Case Number: 2204154/2021

EMPLOYMENT TRIBUNALS

Claimant **Respondent**

Ms S Messi **v** **Cordant People Limited**

Heard at: London Central (hybrid) **On**: 4 October 2021

Before: Employment Judge E Burns (sitting alone)

Representation

For the Claimant: Did not attend

For the Respondent: Mr Paul Brill, in house solicitor

RESERVED JUDGMENT

The judgment of the Employment Tribunal is that:

(1) the Claimant's application for interim relief pursuant to section 128 of the Employment Rights Act 1996 is rejected

(2) the Claimant is ordered to pay the Respondent's costs of £2,000 by 1 December 2021

(3) this claim will be consolidated with claim number 2204302/2021.

REASONS

BACKGROUND

1. The Claimant presented a claim form to the tribunal on 1 July 2021 bringing various claims against three respondents, Cordant People Limited, Hinduja Global Solutions UK Limited and Nicola Burgin.

2. The only claim contained in that claim form that was accepted was the claim of automatic unfair dismissal made against Cordant People Limited (referred to in this judgment as the "Respondent") pursuant to section 103A of the

Employment Rights Act 1996. The remaining claims against the Respondent and the other respondents were rejected because the Claimant had not initiated the Acas pre-claim early conciliation process.

3. The claim of automatic unfair dismissal pursuant to section 103 of the Employment Rights Act 1996 was accepted because the claim form included an application for interim relief pursuant to section 128 of the Employment Rights Act 1996. Such a claim does not require Acas pre-claim conciliation.

4. The Claimant presented a subsequent claim under claim number 2204302/2021 against the original respondents which was accepted.

PREVIOUS POSTPONEMENTS

5. The interim relief hearing had been postponed several times prior to 4 October 2021 as set out below. This is notwithstanding the provisions of section 128(5) of the Employment Rights Act 1996 which say that: "*The tribunal shall not exercise any power it has of postponing the hearing of an application for interim relief except where it is satisfied that special circumstances exist which justify it in doing so."*

6. The first hearing scheduled to take place on 5 August 2021 was postponed by me following an application by the Respondent. The tribunal administration staff contacted the Respondent on 4 August 2021 to ask if the Respondent planned to attend the hearing. The Respondent's representative had no knowledge of claim number 22005164/2021 and had not received the requisite seven days' notice of the hearing (section 128(4) of the Employment Rights Act 1996). The Respondent made an urgent application for postponement on that basis.

7. I dealt with the application that day and re-scheduled the hearing for 12 August 2021. I instructed it should take place by video, and start at 12 pm to accommodate the Claimant's request for a disability-related adjustment. A French interpreter was also to be booked

8. The Claimant wrote to the tribunal on the same day 4 August 2021 to say she was not available on 12 August 2021 date, so I changed the date to 20 August 2021.

9. On 20 August 2021, the Claimant was unable to attend the hearing due to technical issues with her ability to access a video hearing. I conducted a Telephone Case Management Hearing with the parties (with the French interpreter) instead and re-scheduled the hearing for 15 September 2021, in person, starting at 12 pm and with a French interpreter. The date was agreed with the parties. The delay of nearly one month was to accommodate the Claimant's holiday plans.

10. I also made various orders regarding disclosure and the preparation of a bundle. This included a order for disclosure against two third parties to try and obtain the recording of the Claimant's calls on 30 June 2021.

11. Two days before the next hearing date, on 13 September 2021, the Claimant applied for a postponement on the basis that she suspected she had Covid 19. She did not provide any medical evidence. The Respondent did not object to the postponement and I therefore granted it. The hearing was - rescheduled for 4 October 2021. In the letter sent to the parties on 13 September 2021, I said:

"No further postponements will be permitted without evidence of a positive COVID test result or other medical evidence. If the Claimant does not attend the hearing, there is a risk that the application for interim relief will be struck out. The respondent may also wish to make an application for a costs order."

DECISION TO PROCEED IN THE CLAIMANT'S ABSENCE

12. On Friday 1 October 2021 at 17:09, three days before the hearing, the Claimant emailed the tribunal asking for hearing to take place by video saying this was because she still had Covid 19 symptoms and she had to isolate. She attached an Isolation Note dated 1 October 2021 confirming she had been told to isolate until 11 October 2021. She did not attach proof of a positive test for Covid.

13. On the morning of the hearing, Monday 4 October 2021 at 9:04, the Claimant sent the tribunal an email requesting a postponement saying it was "*because I have fever, feeling fainted and I have a headache*."

14. I sent a letter to the Claimant refusing the postponement request saying the following:

"The Claimant's request for a postponement has been referred to Employment Judge E Burns who has decided not to grant it.

It is incumbent on the tribunal to ensure that cases are heard fairly and justly as set out in the overriding objective. This includes avoiding delay, so far as compatible with proper consideration of the issues.

This is the third late request for a postponement made by the Claimant. In response to her second request, the Claimant was informed that she would need to provide medical evidence to support any further postponement requests. Although she has provided evidence that she has been told to self isolate, she has not provided evidence that she has tested positive for Covid. Given that she started to experience symptoms on or around 11 September 2021 and it is now 4 October 2021, she has had ample opportunity to get a test to find out if she does indeed have Covid.

Employment Judge E Burns does not order the Claimant to attend the hearing. She clearly cannot do that. However, the tribunal arrange a CVP link so that Ms Messi can join by video if she is able. If the Claimant is unable to join, it is likely that Employment Judge E Burns will consider the application for interim relief in the Claimant's absence. An interim relief hearing is not a full hearing. Decisions on interim relief are primarily made on the basis of submissions rather than evidence. The tribunal does not make findings of fact, although it can assess the likelihood of certain facts being proved. The Claimant has had an opportunity to send the evidence she wishes to rely on to the respondent and it has been included in the bundle. In addition, she has put forward many of her points in writing already. If the Claimant has prepared any further written submissions, she can send these to the tribunal by email to londoncentralet@justice.gov.uk marked FAO Employment Judge E Burns."

15. Joining instructions for a CVP hearing were sent by email to the Claimant. The Claimant replied witha further email to the tribunal at 11:19 headed "Written submissions FAO Employment Judge Burns if the hearing goes ahead" which contained her written submissions.

16. The hearing started at 12.00 with the Respondent's representative attending in person. The French interpreter also attended in person. Although we kept the CVP video link open through, the Claimant did not attend.

17. When asked for his comments, the Respondent's representative said he would like the hearing to proceed in the Claimant's absence.

18. In reaching my decision to proceed in the Claimant's absence, I took into account that this was an interim relief hearing and the Claimant's main claim would not be prevented from continuing.

19. The Respondent had prepared a bundle of documents of 183 pages that included all of the documents that the Claimant had asked him to include. He also had with him the recordings that had been disclosed in response to the third party disclosure order

20. I decided the hearing should proceed in the Claimant's absence, largely for the same reasons set out in my letter sent earlier that day. I also noted that subsequent to that email, the Claimant had sent written submissions.

21. I was satisfied that the Claimant had been given sufficient opportunity to provide me with all the relevant information in her possession and a summary of her arguments in support of her application. In addition, she would have the opportunity to apply for reconsideration of my decision if there was anything I had omitted to consider.

22. I weighed up the prejudice to the Claimant of proceeding in her absence, against the prejudice to the Respondent of further delay and decided the

balance was in favour of proceeding. I considered that proceeding would be fair and just and therefore in line with the overriding objective.

23. Having heard submissions from the Respondent, I reserved my judgment in order to enable me to prepare a written decision with full reasons for the benefit of the Claimant. The Respondent then invited me to award the Respondent the costs of attending the hearing, being limited to £2,000. The application was made on the basis that the Claimant's application had little or no prospects of success (under Rule 76(1)(a) and/ or (b)) and that she ought to have been aware of that.

THE LAW

Interim Relief

24. The Claimant's claim for interim relief was made under section 128 of the Employment Rights Act 1996. The section enables an employee to apply for interim relief where the employee presents a complaint that she has been unfairly dismissed and the reason (or if more than one, the principal reason) is that she made a protected disclosure pursuant to section 103A of the Employment Rights Act 1996.

25. Section 103A says: "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."

26. The statutory provisions dealing with what constitutes a protected disclosure and to whom they have to be made to qualify for protection are found in sections 43A – 43L of the Employment Rights Act 1996. The relevant provisions are set out below.

27. An application for interim relief must be submitted within 7 days of the date of termination of employment (section 128(2) Employment Rights Act 1996).

28. Only employees (as defined in section 230(1) of the Employment Rights Act 1996) can be successful in applications for interim relief. Workers (as defined in section 230(3)(b) of the Employment Rights Act 1996) are excluded from the right.

29. When dealing with an application for interim relief, the key question is found at section 129(1)(a) of the Employment Rights Act 1996. I must consider whether it appears that is it likely that the tribunal will, on final determination of this claim, find that the reason the Claimant was dismissed was because she made a protected disclosure.

30. "Likely" is this context means that there is a *"pretty good chance of success"* at the final hearing (*Taplin v C Shippam Ltd* [1978] ICR 1086, EAT). A pretty good chance is more than simply on the balance of probabilities and requires a significantly higher likelihood (*Ministry of Justice v Sarfraz* [2011] IRLR 562, EAT).

31. This test applies to all elements of the claim, including for example, whether the claimant is an employee or worker (*Simply Smile Manor House Ltd and ors v Ter-Berg* [2020] ICR 570. EAT).

Employment Status

32. According to section 230(1) Employment Rights Act 1996 an "employee" is "an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment.'

33. A contract of employment is defined in section 230(2) of the Employment Rights Act 1996 as "a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing."

34. Section 230(3) of the Employment Rights Act 1996 states that a ""worker" is an individual who has entered into or works under (or, where the employment has ceased, worked under)—

    (a) a contract of employment, or

    (b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual."

35. The label that the parties may put on an arrangement is not determinative and it may be necessary to consider the reality of what happened in practice and look to other communications between the parties rather than rely on the contractual documentation entered into between the parties (*Uber* BV *and others v Aslam and others* [2021] UKSC 5).

36. When considering employment status, there is not a single determinative test which a tribunal is required to apply. Instead, it is a matter of judgment based on the particular facts and circumstances in each case. I should consider such matters as:

    (i) whether there is a mutual obligation such that the respondent is obliged to provide the claimant with work and the claimant is obliged to undertake work when required to do so

    (ii) whether the obligation is one of personal service

(iii) the degree to which the claimant has agreed to be subject to the respondent's control

(iv) whether the other provisions of the contract / nature of the relationship are consistent with it being a contract of service

37. The term Agency Worker is defined in regulation 3 of the Agency Worker Regulations 2010 as "*an individual who*—

(a) *is supplied by a temporary work agency to work temporarily for and under the supervision and direction of a hirer; and*

(b) *has a contract with the temporary work agency which is*—

(i) a contract of employment with the agency, or
(ii) any other contract with the agency to perform work or services personally."

38. An agency worker can be an employee or a worker of the agency. This can be on an ongoing basis, under what are commonly referred to as 'umbrella' contracts or only while being supplied to a hirer.

Protected Disclosures

39. Section 43A confirms that a "protected disclosure" means a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H.

40. Section 43B(1) says 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—

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

41. Sections 43C to 43H deal with various scenarios in which a disclosure might be made in order for it to be considered to be a qualifying protected disclosure.

Costs

42. The tribunal rules enable a legally represented party in employment tribunal litigation to make an application for a cost order.

43. When considering whether or not to award costs, the relevant tests (known as the "threshold test") which the tribunal must apply are found in Rule 76 which says:

> *(1) "A Tribunal may make a costs order or a preparation time order, and shall consider whether to do so, where it considers that—*
>
> *(a) a party (or that party's representative) has acted …. unreasonably in either the bringing of the proceedings (or part) or the way that the proceedings (or part) have been conducted; or*
>
> *(b) any claim or response had no reasonable prospect of success;*

44. The tribunal must consider an application in three stages:

- I must first decide whether the relevant threshold test is met;
- If I am satisfied the relevant threshold test has been met, I should then decide if I should exercise my discretion to award costs; and
- I should then decide the amount of the costs to be awarded

Each case depends on the facts and circumstances of the individual case.

45. Where a costs application is based on the merits of the case, I should take into account what the party knew or ought to have known about the merits of the case.

46. A factor relevant to the exercise of my discretion may be whether there has been any warning of a risk of costs, but such a warning is not a prerequisite to the making of an order; nor is it a prerequisite that the receiving party must have put the paying party on notice of any application.

47. Rule 84 is also relevant. It says:

> *"In deciding whether to make a costs, preparation time, or wasted costs order, and if so in what amount, the Tribunal **may** have regard to the paying*

party's (or, where a wasted costs order is made, the representative's) ability to pay." (emphasis added)

48. I emphasise the word "may" because the tribunal is permitted but not required to have regard to the means of the party against whom the order is made. A tribunal can make an award even if the paying party has no ability to pay, provided that the tribunal has considered means.

ANALYSIS AND CONCLUSIONS

Introduction

49. I have heard no evidence and am not making, or purporting to make, any findings of fact. There are some matters that appear to be uncontroversial and unlikely to be in dispute, but I am conscious that I may be wrong about these matters and/or the position may change.

50. I was referred to various pages in the bundle during the Respondent's submissions. I also read the rest of the documents in the bundle. I refer to the relevant page numbers below.

51. In addition, the Respondent played me a recording. It told me that the recording was of an incoming call taken by the Claimant, on which she can be heard saying nothing for around 4 minutes and then says words to the effect of : "*This is my fucking life man Jesus. How do I hang up this Fucking Bitch? Why is she still there? If somebody doesn't answer your call why is she still there. Fucking hell.*" I was able to hear these words being spoken.

52. The Claimant sent the tribunal four files said to be digital recordings, but I was unable to get these to play. I did, however, read the transcripts of the recordings which were included in the bundle at pages 127 – 136.

Background and Areas of Dispute

53. It does not appear to be in dispute that the Claimant undertook work for the Respondent between 17 May and 30 June 2021. Her work was as a Call Handler based at home taking incoming calls from members of the public regarding the issue of Covid-19 'Passports'.

54. The Claimant says she was an employee of the Respondent that was dismissed by the Respondent on 30 June 2021. The Respondent says that this is not correct. It says the Claimant was an Agency Worker engaged by it to work on a temporary assignment for Hinduja Global Solutions ("HGS") and it was the assignment that was ended on 30 June 2001. The Respondent also says that the Claimant was a worker and not an employee.

55. The Claimant informed the tribunal in an email dated 19 July 2021 that she was relying on two protected disclosures (16C). Her email said:

"I made the following protected disclosure in the public interest to HSE, EHR (sic) and the CEO by invoking health and safety regulations and my employer and hgsuk to comply accordingly with providing employees with a safe working environment free form discrimination and to make reasonable adjustments while working from home on 29.06.2021.

I made protected disclosure in the in the public interest to the ico, cc both respondents CEO and HR when my former manager Lucy Goring shared excessively me and colleagues sensitive information without our consent such is a breach of GDPR and data policies on 29.06.2021."

The Respondent's position is that these disclosures were not made.

56. The Claimant says that the reason for the termination of her employment was because she made the protected disclosures.

57. The Respondent says that the reason it terminated the Claimant's assignment with HSG was not because she made a protected disclosure, but because HGS asked it to terminate the assignment due to her conduct on 30 June 2021. Specifically, she had a number of silent calls she did not report and she was recorded using abusive language during a call.

Employment Status and Dismissal

58. The bundle includes a copy of a contract dated 31 March 2021 between the Respondent and HGS whereby the Respondent agrees to supply temporary workers to HGS to perform the role of Customer Service Adviser (53-55). The contract confirms that the client (HGS) is responsible for the supervision, direction and control of any temporary worker assigned to them.

59. The bundle also includes Terms of Engagement entered into between the Claimant and the Respondent (57 – 61). The document bears the Claimant's electronic signature and is dated 11 May 2021.

60. The document is headed "Terms of Engagement for Agency Workers (Contract for Services – PAYE). The Claimant is defined as "the Agency Worker" and the Respondent is defined as the "Employment Business". It includes the following provision:

"2.2 During an Assignment, the Agency Worker will be engaged on a contract for services by the Employment Business on the terms of this Contract. Nothing in this Contract (or Assignment) shall mean that the Agency Worker is an employee of either the Employment Business or the Client."

2.3 The Agency Worker is engaged and supplied as a worker, and as such is entitled to certain statutory rights, however, nothing in this Contract

shall be construed as giving the Agency Worker rights in addition to those provided by statute for workers unless where expressly stated." (57)

61. "Assignment" is defined as meaning "assignment services to be performed by the Agency Worker for the Client for a period of time during which the Agency Worker is supplied by the Employment Business to work temporarily for and under the supervision and direction of the Client."

62. At clause 3.1, the Terms of Engagement say:

"*The Agency Worker shall not be obliged to accept any Assignment offered by the Employment Business*."

63. Under the Terms of Engagement, the Agency Worker is entitled to annual leave, pursuant to the Working Time Regulations 1998. There is no entitlement to sick pay, although at clause 8.1, the Terms of Engagement acknowledge that the agency worker may be eligible for Statutory Sick Pay, provided that s/he meets the relevant statutory criteria. Clause 9.1 says: "Any of the Employment Business, the Agency Worker or the Client may terminate the Agency Worker is Assignment at any time without prior notice or liability." (59 – 60)

64. The bundle also contains the Assignment Details Form which according to Mr Brill applied to the Claimant's role. It gives the name of the Client as HGS (62). I note that the version in the bundle is not signed by the Claimant.

65. The Assignment Details Form confirms an assignment starting on 11 May 2021 with a likely duration until 11 August 2021 with the location of work being home-based. According to this document, the Claimant was required to work 37.5 hours per week on rotational shifts between 7 am – 11 pm on 5 days between Monday to Sunday.

66. In an email to the tribunal dated 20 August 2021 and during the Telephone Case Management Hearing on 20 August 2021, the Claimant told me she had signed a fixed term contract of employment on the Respondent's portal on 2 June 2021. The Respondent disputes this and says such a document does not exist. The Claimant did not provide a copy of this document to be included in the bundle or a screen shot of the portal.

67. The Claimant did provide copies of several emails between her and members of the Respondent's staff. The correspondence I have seen suggests that the Claimant was allocated a Team Leader from HSG and that it was solely up to HSG to determine her hours of work and rota and to approve her holidays.

68. The Claimant however appears to have wanted to agree a later start time due to the side effects of medication, and requested a back rest. She raised

this with the Respondent. She was initially told by Patrick MacDonald that the hours of work could not be changed as it was solely up to HSG to decided these. He confirmed, however, that subject to approval of the particular backrest identified, the Respondent was happy to purchase / reimburse her for the backrest (67).

69. I note that in an email dated 1 June 2021, Mr McDonald asks the Claimant:

"*Could I also please request that any correspondence is directed to Cordant (myself is fine) as we are your employer, not HGS*."

70. On 7 June 2021, Jane Cihlar, emailed the Claimant to confirm that:

"*After receiving medical confirmation that you require an alteration to your working hours, this has been discussed with the client and it has been agreed that they can accommodate a start time of no earlier than 10:00*." (176)

71. I was also provided with correspondence in connection with the termination of her assignment. This was requested by HSG (see further below). A member of the Respondent's staff, Nicola Burgin informed the Claimant of the termination of the Assignment with HSG.

72. Subsequently, Ms Cihlar offered to meet with the Claimant after the termination of the assignment and, at her request, sent her a number of policies. This included the Respondent's Equality and Diversity Policy, Whistleblowing Policy, Bullying and Harassment Policy and Complaints Policy – Contract for Services. It did not include a Disciplinary and Grievance policy because, according to Ms Cihlar's cover email, "*you are engaged on a Contract for Services and, as such, these policies are not applicable to you. They are only relevant to those with employee status*."

73. Without making a finding of fact, the documentation supports the Respondent's contention that the Claimant was an agency worker assigned to work under the direction of HSG. It also supports that the Respondent's contention that what was terminated was the assignment with HSG, rather than the Respondent's overall relationship with the Claimant.

Protected Disclosures

74. Although the Claimant's email to the tribunal mentions two protected disclosures made on 29 June 2021, she has not provided copies of these and I have not seen them. The Claimant has sent a number of emails directly to the tribunal attaching evidence, but none of them attach emails containing disclosures made on 29 June 2021.

75. Dealing first with the protected disclosures said to have been made to "*HSE, EHR (sic) and the CEO*," I have assumed that the reference to the HER is

to the EHRC and the concerns were to do with the Claimant's request for a for a back rest and disability adjustments.

76. I have seen various emails where these matters are discussed with members of the Respondent's staff prior to the termination of the Claimant's assignment (66, 67, 70, 163, 176 and 178). There is also discussion of these matters on the covert recordings. The Claimant refers in the correspondence to taking advice from the EHRC and ACAS, but not to making any protected disclosures to them or the HSE. None of the emails I have seen meet the requirements for a protected disclosure.

77. I have also seen reference to the Claimant being asked not to send emails directly to the CEO (68 and 129) but I have not seen an email addressed to the CEO of the Respondent or HGS which would meet the requirements of a protected disclosure.

78. Turning to the purported data breach protected disclosure, the only email I have seen which predates the date and time of the Claimant's termination of assignment is an email dated 27 June 2021 which the Claimant sent to the ICO at 9:35:23 pm complaining that Lucy Goring of HGS has committed a data breach (71). The Claimant asks the ICO to investigate the breach.

79. This email appears to contain the requisite information required for a protected disclosure. Having been made directly to a prescribed person would appear qualify under section 43F of the Employment Rights Act 1996, providing the Claimant can meet the 'reasonable belief' and 'public interest' tests. The email says that the breach involved the Claimant's data and that of other colleagues, which supports the Claimant's contention that it was made in the public interest.

80. I note that the email is not copied to anyone at the Respondent or HGS. The Claimant forwarded the email to various people at HGS and the Respondent on 30 June 2021 at 3:49 pm, after the termination of the assignment (70).

Reason for Termination

81. I have seen a copy of an email exchange between the Claimant and Nicola Burgin, Business Manager for the Respondent confirming the termination of her assignment on 30 June 2021 with immediate effect. (161 - 162). The email exchange suggests that Ms Burgin spoke to the Claimant between 14:29:04 and 14:37:05 and relayed this information to her verbally.

82. The Respondent says that the reason for termination of the Claimant's assignment with HSG was because HSG requested this because the Claimant had some silent calls that had not been reported correctly and then was recorded using abusive language on a call.

83. A copy of the email making this request was also contained in the bundle. The email is dated 30 June and timed at 14:20. It is from a member of HSG staff and send to a member of the Respondent's staff. It says:

"As discussed, TM was dipchecking calls, [the Claimant] was identified as having silent calls, on picking up with her she confirmed yes she'd had silent calls however hadn't raised it in line with the process; with TM and IT.

Furthermore, a call has been picked up where [the Claimant] has been clearly heard saying the below abusive language. Unsure if the actual caller was still on the line….

The below is not acceptable. And for this reason, can you please go ahead and separate [the Claimant] with immediate effect." (63)

84. The transcript of the covert recording made by the Claimant of her telephone call with Nicola Burgin confirms that the Nicola Burgin told the Claimant that the reason for terminating the assignment was because the Claimant had some silent calls that had not been reported and there had been a call picked up where she had been overheard using some abusive language (136).

Analysis and Conclusions

85. In order to succeed in her application for interim relief, I must be satisfied that the Claimant has a pretty good chance of succeeding in her claim that she was an employee of the Respondent who was dismissed because of having made protected disclosures.

86. The documents I have seen support the Respondent's contention that:

(a) the Claimant was an agency worker placed by it with HSG for a temporary assignment;

(b) the assignment, rather than the overall relationship between the Respondent and the Claimant was brought to an end on 30 June 2021; and

(c) the reason for this was because HSG asked the Respondent to end the assignment for the reasons set out in its email to the Respondent at page 63 of the bundle.

87. The alleged recording of the Claimant using abusive language has been disclosed and provides further support to the Respondent's position. In contrast, the Claimant has not been able to provide copies of the purported protected disclosures that she says were the real reason for the termination of her employment, nor do the covert recordings she made support her position.

88. I therefore conclude that the Claimant's application for interim relief should fail.

Costs Application

89. I am also awarding the Respondent costs of £2,000.

90. In my judgment, the Claimant has pursued the claim for interim relief unreasonably knowing that the claim had no reasonable prospects of success. The threshold tests in Rule 76(1)(a) and Rule 76(1)(b) are met. In addition, I consider she has acted unreasonably in the way she has conducted the proceedings.

91. This is not the first time the Claimant has made an unsuccessful claim for interim relief. She did the same in a claim brought against Serco Group Plc under claim number 1401285/2021. The claim was heard on 10 May 2021. A judgment with full reasons was issued in that case.

92. The legal issues in that case and this case were very similar. In both cases, the respondents prepared detailed written submissions containing accurate summaries of the law. The Claimant has had the written submissions since 20 August 2021. As such, I consider the Claimant ought to have realised, even though she is not a lawyer, but representing herself, that her claim on this occasion would fail.

93. In this case, the Respondent has produced very cogent evidence that supports its version of events, all of which has been disclosed to the Claimant at the earliest opportunity. She has nevertheless continued to pursue the application.

94. In addition, tuning to the issue of her conduct, in both the earlier case and this case, the Claimant has sought to argue that the employment documentation provided by the respective respondents should not be relied upon because there is other documentation. She accused them both of underhand behaviour in this regard. She has not, however, produced the documentation, despite being in a position to produce covert recordings of telephone calls and numerous screen shots. I therefore conclude that she the Claimant has deliberately sought to misdirect the tribunal on this point.

95. I have also formed a similar view about the Claimant's letter to the tribunal date providing further and better particulars of her purported protected disclosures. Although she has had ample opportunity to provide copies of the relevant communications referred to in that letter, she has failed to do so. I conclude that her letter is another attempt to misdirect the tribunal.

96. In light of my conclusions, I consider it is fair and just to make a costs award against the Claimant. The Respondent has had to defend a poorly

conceived application which the Claimant likely knew would fail, and one based on known false allegations.

97. As the hearing proceeded in the Claimant's absence, I have not been able to enquire as to her means before making a costs award. The Respondent's representative has limited his application to 10 hours at £200 per hour, being the time spent preparing for the hearing on 4 October 2021. In the circumstances, I have decided not to take into account the Claimant's means to pay and to award the full £2,000.

_____

Employment Judge E Burns
1 November 2021

Sent to the parties on:

01/11/2021

For the Tribunals Office