



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr Andrew Mayes

v Gartner UK Limited

PRELIMINARY HEARING

Heard at: Watford

On: 7 June 2017

Before: Employment Judge Alliott

Appearances:

For the Claimant: Mr Jack Mitchell (Counsel)

For the Respondent: Mr Laurence Anstis (Solicitor)

JUDGMENT

The respondent's application for an open preliminary hearing to consider a preliminary issue is refused.

REASONS

1. The respondent has applied for an open preliminary hearing to be listed to consider the following preliminary issue:

“If the claimant made the disclosures in the terms set out at para 17 of his application to the tribunal:

- (i) Did he believe the disclosures were made in the public interest; and
- (ii) Was that belief reasonable?”

2. In the respondent's submission the determination of that issue would be conclusive in disposing of this claim in total. Mr Mitchell agrees with that proposition. Both parties consider that the evidence in this case is going to take 6 days with possibly two days for deliberation by the employment judge hearing it. Consequently, this case at a full merits hearing will take eight days. The respondent submits that this preliminary issue will take between half and one day. There will be considerable saving in terms of costs and judicial time if the preliminary issue were to be determined in favour of the respondent. In addition

the respondent submits that, being a global entity, witnesses at a full merits hearing would have to attend from the US, Italy and France at some expense and inconvenience.

3. In the respondent's submission the preliminary issue would take place in the context of accepting that the claimant would prove all the other allegations as contained in his Form ET1 and that the issues would be as simple as determining whether the claimant genuinely believed that the disclosures were made in the public interest, and, secondly, whether that belief was reasonable.
4. In the respondent's submission that evidence would be required solely from the claimant. Mr Anstis, on behalf of the respondent, prayed in aid the case of Wellcome Foundation v Darvey [1996] IRLR 538 in support of the contention that a preliminary hearing on a discreet issue in a case would be appropriate in the event that it would dispose of the whole of the case.
5. On behalf of the claimant, Mr Mitchell submitted that issues concerning whether or not the disclosures were made in the public interest and whether that belief was reasonable are fact sensitive and can only fairly be determined once all the factual evidence, including that from the respondent's witnesses, has been heard and the actions of the claimant can be assessed in the context of the case as a whole. In particular, Mr Mitchell cited to me the case of Ezsia v North Glamorgan NHS Trust [2007] EWCA Civ 330 and took me to the passage where Lord Justice Morris Kay said "In my judgment the same or a similar approach generally inform whistle blowing cases subject always of course to the kind of exceptional case to which I have referred".
6. In my judgment, I can certainly see the attraction of saving eight days or so of judicial time, saving much expense and determining this issue a lot sooner than would otherwise happen. However, in my judgment, the issue as to whether or not disclosures were made in the public interest and whether any such belief was reasonable is fact sensitive and can only fairly be determined once all the evidence has been heard in the case. In my judgment the circumstances surrounding the interaction between the claimant and the respondent's personnel may well have an important bearing on the issues to be determined. Consequently I have decided not to grant the application for an open preliminary hearing.

Employment Judge Alliott

Date 19 June 2017

Sent to the parties on:

29 July 2017.....

For the Tribunal:

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