



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr W Hazell

-v-

Tata Technologies EU Ltd

PRELIMINARY HEARING

(CONDUCTED IN PUBLIC IN PERSON)

Birmingham

On: Thursday 10 October 2024

Before: Employment Judge Perry

Appearances

For the Claimant: Mr W Hazell (in person)

For the Respondents: Miss T Vittoria (Legal advisor)

JUDGMENT

The claimant's application for interim relief is refused and is dismissed.

REASONS

- 1 At the outset of the hearing I clarified the papers that were before me and with the agreement of the parties created a bundle which I had disseminated to them. Where attachments were not displayed the claimant was able to share the contents by logging into the CVP system and sharing them via the JVS screen in the Tribunal room.
- 2 The claimant is a layperson and within the bundle I identified a number of cases in which the law was identified. I propose to touch upon the caselaw only briefly.
- 3 The settled caselaw makes clear that interim relief applications are to be dealt with by the parties making submissions directing my attention to the relevant parts of the documentary evidence (*Raja v Secretary of State for Justice* EAT/0364/09). The questions for consideration by me in cases such as this involving s.103A ERA are those outlined in general terms by Underhill P in *Ministry of Justice v Sarfraz* [2011] IRLR 562 EAT [14] save they need to be adapted to address the change in the statutory regime since then.
- 4 The test in section 129 (1) ERA as to likelihood is that in *Taplin v C Shippam Limited* [1978] ICR 1068



“Nor do we think that it is right in a case of this kind to ask whether the applicant has proved his case on a balance of probabilities in the sense that he has established a 51% probability of succeeding in his application, ... It seems to us that the section requires that the employee shall establish more clearly that he is likely to succeed than that phrase is capable of suggesting on one meaning.”.

5 To emphasise the point Underhill P in Sarfraz put it this way

“19. ‘likely’ connotes something nearer to certainty than mere probability”.

6 The rationale for the stringency of that test is that set out in Robinson v Sheikh halid Bin Saqr Al Qasimi (CA) 2021 ICR 1533 (Court of Appeal)

“117. ... the employee will not have to repay the monies received even if his or her claim ultimately fails. In similar vein, he made the point that the

118 As was common ground before us, the relatively high threshold required by the “likely” test (“pretty good chance of success”) has “priced into it” the serious consequences which follow for an employer if an interim order is made.”

Turning now to the respective arguments.

7 The dismissing officer provides a rationale for her decision in the dismissal letter. That references a WhatsApp message that the claimant does not deny having sent. Whilst the claimant alleges that the protected disclosure he had previously made was the reason for that dismissal the rationale references the breaches of the various respondent’s rules that that message gave rise to and how the claimant failing to have insight into what was confidential information, how that should be treated and that was something that was critical to his role as senior manager fed into her decision.

8 The claimant’s seniority can be readily identified by the fact that he was paid some £78,000 a year, a bonus, a car, health insurance it appears other benefits in kind.

9 The claimant’s principal argument appears to be a “but for” argument - I would not have been dismissed had I not blown the whistle. With respect that is placing the cart before the horses in that the necessary causal link needs to be shown to have been caused by the disclosure not inferred from what resulted.

10 Given the rationale provided by the disciplinary officer I consider the claimant faces a difficult task to succeed in this claim. That assessment ignores the



difficulties the respondent states the claimant will also face in showing he made a qualifying disclosure.

- 11 Taking that into consideration as well, in my assessment it is not just “unlikely” (in the sense of not simply more than 51%) that he will succeed. I indicated to him that were this matter coming before me on case management, I would have been minded to at least consider if I should list the matter to determine if a deposit order should be made. The test for a deposit order is little reasonable prospects of success. Hence, my assessment based on the summary view I have to take is that the likelihood of success is not only some way from being more likely than not, but it follows a considerable distance from the higher “likely” test required here.
- 12 I made it plain however that had an application for a deposit order been made given that I envisage the claim will only take 3 days to try, the additional costs and use of precious tribunal time that would entail, I would have refused it. The purpose of a deposit order is to make a claimant stop and think before proceeding and hopefully the claimant will do just that (I have suggested he should take legal advice before proceeding and I am confident that is exactly what he will do). That of course is not to prejudge the outcome of the matter but merely to ask him to reflect upon the merits.

Employment Judge Perry

Dated: 10 October 2024

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