



EMPLOYMENT TRIBUNALS

Claimant: Mr Simon Duffy

Respondent: Nottingham CityCare Partnership

Record of a Hearing heard by CVP at the Employment Tribunal

Heard at: Nottingham

Heard on: 12 June 2024

Before: Employment Judge Hutchinson (sitting alone)

Appearances:

Claimant: In person

Respondents: Oliver Isaacs, Counsel

JUDGMENT

The Employment Judge gave Judgment as follows:

1. The application for interim relief fails and is dismissed.

REASONS

1. The Claimant presented his claim to the Tribunal on 29 May 2024. He had been employed by the Respondents from 9 November 2015 until his dismissal on 23 May 2024 as a Team Leader.
2. His claim is of unfair dismissal only. At the time he presented his claim he was not legally represented and did not tick the box for unfair dismissal. It is clear from the body of his claim that he is claiming:
 - Ordinary unfair dismissal under Section 94 Employment Rights Act 1996 (“ERA”)
 - Unfair dismissal under 103A ERA on the grounds that the reason or principal reason for his dismissal was that he had made a protected disclosure.
3. The Respondents say the reason for his dismissal was gross misconduct namely that he had sent his Line Manager inappropriate text messages. Those text messages amounted to sexual harassment.
4. The Claimant says that was not the real reason or the principal reason for his dismissal. The reason was because he had made protected disclosures.
5. The Respondents have a Speaking Up Procedure whereby concerns can be raised confidentially to the Speaking Up Guardian.
6. He says that he raised matters with the Speaking Up Guardian and that was the reason he was dismissed.

The Hearing Today

7. The Respondents produced a bundle of documents and where I refer to page numbers it is from that bundle. I also had the benefit of a witness statement from Deborah Hall. She was not called to give evidence and it was unnecessary for the purpose of this hearing that she do so.
8. From the bundle of documents I particularly considered:
 - 8.1. The ET1 pages 15-17.
 - 8.2. To the disciplinary investigation page 33.
 - 8.3. The investigation report pages 35-46.
 - 8.4. The WhatsApp messages pages 155-161.
 - 8.5. The witness statement of Emma Lee pages 162-163.

8.6. The expert reports pages 258-267.

8.7. Gary Evans analysis pages 286-287.

8.8. Outcome letter pages 287-289.

8.9. I also heard oral submissions from the Claimant and Mr Isaacs who also provided me with written submissions.

Relevant Matters

9. It is alleged that on 20 October 2023 the Claimant sent WhatsApp messages to his Line Manager, Emma Lee. I have seen those WhatsApp messages. They are at pages 155 to 161.

10. On 10 January 2024, Emma Lee contacted the Assistant Clinical Director to say that she wanted to speak to her about the Claimant. The Head of Clinical Services was Neelima Nagalla.

11. They met on the 9 February 2024 and there was a discussion between them about the WhatsApp messages.

12. On 22 February 2024, Deborah Hall the Assistant Director of Clinical Services sent an email about the inappropriate text messages she said that she had received. The email is at pages 27-28. It explains the delay in her making the allegation. The letter talks about the necessity for an investigation and the possible suspension of the Claimant.

13. On 23 February 2024, Miss Hall sent another email which is at page 29-30. This email instructs Charlotte Goode-Bond to conduct an investigation into the allegations.

14. On 27 February 2024, Miss Hall sends a further email that day being told that the Claimant had raised some concerns regarding:

14.1. Patient safety.

15. By the time she was aware of those concerns the investigation had already commenced.

16. On the face of it, it would appear that neither Emma Lee or Deborah Hall were aware of the concerns until after the allegation had been made and the investigations commenced.

17. A disciplinary hearing was conducted on 9 May 2024 the transcript of which is at pages 254-257. The hearing was conducted by Gary Eaves, Deputy Director of Operations. At the hearing the contention made by Mr Duffy was that:

17.1. The messages had been falsified.

- 17.2. The allegations were made to cover up issues at work.
- 17.3. He had raised matters with the FTSUG in December 2023 and this was the reason the allegations were made against him/he was subjected to the disciplinary procedure.
18. The disciplinary hearing was reconvened on 23 May 2024 was again conducted by Gary Eaves. The Transcript is at pages 271-282.
19. The Claimant was told at the meeting that he was being dismissed without notice for gross misconduct.
20. A letter confirming that decision was sent to the Claimant on 29 May 2024 is at pages 288-291.
21. The Claimant appealed against the decision on 6 June 2024 and the appeal is still pending.

The Law

22. Section 128 ERA provides as follows:

“(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 103A...

may apply to the tribunal for interim relief.

(2) The tribunal shall not entertain an application for interim relief unless it is presented to the tribunal before the end of the period of seven days immediately following the effective date of termination (whether before, on or after that date).”

23. Section 129 ERA provides:

“(1) This section applies where, on hearing an employee's application for interim relief, it appears to the tribunal that it is likely that on determining the complaint to which the application relates the tribunal will find—

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

(i) ... 103A...

(2) The tribunal shall announce its findings and explain to both parties (if present)—

(a) what powers the tribunal may exercise on the application, and

(b) in what circumstances it will exercise them.”

24. I was referred to several cases namely:

- *Taplin v Shippham Ltd*
- *Ministry of Justice v Sarfaz*
- *Dandpat v University of Bath*

25. In this case the Claimant contends that the reason for the dismissal was his protected disclosure that he made to the FTSUG although it is not clear from his application what the disclosures are.

26. The Claimant's contention is that Emma Lee had fabricated the evidence to ensure he was dismissed.

My Conclusion

27. I am not satisfied that the claim under section 103A is likely to succeed.

28. There is no evidence produced by the Claimant that Emma Lee had fabricated the WhatsApp messages. On the face of it it is going to be difficult for him to establish his case under Section 103A ERA.

29. On the face of it Miss Lee was not aware of any whistleblowing until after she had reported matters to Miss Hall or Miss Nagalla and Miss Hall similarly was not aware about any concerns until after she had already commissioned the investigation into the allegations.

30. In these circumstances I am satisfied the claim is unlikely to succeed and the application for interim relief is therefore dismissed.

Employment Judge Hutchinson

Date: 20 June 2024

JUDGMENT SENT TO THE PARTIES ON

....25 June 2024.....

FOR THE TRIBUNAL OFFICE

Note

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing, or a written request is presented by either party within 14 days of the sending of this written record of the decision.

Public access to employment tribunal decisions

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