



# EMPLOYMENT TRIBUNALS

## Claimant

Mr S Chowdhury

## Respondent

Ealing Hospital NHS Trust

v

Heard at: Watford

On: 2 July 2010

Before: Employment Judge Mahoney

## Representation

For the Claimant: Miss H. Mountfield QC  
Mr J Laddie, Counsel

For the Respondents: Mr A Sharland, Counsel

## Judgment On Interim Relief Application

### The application

1. This is an application by Miss Chowdhury against her former employer Ealing Hospital NHS Trust for interim relief under Section 128 and 129 of the Employment Rights Act 1996 on the basis that she asserts that it is likely that the tribunal hearing the case will find that the reason for her dismissal was that specified in Section 103A of the Employment Rights Act ("ERA"), namely that it was because she had made protected disclosures.

### The law

2. I will not for the purposes of this oral judgment recite the relevant provisions of Section 128(1), 129(1) and 103A/ERA.
3. The legal framework for an application of this nature, which is agreed between the parties, subject to the point being disputed on appeal, is that on the basis of the long standing authority of Taplin v Shippam [1978] ICR

1068 recently applied in Raja v The Secretary of State for Justice in 2010 the test that I have to apply is whether there is a "pretty good chance" of the claimant succeeding in her claim of automatic unfair dismissal on the grounds of having made protected disclosures.

4. The other relevant legal authority is Kuzel v Roche Products Limited [2008] ICR 799 a judgment of the Court of Appeal, which sets out the application of the burden of proof in such a case at the full merits hearing, namely:
  - 4.1 Has the claimant shown there is real issue as to whether the reason put forward by the employers, namely conduct, was not the true reason? Has she raised some doubt as to that reason by advancing the Section 103A reason?
  - 4.2 If so, have the employers proved their reason for dismissal?
  - 4.3 If not, have the employers disproved the Section 103A reason advanced by the claimant?
  - 4.4 If not, dismissal is for the Section 103A reason.
  - 4.5 At paragraph 61 of the law report the Court of Appeal emphatically rejected the employer's contention that the legal burden was on the claimant to prove that the protected disclosure was the reason for dismissal. An employer who dismisses an employee has a reason for doing so. He knows what it is. He must prove what it is.
  - 4.6 The tribunal is also aware on the authority of Dandpat v University of Bath 2010 EWCA Civ 205 that a comparatively high test in relation to interim relief has to be satisfied and if interim relief is granted the respondent is irretrievably prejudiced by the obligation to pay the claimant until the end of the proceedings.

#### Evidence

5. I had before me witness statements from the claimant; Mr Stanton, the director of HR of the respondent; Miss Garlick, the assistant director of operations who carried out the investigation and Mr Coleman, head of operations who dismissed the claimant.
  - 5.1 By agreement only Mr Coleman was cross-examined.
  - 5.2 There were various documents that it was agreed I should read and various notes of interviews which I perused.

Submissions

6. I have had the advantage of very helpful detailed submissions in writing from counsel on both sides, supplemented by oral argument.

Conclusions

7. In applications of this nature it is not appropriate for the tribunal to make any findings of fact and in this particular case I feel it is inappropriate for me to make any reference to the cogency of any evidence put before me. On the basis of the evidence put before me, the cross-examination of Mr Coleman and the submissions of both parties, I am satisfied that the claimant does have a "pretty good chance" of success in a claim for automatic unfair dismissal on the grounds of her making a protected disclosure and in those circumstances I am going to grant the application for interim relief.
8. I make the following orders:-

**ORDERS**

1. The claims are consolidated.
2. The case management discussion listed for 21 July 2010 at 2pm will have a time allocation of 2 hours.

*John Mahoney*

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Employment Judge Mahoney

Sent to the parties on:

*9 July 2010*  
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*7. Cuth*  
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For the Secretary to the Tribunals