



# EMPLOYMENT TRIBUNALS

## Claimant

Ms Catherine Stamper

v

## Respondent

Merchant Seamans War Memorial  
Society;  
t/a Care Ashore

**Heard at:** Huntingdon (by CVP)

**On:** 5 January 2023

**Before:** Employment Judge M Ord

## Appearances

**For the Claimant:** In person

**For the Respondent:** Mr T Russell, Solicitor

## JUDGMENT on APPLICATION for INTERIM RELIEF

### Order

No Order is made on the Claimant's Application for Interim Relief which is refused.

## REASONS

1. This matter came before me today on the Claimant's Application for Interim Relief, pursuant to Section 128 of the Employment Rights Act 1996.
2. It is appropriate to set out the relevant Law in this area at the outset of this decision.
3. I had before me the Claimant's Claim Form and Application, a Bundle of documents, a draft of the Respondent's proposed Grounds of Resistance and a Statement from Mr Kenneth John Usher dated 4 January 2024.
4. I note that at the Final Hearing of this case the Respondent seeks to rely on this Statement from Mr Usher which may be added to by means of a Supplementary Statement.

## The Law

5. Under Section 103A of the Employment Rights Act 1996,

**103A Protected disclosure.**

An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure or disclosures.

6. Under Section 128 of the Employment Rights Act 1996,

**128 Interim relief pending determination of complaint.**

(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 (inter alia) —

(i) the ground specified in section 103A, of that Act,

may apply to the Employment Tribunal for Interim Relief.

7. Under Section 129 of the Employment Rights Act 1996, where the Tribunal is satisfied, on hearing an Application for Interim Relief that it is likely that the Tribunal determining the complaint which the Application relates to will find that such ground was the reason or principal reason for the dismissal, then the Tribunal will make an Order as is appropriate under s.129 and 130.
8. Under Section 130 of the Employment Rights Act 1996, if there is no agreement (in the event of a successful Application for Interim Relief) for re-instatement or re-engagement, then the Tribunal will make an Order for the continuation of the Claimant's contract of employment.
9. Under Rule 95 of the Employment Tribunal Rules of Procedure 2013, a Hearing for Interim Relief will not consider all evidence unless the Tribunal directs otherwise.
10. In London City Airport v Chacko [2013] IRLR 610, the Employment Appeal Tribunal said that,

“... An Interim Relief Hearing requires the Employment Tribunal to carry out an “expeditious summary assessment” on the untested evidence before it which requires far less detailed analysis of the matter than at a Final Hearing.”

11. In Reyb v Nomura International Plc. (ET: 320174/09), the first instance Hearing stating that,

“...at the Interim Relief Hearing it is not necessary to make any findings of fact.”
12. In Taplin v C Shippam Limited [1978] ICR 1068, confirmed that the phrase “likely to succeed” means “a pretty good chance of success” which is greater than the balance of probabilities as required at a Final Hearing.
13. Ministry of Justice v Scarfaz [2011] IRLR 652, is a case where Mr Justice Underhill (then President of the Employment Appeal Tribunal) stated that, “likely” does not mean simply “more likely than not”, but connotes a significantly higher degree of likelihood, i.e. something nearer to certain than mere probability.
14. Al Qasiri v Robinson EAT02831/17, a case where the Employment Appeal Tribunal confirmed that the role of the Tribunal at an Interim Relief Hearing is to form a view as to how the matter looked – was the Claimant likely to make out her case? Thereafter, the Tribunal should explain the conclusion reached on that basis giving the essential gist of the Judge’s reasoning sufficient so the parties understood why the Application has succeeded or failed.
15. Against that background I have considered the matters before me on the basis of the documentary evidence submitted and the oral submissions made by the Claimant and Mr Russell.
16. Here I have to consider whether it is likely that the Claimant will succeed, showing that:-
  - 16.1. she made a protected disclosure or disclosures; and
  - 16.2. that the reason or principal reason for her dismissal was the making of such disclosure or disclosures.
17. The Claimant was employed by the Respondent as Chief Executive Officer from 16 November 2020 until 11 December 2023, when she was summarily dismissed for gross misconduct. Her Appeal against dismissal is pending.
18. The Respondent is a Charity engaged in the welfare of Mariners (Royal Navy, Merchant Navy, or Deep Sea Fishermen).
19. On 13 December 2023, the Claimant began and concluded Early Conciliation through ACAS and on 15 December 2023 submitted her complaint to the Employment Tribunal with an Application for Interim Relief.
20. Notice of today’s Hearing was sent by the Tribunal on 29 December 2023, exactly seven days before this Hearing. The Respondent did not

apparently receive the Tribunal documents until 2 January 2024. Notwithstanding this, the Respondent was content to proceed today on short notice and I have had careful regard to all the documents which have been put before me, together with the submissions made by each side.

21. The Claimant says that following the departure of a Trustee from the Respondent, she took (through the Respondent's IT provider) control of that Trustee's mail box.
22. She believed that she was, as Chief Executive Officer, entitled to do so and said that she had done so on previous occasions when Trustees had departed, with the knowledge of the Interim Chair of Trustees.
23. That knowledge is denied.
24. The Claimant says that she found that the departed Trustee had sent documents relating to the Respondent's business to their private email account and that this included, in her view, personal data relating to herself and others.
25. The Claimant says this amounted in her view to a breach of the General Data Protection Regulations and became aware of this on 2 October 2023.
26. The Claimant says the information sent to the private email box included confidential personal data regarding both the Claimant and other employees and an email discussion between the relevant Trustee and the external HR provider for the Respondent regarding the possible termination of the Claimant's employment.
27. Such communications and email discussion pre-dated any protected disclosure by the Claimant.
28. The Claimant says that she brought these matters to the attention of the Trustees in writing on 4 October 2023 and in a meeting with the Interim Chair (Mr Bick) on 6 October 2023, when she suggested the issue should be referred to the Office of the Information Commissioner.
29. The Claimant says that at or about this time, the departed Trustee had been re-engaged as a Consultant by the Respondent and was to carry out a substantial part of what had been the Claimant's work.
30. The Claimant's action in accessing the relevant email was reported to the Information Commissioner. A Report was prepared and the Claimant was then suspended.
31. Her suspension began on 12 October 2023 and she was suspended for accessing and reading the emails of the departed Trustee, which the Respondent says amounted to a breach of trust and confidence.

32. A Disciplinary Investigation Meeting took place on 30 October 2023. The Claimant did not deny accessing the emails, but said that she believed she was entitled to do so.
33. The Claimant raised a Grievance on 14 November 2023 which has allegedly not been actioned by the Respondent. On 28 November 2023 a Disciplinary Hearing was held.
34. Mr Usher conducted the Disciplinary Hearing and the outcome was communicated by email on 11 December 2023. The Claimant was summarily dismissed for gross misconduct.
35. According to the Statement provided by Mr Usher, the reason for dismissal was not related to the Claimant's alleged protected disclosures (which are denied as amounting to such), but rather because of her accessing a departed Trustee's email without authorisation and that that led to a break down of trust and confidence.
36. The Respondent's position is that access to the email account should have been authorised by the remaining Trustees.
37. I note that the Respondent disputes that they had knowledge of the Claimant taking control of the email account for the departed Trustees and for the Trustee in question.
38. Much of the submissions I have heard today related to the reasonableness or otherwise of the procedures and actions of the Respondent which led to the Claimant's dismissal. They are not, however, relevant to the matters before me.
39. On the basis of what I have been told today, making the best assessment I can on the information provided, I am not satisfied that the Claimant has demonstrated that she is likely, as defined in the Authorities referred to, to establish that she had made protected disclosures and / or that her dismissal was because of making such disclosures.
40. A protected disclosure must be a disclosure of information and not a mere opinion. The information which the Claimant set out (as opposed to her opinion which there is a potential breach of General Data Protection Regulations) was that the departed Trustee had sent documents from his email account as held by the Respondent to his private email address. It is not clear to me that this is likely to amount to a qualifying disclosure within the meaning of the Employment Rights Act 1996. It is not clear what type of qualifying disclosure the Claimant says this amounted to. If, as the Respondents maintain, Trustees would regularly send material from a work account to their private account to enable them to work on matters from home (the information which was not further disseminated) I do not see nor am I satisfied the Claimant is likely to establish that the relevant Trustee was in breach of a legal obligation (and that by virtue of vicariously liability that the Respondent was therefor liable).

41. If the Claimant did establish that she has made protected disclosures, however, I am not satisfied that she has demonstrated today that she is likely to establish at a Final Hearing that that was the reason, or principal reason, for her dismissal.
42. There were, on the Claimant's own account, private discussions within the Trustees and an external HR provider regarding the potential termination of her employment. These preceded any protected disclosures by the Claimant.
43. Further, Mr Usher says in his evidence (upon which the Respondent intends to rely at the Final Hearing) that the reason for dismissal entirely related to the fact that the Claimant had, without authorisation from the Trustees, accessed the departed Trustee's email account.
44. I must take note of the fact that the Trustees of an organisation will, from time to time, engage in discussion between themselves and external advisors which may relate to matters concerning individual employees within the organisation. If an individual within the organisation (however senior) is able to access that information, the confidentiality of those discussions is lost.
45. In those circumstances I cannot say that the Claimant is likely to demonstrate that the sole or principal reason for her dismissal was the making of a protected disclosure.
46. That is not, of course, to say that the Claimant will not succeed at a Final Hearing. It is simply to say that on the basis of the information before me today, she has not demonstrated that she is likely to succeed.
47. Accordingly no Order is made for Interim Relief and the Application is dismissed.

16 January 2024

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Employment Judge M Ord

Sent to the parties on: ..17 January 2024

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For the Tribunal Office.

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not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

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