



## EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4104002/2024

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Held in Glasgow on 21 March 2024

Employment Judge P O'Donnell

10 **Mr Jack Scanlan**

**Claimant**  
**Represented by:**  
**Mr B Duffy -**  
**Lay representative**

15 **MML Leisure Limited**

**First Respondent**  
**No appearance and**  
**No representation**

20 **Pintplace Limited**

**Second Respondent**  
**No appearance and**  
**No representation**

25 **Mr William Cooper McIntosh**

**Third Respondent**  
**No appearance and**  
**No representation**

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### JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Employment Tribunal is the claimant's application for interim relief against the second respondent is granted.

30 The Tribunal orders the continuation of the claimant's contract of employment from the date of termination of employment (2 March 2024) until the determination or settlement of the complaint.

The Tribunal further ordered the second respondent:

35 (i) to pay to the claimant the (net) sum of £858 (being normal pay due to the claimant in the period 2 March 2024 to 16 March 2024) and

- (ii) from the 24 March 2024 and each week thereafter to pay to the claimant net wages of £429 until the final determination or settlement of the claim.

## REASONS

### Introduction

- 5 1. The hearing was held in order to determine the claimant's application for interim relief under s128 of the Employment Rights Act 1996 arising from his claim for unfair dismissal under s103A of the Act. The claimant brings other claims against the respondents but these are not relevant to the application for interim relief.
- 10 2. There was no attendance by any of the respondents. They were all sent Notices of Hearing for this hearing and the Tribunal was satisfied that they had been given the opportunity to attend. The Tribunal did not have any contact telephone numbers or email addresses for any of the respondents so it was not possible to identify any reason why they had not attended the
- 15 hearing. Given the nature of the interim relief application, this requires to be dealt with expeditiously and without delay and so the Tribunal considered that it was in keeping with Overriding Objective to proceed with the hearing in the absence of the respondents.

### Evidence & documents

- 20 3. Given the nature of the hearing, the Tribunal did not hear live evidence. It was provided with a witness statement from the claimant and a small bundle of documents. Mr Duffy made submissions on behalf of the claimant. For the sake of brevity, the Tribunal will not set these out in detail.

### Relevant Law

- 25 4. Section 128 of the Employment Rights Act 1996 provides that:
- (1) *An employee who presents a complaint to an employment tribunal that he has been unfairly dismissed and—*

(a) *that the reason (or if more than one the principal reason) for the dismissal is one of those specified in—*

(i) *section 100(1)(a) and (b), 101A(1)(d), 102(1), 103 or 103A, or*

5 (ii) *paragraph 161(2) of Schedule A1 to the Trade Union and Labour Relations (Consolidation) Act 1992, or*

(b) *that the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was the one specified in the opening words of section 104F(1) and the condition in paragraph (a) or (b) of that subsection was met,*

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*may apply to the tribunal for interim relief.*

5. In order to succeed in an application for interim relief, the claimant must show that it is “likely” that the complaint of unfair dismissal will succeed. The question of what is meant by “likely” has been addressed by a number of

15 authorities which have said that it means “a pretty good chance of success” which means more than just the balance of probabilities (*Taplin v C Shippam Ltd* [1978] IRLR 450) and that it involves a “significantly higher degree of likelihood” than more likely than not (*Ministry of Justice v Sarfraz* [2011] IRLR 562).

20 6. The Tribunal needs to take account of all matters that would require to be determined at the final hearing of the unfair dismissal claim although it does not require to conclusively resolve those matters before deciding on the application for interim relief (*Hancock v Ter-Berg* [2020] IRLR 97).

25 7. Where the main or principal reason for dismissal is that the Claimant made a protected disclosure then the dismissal will be unfair under s103A of the 1996 Act. This is one of the categories of “automatic” unfair dismissal where the reason for dismissal alone renders it unfair.

8. A “protected disclosure” is defined in s43A of the 1996 Act as being a qualifying disclosure as defined in s43B made by the worker in accordance with any of ss43C-H.

9. Section 43B states:

5 (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—*

10 (a) *that a criminal offence has been committed, is being committed or is likely to be committed,*

(b) *that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,*

(c) *that a miscarriage of justice has occurred, is occurring or is likely to occur,*

15 (d) *that the health or safety of any individual has been, is being or is likely to be endangered,*

(e) *that the environment has been, is being or is likely to be damaged, or*

20 (f) *that information tending to show any matter falling within any one of the preceding paragraphs has been, or is likely to be deliberately concealed.*

10. In order to be a qualifying disclosure, any communication must have sufficient factual content capable of tending to show one of the matters listed in s43B(1) and a mere allegation is not enough (*Kilraine v Wandsworth LBS* [2018] ICR  
25 1850).

11. The factual accuracy of the allegations is not determinative of whether one of the relevant failures listed in s43B has been or is likely to occur but can be an important tool in deciding whether the worker had a reasonable belief that the

disclosure tended to show a relevant failure (*Darnton v University of Surrey* [2003] ICR 615). The term “likely” in this context requires more than a possibility or risk of a relevant failure (*Kraus v Penna Plc* [2004] IRLR 260).

5 12. Any belief on the part of the worker must be genuinely and reasonably held at the time at which the disclosure is made (*Kilraine*).

13. The question of how the Tribunal should approach the burden of proof in relation to the reason for dismissal in cases involving claims of automatically unfair dismissal was addressed in *Kuzel v Roche Products Ltd* [2008] IRLR 530 by Mummery, LJ:-

10 *“As it is a matter of fact, the identification of the reason or principal reason turns on direct evidence and permissible inferences from it. It may be open to the tribunal to find that, on a consideration of all the evidence in the particular case, the true reason for dismissal was not that advanced by either side. In brief, an employer may fail in its case of fair dismissal for an admissible*  
15 *reason, but that does not mean that the employer fails in disputing the case advanced led by the employee on the basis of an automatically unfair dismissal on the basis of a different reason.”*

### Decision

20 14. The Tribunal reminded itself that, in terms of the application before it today, the relevant claim was that under s103A of the 1996 Act as this was what gave the claimant the right to make the application under s128.

25 15. The Tribunal also reminded itself that the question to be asked was whether it was “likely”, on the material available to the Tribunal, the claimant would succeed in his claim under s103A. The Tribunal was not making any conclusive findings of fact or law in relation to that claim.

16. For the reasons set out below, the Tribunal is satisfied that, based on the material available to it, the claimant is likely to succeed in his claim under s103A.

17. The information available demonstrates that the claimant disclosed information to his employer (by way of his manager) that the second respondent was operating the bar at which he worked without the necessary alcohol licence. This is clearly a matter which shows or tends to show a matter falling within the scope of s43B(1) either in the basis of subsection (a) or (b). This is, on the face of it, a matter of public interest. In these circumstances, the claimant is likely to succeed in showing that he made a qualifying disclosure.
18. The claimant was dismissed the very next day after making the disclosure. This came out of the blue with the claimant having no previous disciplinary or performance issues. The reason given was a very vague reason that the claimant "*no longer fits in*" at the business. This very strongly suggests that something had changed and, on the information available, the only thing which had changed was the disclosure made by the claimant.
19. The claimant was also told that he was barred from the premises and the premises of other bars operated by the companies within the first respondent's group of business. There is no obvious reason for such a draconian measure beyond the claimant's disclosure.
20. The Tribunal considers that, in light of the circumstances surrounding his dismissal, the claimant is likely to succeed in persuading a Tribunal to draw an inference that his disclosure was the reason for his dismissal. He is, therefore, likely to succeed in his claim under s103A ERA.
21. Mr Duffy confirmed that the unfair dismissal claim is only pursued against the second respondent as they were the claimant's employer.
22. Given the absence of the second respondent, it was not possible to determine whether they would be willing to reinstate or re-engage the claimant in terms of s129(3) ERA. The powers given to the Tribunal under s129(9) ERA, therefore, are the relevant powers in this case.
23. For these reasons, the Tribunal grants the claimant's application under s128 ERA and orders the continuation of the claimant's contract of employment

with the second respondent from the date of termination of employment (2 March 2024) until the determination or settlement of the complaint. This means the contract of employment will continue in force for the purposes of pay or any other benefit derived from the employment, seniority, pension rights and other similar matters, from the date of termination of employment (2 March 2024) until the determination or settlement of the claim.

24. The claimant was paid £429 a week net of any deductions. He is a student and has not presently secured any alternative employment. He is not in receipt of state benefits.

25. The Tribunal orders the second respondent to pay the claimant the sum of £858 (being normal pay due to the claimant in the period 2 March 2024 to 16 March 2024) and from the 24 March 2024 and each week thereafter to pay to the claimant net wages of £429 until the final determination or settlement of the claim.

Employment Judge O'Donnell  
**Employment Judge**

22 March 2024  
**Date**

**Date sent to parties**

25 March 2024