



EMPLOYMENT TRIBUNALS

First Claimant: Ms K Steele
Second Claimant : Ms C Hastie

Respondent: Comfort Homecare Ltd Trading as Nestora Home Care

14 November 2024

Before: Employment Judge Shepherd

Appearances:

For the Claimants: In person

For the Respondent: Mr Peel, consultant

JUDGMENT ON THE CLAIMANTS' APPLICATION FOR INTERIM RELIEF

The claimants' applications for interim relief are refused.

REASONS

1. The claimant represented themselves and the respondent was represented by Mr Peel. The name of the respondent is amended by consent to Comfort Homecare Ltd Trading as Nestora Home Care.
2. I was provided with a bundle of documents compiled on behalf of the respondent consisting of 36 pages I also considered the further statement, chronology and other documents provided by the claimants.
3. This was an application by the claimants for an order for interim relief on the basis of the claim for dismissal by reason of making a protected disclosure under section 103A of the Employment Rights Act.

4. The claimants presented a claim to the Employment Tribunal on 26 September 2024.
5. The claimants apply for interim relief under section 128 of the Employment Rights Act 1996.
6. I have to decide whether it appears to me likely that, on determining the complaint, the claimants will succeed in establishing that the reason (or if more than one the principal reason) for their dismissal was they had made a protected disclosure.
7. The claimants have been employed by the respondent for less than two years.
8. The decision as to whether it is likely that the claimants will succeed at a full hearing of the unfair dismissal complaints pursuant to section 103A does not require me to make any findings of fact and I must make the decision as to the likelihood of the claimants' success at the full hearing on the material before me.
9. I have considered the claim form and grounds of complaint. I have considered the documents provided to me and the submissions from the claimants and the respondent.
10. The basic task I have to decide is to make a broad summary assessment on the material available doing the best I can with the untested evidence from both parties to enable me to make a prediction about what is likely to happen at the eventual hearing before a full Tribunal.
11. When considering the "likelihood" of the claimants succeeding at the Tribunal, the test to be applied is whether they have a "pretty good chance of success". In the case of *Taplin v C Shipham Ltd* 1978 ICR 1068 the Employment Appeal Tribunal expressly ruled out possible alternative tests such as "a real possibility" or "reasonable prospect" of success. The burden of proof in an interim relief application is intended to be greater than that at the full Tribunal where the Tribunal need only be satisfied on the balance of probabilities that the claimants have made out their case.
12. In the claim to the Tribunal the claimants referred to the lack of procedure and that other employees having also been carrying out the clocking in misconduct of which they were accused. Mr Peel submitted that this was an admission of the misconduct.

13. The letters of dismissal were headed “short service dismissal for gross misconduct” and the allegations were of “gross misconduct, namely falsifying logging in and out documents” and “Failure to follow reasonable management instructions whereby you refused to attend obligatory investigation and disciplinary meetings without a substantial reason”.

14. The claimants indicated that they have now obtained further employment and are awaiting the commencement of that new employment. They did not want to go back to work for the respondent. In those circumstances, it would not be appropriate to make an order for continuation of the claimants’ contract of employment with the respondent.

15. The claimants may believe that their dismissals were for the reason or the principal reason of making a protected disclosure. They may succeed at the substantive hearing but there is nothing within the material available to me that would enable me to conclude that it is pretty likely that the claims of dismissal by reason or principal reason of making protected disclosures will succeed. There are a number of disputes about factual issues that will need to be determined by the Tribunal at the full hearing.

16. In all the circumstances, the application for interim relief is refused.

Employment Judge Shepherd

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