EMPLOYMENT TRIBUNALS

Claimant: **Ms E Hogg**

Respondent: Lincolnshire Integrated Voluntary Emergency Services (LIVES)

Heard at: **Lincoln Employment Tribunal**
On: **17th October 2024**

Before: Employment Judge Singh

Representation
Claimant: In-person
Respondent: Mr H Mennon (Counsel)

JUDGMENT ON INTERIM RELIEF APPLICATION

The Claimant's application for interim relief brought under section 128 of the Employment Rights Act 1996 is refused.

REASONS

Background

1. The Claimant was employed by the Respondent between 2nd May 2023 and 26th September 2024. This is less than 2 years.

2. The Claimant was employed as a Resource Scheduler.

3. The Claimant submitted a claim for Unfair Dismissal and detriment because of a protected disclosure on the 2nd October 2024.

4. The Claimant requested Interim Relief in that claim form.

5. There were no Particulars of Claim attached to the ET1. Instead, the Claimant had provided a copy of a letter that she had sent to the Respondent on the 26th September 2024. This was 9 pages long and contained a number of issues raised with the Respondent as reasons for her resignation.

6. On the 9th October 2024, the Employment Tribunal wrote to the Claiamnt to confirm

that her claim for detriment because of a protected disclosure was being struck out as she had not provided an ACAS Early Conciliation certificate number in her claim form.

7. The Respondent has been sent a copy of the claim on the 9th October 2024 and have been given until the 6th November to submit their ET3 and grounds of resistance.

8. This hearing takes place before the substantive response has been received.

9. I was provided with 2 bundles, one from each party. The Claimant's was 416 pages long and the Respondents was 276 pages long.

10. In the Claimant's bundle she provided a skeleton argument. This confirmed that the Claimant's application for interim relief is for a continuation of her contract of employment.

11. The Respondent had provided a witness statement for a Ms N Cooke. She was not called to give evidence although her statement was read. The Claimant had not provided a statement.

The hearing

12. The Claimant represented herself in the hearing. The Respondent was represented by Counsel.

13. The Claimant was given the opportunity to state her case as to why interim relief should be granted.

14. She was asked what in the letter of the 26th September were her protected disclosures were. The Claimant explained that her main complaint was about the Respondent leaving patients vulnerable. She confirmed that she was raising issues about the health and safety of those patients and a breach of the legal obligations that the Respondent owed to the oversight bodies about the health and safety of the patients.

15. The Claimant explained that there were other issues in the letter. Some were complaints that fed into or were tied to the main complaint of putting patients at risk. For example she had raised issues about lack of proper training which then led to patients being put at risk. She said some of the issues raised in the letter weren't disclosures but supporting information to her main complaint.

16. The letter was not the disclosure itself but a summary of the disclosures the Claimant had made over her time with the Respondent.

17. The Claimant confirmed that the public interest element was met because she was raising issues about the Respondent putting members of the public, that is the patients, at risk.

18. The Claimant was asked what the breach of the Employment Contract she was claiming was. The Claimant agreed that she was alleging a breach of mutual trust and confidence by the Respondent subjecting her to detriments because she had made the protected disclosure. However, she also said that the Respondent's actions were in breach of their Whistleblowing Policy which said that it should protect anyone who had raised issues.

19. The Claimant said that the main detriment was the Respondent starting the investigation into the disciplinary. The Claimant accepted that this had not actually progressed to a disciplinary nor had any action taken against her as an outcome

to that disciplinary. However the Claimant had felt that it was a foregone conclusion as the Respondent had appointed people to carry out the investigation and oversee the disciplinary who she says were part of the complaint she had raised.

20. The Claimant was asked how she would show that there was a link between the disclosures and the detriments. She said that she raised the issues on the 7th July 2024 and that the investigation letter was sent to her on the 7th August 2024. She argued that the proximity of time made it clear that the reason she was being subjected to an investigation was because she had raised issues.

21. The Claimant was asked about a point made by the Respondent in their submissions, in that some of the complaints that had led to the investigation had been made by colleagues and not the Respondent. It was posited that an employer has an obligation to investigate when one colleague complains about the other and doing so would not be unreasonable.

22. The Claimant said that these were colleagues who had been named as part of her complaint and in the issues she had raised. Further she said that the Respondent should have raised the issues with her informally before proceeding to a disciplinary investigation.

23. The Claimant was asked what ultimately led her to resign. The Claiamnt said that she had felt uncomfortable that the Respondent wasn't addressing the conflicts of interest in the people investigating also being those that she had named in her complaint. She felt she wasn't going to get a fair hearing.

24. However, she went on to say that the last straw was that on the day she submitted her resignation she had been removed from the IT systems such as Sharepoint.

25. She also cited a telephone call from a colleague on the 17th September 2024 who asked her when she was returning to work as he had been checking her records, even though he was not part of the Claimant's line management structure or even a member of HR so would have no reason to ask about this.

26. Finally, the Claimant was asked about a point the Respondent made in their submissions about the perceived "absurdity" (their words) of the Claimant asking to be reinstated even though she had resigned because she had said her position had become untenable.

27. The Claimant said that she did not actually want to return to work. She simply wanted a continuation of contract order so she would not be financially disadvantaged by the dismissal until the hearing.

28. It was noted that I could not order a continuation of contract in the first instance. The Employment Rights Act 1996 states at s.128 that I can order reinstatement or re-engagement. Only if the Respondent refuses to agree to those would I be able to order a continuation of contract whereby the Claimant is paid her salary but does not actually report to work.

29. In this case, if the Respondent agreed to reinstatement or reengagement, the Claimant would have to return to work.

30. The Respondent's position was that the Claimant would not be able to meet the high bar that is required for an Interim Relief order. She would have to prove that the case is a "slam dunk" (their words) and she has not.

31. The Respondent pointed out that there are factual issues in dispute that could not be resolved until evidence has been heard from all witnesses.

32. The Claimant's alleged detriments are also in dispute. In particular some of those

are not accepted as detriments; for example, asking her to attend a 1-2-1. The Claimant may be able to explain why this is a detriment after considering all the evidence, but it isn't clear from the limited information presented so far.

33. The Claimant would also need to show that the detriments were because of the protected disclosures, and she hasn't done so at this stage.

34. The Respondent said that the Claiamnt is also alleging that there is a conspiracy between lots of people to bring about the detriment of the disciplinary investigation. This is often difficult to prove even at a final hearing, but it certainly had not been proven at this stage of the case.

35. The Respondent said that the Claimant must also show that there is no plausible defence to the allegations she has made which she has not done.

36. The Respondent said that the Tribunal must be able to determine what the detriments are individually and whether they amount to detriments and also to what extent they contributed to the decision to resign. The information provided by the Claimant does not set this out in a clear way.

37. Further, the tribunal must be satisfied that the detriments caused the decision to resign. If the tribunal isn't clear about the detriments, they cannot be clear about that.

The law

38. The power to grant interim relief comes from s.128 of the Employment Rights Act 1996.

39. Section 129(1) provides that an application for interim relief should be granted if it appears to the Tribunal that it is likely that on determining the complaint to which the application relates the Tribunal will find that the reason or the principal reason for the dismissal is one of the statutory automatically unfair reasons.

40. "Likely" has been defined as the claimant must show that her case has a pretty good chance of success, which means something better than likelihood on the balance of probability; see the cases of **Taplin v C. Shippam Limited (1978) ICR 1068,** as approved and followed in **London City Airport Limited v Chacko (2013) IRLR 610** at paragraph 10 and **His Highness Sheikh Bin Sadr al Qasimi v Robinson (UKEAT/0283/17).**

41. The Tribunal must be satisfied that the Claimant is likely to succeed on each necessary aspect of her claim, applying the high threshold, before relief can be granted. That means that the Tribunal must be satisfied that the Claimant is likely to show she made a protected disclosure within the statutory definition ***and*** that it is likely it was the sole or principal reason for dismissal. In the case of **Chacko** the EAT gave guidance on the approach to be taken at paragraph 23 namely

"*in my judgement 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, but 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 swift reconvened 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 then will be ultimately undertaken at the full hearing of the claim."

42. HHJ Eady has stated that "The summary assessment of the material before it to determine this question as broad brush approach and very much an impressionistic one."

43. The Employment Rights Act 1996 provides as follows;

43. B disclosures qualifying for protection

(1) In this part, a qualifying disclosure means any disclosure of information which in the reasonable belief of the worker making the disclosure is made in the public interest and 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 or is failing or is likely to fail to comply with any legal obligation to which he is subject
c. ….
d. that the health or safety of any individual has been or is being or is likely to be endangered
e. …..
f. that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.

Conclusions

44. On hearing of this application, the Employment Judge has not made findings of fact but relies on the material provided by each party, highlighting their strongest points. The Tribunal heard no oral evidence.

45. The Tribunal has considered in this case whether there is a pretty good chance that at the final hearing whether (1) that the claimant had made a disclosure to her employer; (2) whether the claimant believed that the disclosure tended to show one or more of the things set out at (a)-(f) under section 43B (1); (3) that she believed that the disclosure was made in the public interest; (4)those beliefs were reasonable.

46. In this case, as the Claimant resigned, it is necessary to consider whether the Respondent has committed a fundamental breach of the employment contract, whether the Claimant resigned in response to that breach and whether the Claimant did anything to acquiesce to that breach in order to find whether there has been a constructive dismissal or not. If we find that there is, then the tribunal needs to consider whether the reason or principal reason for that dismissal was the protected disclosures.

47. In order for to me to make an order for interim relief, I have to find that each of the aspects of the Claimant's claims were likely to succeed. That is that they had a pretty good chance of success. That decision needs to be made in the absence of detailed cross examination of witnesses and with only a cursory review of the documents.

48. The initial barrier to me making such a finding was the lack of clarity of the Claimant's claims. The Claiamnt had not provided a statement of case but instead provided a copy of a letter she had sent to the R on the day of her resignation.

49. Although Claiamnt is a Litigant in Person, even a basic statement of case setting out the complaints and issues would have been useful.

50. Whilst the letter she did provided with her ET1, does set out the issues, there will need to be a lot of unpicking of it before it is in a state by which it would be easy for the Respondent and the Tribunal to glean what the disclosures are and what the detriments were and how she can show that the reason for those were the disclosures.

51. The Claiamnt presented some evidence orally about the disclosures but that wasn't sufficient in my opinion. The Claiamnt wasn't able to say in certain terms what in her letter amounted disclosures under the Employment Rights Act 1996 and what was background information. In order for me to understand the case (and make a finding that the case is likely to succeed), the Claimant would need to set out each of the disclosure of information relied upon, what they are alleged to show and how they are said to be in the public interest. She has not done this at this stage.

52. The Claimant also gave some information about the alleged detriments that led her to resign. I say that these too are not clearly defined. There was clearly a lot that the Claimant says she was subjected to, and we have only touched upon a few here. The Claimant will need to clarify this further before any determination could be made about the claim.

53. I need to consider the link between the detriments and the disclosure. The Claimant gave an explanation that she felt that the reason she was subjected to the disciplinary process was because she had made a disclosure. That could potentially be accepted but the Respondent submitted that the Claimant has not evidenced sufficiently how that could be the case given the number of different people involved in making complaints against the Claimant or contributing to the flawed disciplinary process. I would agree. The Claimant needs to explain who was involved and how they were motivated to make complaints against her or

support an unfair disciplinary investigation for her claim to be succeed. I do not see that she has shown that she is likely to do that at this stage.

54. I also take into account the conflict in facts that the Respondent points to. This is not, in my opinion, a situation where the Respondent is being obtuse or refusing to admit the obvious, but instead there appears genuine conflicts in the evidence. The Respondent is saying somethings didn't happen and somethings have been interpreted differently by the Claimant. This conflict can not be resolved until hearing all the witness evidence and, based on the information I have so far, I cannot be satisfied that the Claimant is "likely" to succeed with her claim.

55. For these reasons, the Claimant's application was not successful.

56. I must make it clear also that this is not a finding on any of the facts in the case. Those are still to be determined and can only be done so by a judge after hearing all the evidence and considering all the documents. Instead, this is a finding that, based on the limited information in front of me, I do not have sufficient grounds to find that, at this stage, the Claiamnt is likely to succeed with her case and meet the threshold of the test for Interim Relief to be granted.

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Employment Judge **Singh**

_____17th October 2024_____
Date

JUDGMENT & REASONS SENT TO THE PARTIES ON

.....18 October 2024.....

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FOR THE TRIBUNAL OFFICE

Note
Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/"