



## EMPLOYMENT TRIBUNALS

Claimant

**Mrs S Riaz**

v

Respondent

**Castle Villas Ltd (R1)**

**G Aleem (R2)**

## PRELIMINARY HEARING

**Heard at: Leeds by CVP**

**On: 7 May 2021**

**Before: Employment Judge O'Neill**

**Appearance:**

**For the Claimant: In person (accompanied by her friend Ms S Badshah)**

**For the Respondent: Ms Aleem (in person) Ms S Hussain for R2**

## JUDGMENT

1. The application for interim relief is refused.

## REASONS

### Claims

1. The Claimant has brought claims including unfair dismissal for having made a protected disclosure. There are also other complaints which appear to relate to disability and money claims.
2. The matter before the Tribunal today is an interim relief application relating to the protected disclosure unfair dismissal claim and no other matter.

## Information

3. I have before me the ET1, the ET1 grounds and the additional information provided by the claimant to the tribunal and admitted by Judge Rostant. The claimant has tried to submit a bundle of documents today but it could not be opened by the tribunal office, the respondent or myself. The respondent, Aleem had submitted a statement. The first respondent says that it submitted a bundle of 43 pages to the tribunal on 2 May 2021, but this was not before me. In the absence of copies of the documents I asked the parties to read out key documents, including the letter of dismissal and the texts and messages that the claimant relies on as evidence of her disclosures. The parties made submissions and answered my questions.

## Law and Issues

4. Under ERA 1996 ss 128(1)(a) and 129(1)(a) and 130 Interim relief may be granted to restore an employee to their employment pending a final determination of their claim for (among other things) unfair dismissal for whistleblowing under ERA 1996 s 103A provided the application is made within 7 days of dismissal.
5. The employee may be restored to employment by means of reinstatement or reengagement on comparable terms or a continuation of contract order
6. The Tribunal must assess the strength of the case and decide whether the Claimant has a pretty good chance of succeeding. (*Taplin v C Shippam Ltd [1978] IRLR 450*). Pretty good chance is a significantly higher degree of likelihood than more likely than not. (*Ministry of Justice v Sarfraz [2011] IRLR 562*).
7. Does the Claimant have a pretty good chance of showing that he made one or more qualifying disclosures as defined in section 43B of the Employment Rights Act 1996 as summarised below?
  - a) What did the claimant say or write? When and to whom
  - b) Does the Claimant have a pretty good chance of showing that this constitutes information in relation to a matter in d below
  - c) Does the Claimant have a pretty good chance of showing that he believed the disclosure of information was made in the public interest? And it was a reasonable belief.
  - d) Does the Claimant have a pretty good chance of showing that he believed it tended to show one or more of the following and that his belief was reasonable
    - a. a criminal offence had been, was being or was likely to be committed;
    - b. a person had failed, was failing or was likely to fail to comply with any legal obligation;
    - c. a miscarriage of justice had occurred, was occurring or was likely to occur;
    - d. the health or safety of any individual had been, was being or was likely to be endangered;

- e. the environment had been, was being or was likely to be damaged;
  - f. information tending to show any of these things had been, was being or was likely to be deliberately concealed.(a cover up)
- e) Does the Claimant have a pretty good chance of showing that he made the disclosure to his employer or a designated person in *sections 43C, 43D, 43E, 43F, 43G, or 43H* of ERA 1996.
- f) Does the Claimant have a pretty good chance of showing that the dismissal (if there was one) was due to the disclosure.

## Discussion

8. The claimant relies on section 43B (1) (d) and claims to have made disclosures relating to the health and safety of residents and staff at the care home at which she was employed as a senior care worker. The home accommodates older people, including those with dementia. The claimant's immediate manager is the second respondent who is managed by Ms Hussain.
9. The claimant relies on a number of alleged disclosures which she describes in summary as follows
- 20 January 2021 , text message to R2 relating to stained mattresses allegations of poor quality of care, hygiene and infection control
  - 16<sup>th</sup> of February 2021 text to R2 physically aggressive resident requiring one-to-one care, which was not being provided and compromised staff safety
  - 16 February 2021 face-to-face conversation with Leanne Adams - support manager- relating to one-to-one care of the above
  - 2 March 2021 – whats Ap message to R2 showing picture of damaged ceiling (no wording)
  - 9 March 2021 text exchange with R2 relating to resident with bruising
  - 15<sup>th</sup> of February 2021. What's Ap photograph of water jug which residents had urinated in
  - Verbally reported insufficient urine bottles
  - 9 March 2021- verbal report to Ms Hussain - that the staff cannot manage a particular service user without one-to-one care - inappropriate conduct of Mr Hussain, who allegedly shouted at a colleague in front of residents causing them distress
- 10.- The claimant was unable to find the first text message;
- the second text message (16 February 2021) was read to me and says 'we found Leslie upstairs. Please ask Leanne to come down as we can't manage' to which R2 replied okay.
  - the whats ap message (2 March) contained no text but related to the surrounding area of a fire protection device which had been detected as faulty and an engineer called (the respondents say immediately). There was no allegation of delay or other fault or risk in the message.
  - 15 February – whats ap message – urine in jug - text merely says 'new man doing this'.

- Text message exchange 9 March 2021 begins with R2 asking 'how is new man', the claimant replies 'he is very aggressive were just changing him', R2 advises the claimant to 'call his wife when he is settled', R2 asks 'is he bruised', the claimant replies 'yes, he has broken his glasses', R2 asks 'how', R2 the claimant to 'ring his wife and he banged himself in the doorway as he was walking what do you think', the claimant replies 'he was aggressive with staff when we were changing him'.

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- 11. The respondent contends that the claimant was dismissed for taking an unauthorised holiday in Pakistan in breach of the Covid regulations and in breach of the Care Home's policy and was absent without leave, her holiday having never been authorised and after she had been specifically told that she was not permitted to take this leave because of the Covid restrictions, because of their particular concerns for safeguarding the care home residents, because of the staff pressures caused by some members of staff being ill or self-isolating because of Covid and because of the claimants quarantining obligations on return from a foreign country. The claimant had been specifically warned of the disciplinary consequences if she went ahead with the holiday. The claimant accepts that she took holiday in Pakistan from 11 March to 24 March 2021, but she claims her holiday request was authorised in January 2021, she accepts she was warned not to take the holiday in March a few days before her planned departure, but by then she had purchased a ticket and considered the late withdrawal of permission unfair. The claimant does not accept that this was the real reason for her dismissal. I find that the respondent has produced a cogent and potentially fair reason for dismissal, (whether that is ultimately accepted as the real reason for dismissal will be a matter for the Tribunal hearing the case).

## **Conclusions**

- 12. The claimant has failed to show on the balance of probability that she has a pretty good chance of succeeding at the final hearing in her claim for unfair dismissal under section 103 A ie for having made a public interest disclosure (otherwise known as whistleblowing).
- 13. The claimant has failed to show on the balance of probability that she has a pretty good chance of succeeding at the final hearing in showing that she made a qualifying disclosure (i.e. a disclosure of information about a matter listed in S43(B) (1) (d) health and safety. The tenor of the text and Whats Ap messages set out above do not appear to me to be messages of someone who is raising health and safety concerns for the residents and staff at the home. They appear to me to be everyday exchanges between a senior care worker and her manager reporting on matters arising at the Home. If the text and Whats Ap messages are of this kind then I infer that the verbal exchanges may well be similar.
- 14. Even if the claimant could show that she made a qualifying disclosure in the public interest the claimant has failed to show on the balance of probability that she has a pretty good chance of succeeding at the final hearing in showing that her dismissal was not for the reason the Respondent has given but was due to the disclosures made by her in the texts, what's ap messages and

conversations. The respondent's reason is that she was absent without leave in circumstances which put the Home at risk. I make no finding at this stage other than to say that the respondent has put forward a cogent and potentially fair reason for dismissal unrelated to the alleged disclosures.

15. In all the circumstances I refuse the application for interim relief and make no order.

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**Employment Judge C O'Neill**

Date: 7 May 2021