered whether the claimant believed that the information tended to show a breach of a legal obligation. I am satisfied that he did. The claimant has made reference to the data protection regulations, the respondent's IT policy, and also the Construction Development Management Regulations 2015. I am also satisfied that the information which the claimant disclosed included matters which could amount to other breaches arising from the need to act with probity in carrying out a role in a public office.

8. The employment tribunal must consider whether the belief was 'reasonable' for the claimant to hold. On the basis of the material before me I am satisfied that the claimant will show the belief was reasonable. The only account I have been given is by the claimant who has given a compelling an coherent narrative linking the making of the disclosures to the decision to dismiss him on the purported ground of redundancy

9. The employment tribunal must also consider whether the disclosure was, in the claimant's reasonable belief, made in the public interest. The employment tribunal will need to decide whether the claimant believed disclosure was in the public interest and it was reasonable to believe that. I am satisfied on the material available that the claimant will establish that the disclosure made was in the public interest. In coming to this conclusion, I bear in mind that the disclosure can also be made in the claimant's own interest and that the 'public' can simply be other people employed by the same employer. The claimant has established that he has a "pretty good" chance of showing that he made a protected disclosure.

10. Having established there was a protected disclosure, the employment tribunal will have to decide whether the reason or principal reason for the dismissal was one or more of the disclosures.

11. The material put before me by the claimant shows the redundancy was not the reason for the claimant's dismissal. The claimant explained that he was dismissed on the purported grounds of redundancy but his role continued in substance. The claimant contended that he was informed that a person was employed by the respondent as a Senior Engineer to carry out work that he had previously carried out. The claimant contends that his role continued, even if described by the respondent in a different way after his employment ended 26 May 2021. The claimant further contends that at his redundancy appeal one senior manager said that the respondent had "*got someone temporarily"* to do the claimant's work. The work which the claimant was doing was to undertake work which involves highways, the work among other matters, involves dealing with changes to the Highway, controlled parking zones, parking spaces, and remedial works and changes to the highways. The work carried out by the claimant in his role continues to be carried out by the council. The claimant contends that his role was not redundant and the real reason he was dismissed was because of whistleblowing.

12. I bear in mind that the reason for dismissal is the set of facts known to the employer, or it may be of beliefs held by him, which cause him to dismiss the employee. The material provided to me in this application for interim relief, which involves a summary consideration, has been provided by the claimant and contains only his version of events. The claim and notice of hearing of this interim relief application was sent to the parties but the respondent has not attended. I have in considering the information provided by the claimant tried to test the material he has presented to me. The claimant has given a coherent and compelling narrative of events. I am satisfied that the claimant has a pretty good chance of showing that the reason for his dismissal was because he made a protected disclosure.

13. The claimant is entitled to an interim award.

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Employment Judge Gumbiti-Zimuto

Date: 24 June 2021

Sent to the parties on: .2/8/21.....

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For the Tribunals Office

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