



# EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

v

Mr S Emeali

London Energy Ltd

**Heard at:** Watford  
**Before:** Employment Judge Jack

**On:** 21 February 2020

## Appearances

**For the Claimant:** In person

**For the Respondent:** Ms R Kennedy, Counsel

## JUDGMENT INTERIM RELIEF APPLICATION

1. Interim relief is refused.
2. The respondent's application for costs is refused.

## REASONS

1. This is an application for interim relief under s.128 of the Employment Rights Act 1996.
2. The claimant resigned his employment with the respondent on 16 January 2020 and on 19 January 2020 he presented his ET1 seeking interim relief as well as claims of discrimination and unfair dismissal.
3. In order to establish a claim for interim relief a claimant has to show that the alleged unfair dismissal was caused on one of the particular grounds which are set out in s.129. Of these the only one which is relevant is that the claimant has made a protected disclosure. Further, in order to obtain an order for interim relief, the claimant has to satisfy the test set out in the case of Dandpat v The University of Bath UK EAT/0408/09/LA, a decision of Mr Justice Underhill sitting with Mr Norman and Mr Yoeam on 10 November 2009. There, the Employment Appeal Tribunal said that the test to be applied is that the claimant has a pretty good chance of success citing an earlier decision of Taplin v C Shippam Ltd [1978] IRLR 450.
4. The claimant represented himself. The respondent was represented by Miss Ruth Kennedy of Counsel. The claimant had presented a bundle of

documents on which he relied. The respondent provided a witness statement from Mr Wilson who was the claimant's line manager.

5. Apart from the case I cited no other authorities were relied upon.

### **The facts**

6. The claimant was born on 24 April 1976. On 25 March 2019 he started working for the respondent but he was employed by an agency, Astute Technical Recruitment Limited. His employment was as a Store Keeper. After a period of holiday, on 18 June 2019, he became a full-time employee of the respondent. The respondent had to pay Astute the sum of £7,940.20 in order to be able to employ him. Clearly, the respondent rated the claimant. He was put on six-month probation though, as is normal.
7. After his full-time employment began he complained that he had been the subject of disparaging remarks of another employee, Graham Gifford. That resulted in him presenting a formal grievance on 18 July 2019 which was investigated by the respondent. There was an investigatory meeting on 24 July 2011. The result of that was that the two men were separated in terms of where they worked in the respondent premises.
8. On 20 August 2019, a friend of Mr Gifford, Peter Driscoll, is said to have spoken aggressively to the claimant, that appears from an email of that day, but the following day Mr Driscoll apologised fulsomely to the claimant.
9. Shortly after that, on 24 August, the claimant was asked to cover work on Sunday 25 August 2019. The position here is that both Saturday and Sunday working results in a payment of overtime but Sunday overtime is better paid than Saturday overtime. The claimant's evidence to me today was that he was a Christian but that he was not a fanatic, so that he was willing to work on Sundays.
10. As part of his duties the claimant was required to obtain a licence for operating a fork lift truck. He did this over 7 and 8 November 2019 and thenceforth was able to carry out the full duties of a Storekeeper.
11. In the meantime, on 17 September 2019, there had been further issues which had arisen in relation to two other people with whom he worked. One was a gentleman called Reece who he suggested had alcohol on his breath, although Mr Reece disputed that. And another was a sub-contractor whom the claimant is alleged to have kicked. Those matters were investigated and no disciplinary action was taken in respect of them.
12. On both 22 and 30 November 2019, the claimant made criticisms of the way in which stock taking was being carried out and that, he said, was received badly by the members of management to whom he reported.
13. On 4 December there is what is described by the claimant as a protected disclosure. He reported that an oil drum, which had engine lubrication oil in it, was not moved on a Bund, that he considered was a danger, although the respondent's case is that it's a completely standard way of keeping barrels of oil in the premises and no health and safety issues arise from it.

14. On 6 December 2019 there was a stocktake. The respondent was concerned that the claimant had left at 2pm instead of continuing to work overtime until 7pm that day.
15. On the weekend of 7 and 8 December, the respondent says there was a stocktake which had to be adjourned from Saturday 7 to Sunday 8 because there had been a breakdown of the computer which was necessary for carrying out the stocktake. The claimant disputed that that was the weekend where the computer breakdown occurred. He said that that was in October. However, there did seem to have been an issue then about the late change of work from the Saturday to the Sunday.
16. On 10 December 2019, the claimant raised an issue of race discrimination. He said that his locker had been placed outside whereas the other lockers were inside the room used for those purposes and this, he said, was a result of his race. There is no evidence I have seen that there is any racial involvement in the giving of a locker outside to him rather than inside.
17. On 17 December 2019, there was a performance review with Mr Wilson. That review was broadly, quite positive, but there were some issues particularly that Mr Wilson reported as regards his relations with other employees and the sub-contractor who had alleged that he had been kicked. Mr Wilson's conclusion was, on page 77 of the bundle:

“I see Samuel as a capable member of the team who can be helpful and is able to work to the required level within my team. However, there seems to be various issues with his behaviour and attitude both towards myself and towards other members of my team as well as other departments. Samuel also needs to improve his efficiency when working daily. For these reasons I will be extending his probationary period for three months to give him the chance to improve in all areas stated.”
18. That performance review is, on its face, a justified review which has the positive items and the negative items and gives a, on the face of it, a justifiable reason for extending the probation for three months namely the issues regarding other employees and sub-contractors.
19. The claimant raised a grievance in respect of that. On 23 December 2019, there was an investigatory meeting held by Mr Bailey with Mr Wilson to investigate the grievance.
20. On 7 January 2020 the grievance was dismissed.
21. An appeal was lodged by the claimant on 12 January 2020 and that was due to be heard on 16 January 2020.
22. That followed a meeting on 15 January 2020 which was held to discuss the issues raised on the grievance appeal.
23. The meeting on 16 January never took place because, on that day, the claimant resigned.
24. As I have said on 19 January 2020 the ET1 was issued.

25. In order to succeed in his claim, the claimant has to show first of all that there was a constructive dismissal of himself. In order for there to be a constructive dismissal, the claimant must show firstly, that there was a breach of contract by the employer. Secondly, that that breach of contract was sufficiently serious to amount to a repudiation of the contract. Thirdly, that the breach of contract was a reason, if not the only reason, for the employee resigning. Lastly, the resignation must not be too long after the events of which complaint is made.
26. In my judgment, the claimant has a weak claim for breach of contract. All of the matters of which he complained were properly investigated by the respondent. The detriment on which he relies in order to show that there has been a breach of trust is the extension of probation period by three months but the respondent has shown prima facie reasons why it was reasonable for them to extend the probation period for three months. So, the claimant, in my judgment, has a weak claim for showing that there was any breach of contract in extending the probation in that way. Further, the claimant delayed, nearly a month, before resigning after the last incident for which he complained, namely the extension of the probation period and that too would be, potentially, an answer to the claim for constructive dismissal.
27. Even if I considered that there was a case for constructive dismissal which we see pretty good chance of success or even the lesser balance of probabilities test, nonetheless, in my judgment, it would be difficult for the claimant to show that the reason for his resignation was the alleged protected disclosure. On the contrary, the reasons seem to be a number of dissatisfactions which he had with the company and, in those circumstances, I refuse the application for interim relief.
28. After delivering that judgment Miss Kennedy applied for costs. She said that the claimant had been warned by the respondent's solicitors that he was behaving unreasonably and that the claim was not one that should be pursued. In my judgment, although the claimant has lost, overall this is not a claim which is of such a tenuous nature that it can be described as an abuse of process or a claim which it was unreasonable for the claimant to pursue. It is perfectly normal for litigants, particularly litigants in person in this tribunal, to make mistakes and to bring claims which fail. That does not mean that costs automatically follow and, in those circumstances, I refuse to make a costs order in my discretion.

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Employment Judge Jack

Date: 26.02.2020.....

Sent to the parties on: .10.03.2020.....

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For the Tribunal Office