Interim relief granted to dismissed employee who used trade union to lodge grievance about COVID-related wage cut and lack of PPE

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Interim relief granted to dismissed employee who used trade union to lodge grievance about COVID-related wage cut and lack

of PPE

What does the law say?

Employees who are dismissed because of their trade union membership or activities and/or because they have blown the whistle are able to claim that they have been automatically unfairly dismissed. They will also be entitled to apply for "interim relief" pending the final hearing of their claim. If they succeed in their interim relief application, the employment tribunal can order reinstatement or, failing that, order the employer to continue paying the employee until the final decision is made. Crucially, this money does not have to be repaid even if the employee ultimately loses their claim.

In an interim relief hearing, the employment tribunal won't hear evidence or make findings of fact. Instead, they will carry out a broad assessment of the evidence in order to reach a view as to whether the Claimant is likely to succeed in their claim at the final hearing. This means that they must have a "pretty good" chance of success on the basis of the material before the employment judge.

What happened in this case?

The Claimant worked for the Respondent, a high-end fruit and vegetable retailer based in New Covent Garden market. The Respondent's business was badly affected by the coronavirus pandemic. However, instead of taking advantage of the Government's furlough scheme, the Respondent proposed an all-staff pay cut of 25% plus one week's unpaid leave per month.

The Claimant's trade union lodged a grievance on his behalf stating that the proposed wage reductions were detrimental and that the health and safety of staff was endangered by a lack of PPE (notwithstanding that the COVID-19 secure guidelines for markets does not advocate the use of PPE for workers).

A few days later an all-staff meeting was held. The Claimant was excluded from the meeting and so he asked a colleague to record it for him. In the meeting, Mr Tanner (the Respondent's Chairman) made disparaging comments about the Claimant and the fact of the trade union's involvement. The colleague who had recorded the meeting for the Claimant was dismissed a few days after the meeting.

On 20 May 2020 the grievance hearing was held, and the Claimant made a new allegation of victimisation for having raised the grievance. On 18 June 2020, the grievance outcome letter rejected the complaints about the proposed pay cut and lack of PPE but failed to deal with the victimisation complaint. An internal appeal was also rejected and on 9 July 2020 the Claimant was dismissed during a 5.00am tea break.

What was decided?

The Claimant brought a claim alleging he had been automatically unfairly dismissed because of his trade union membership or activities and/or because he had made whistleblowing disclosures. He applied for interim relief.

Finding in the Claimant's favour, the employment judge decided that it was likely that he would be able to show that he had been dismissed because of his trade union membership or activities. Unusually, the tribunal agreed to hear evidence in the form of the recording of the staff meeting because it was highly relevant. The employment judge decided that it was clear from the recording that Mr Tanner was irritated by the fact the Claimant had sought advice from the trade union and that he had a great deal of antipathy towards trade unions. The employment judge also gave weight to the fact that the Respondent had dismissed the colleague who had recorded the meeting for the Claimant.

However, the employment judge was not persuaded that the Claimant would be able to show that he was dismissed because

he had made whistleblowing disclosures. It would be for the employment tribunal to decide whether the Claimant would have been dismissed if he had raised the dangers to health and safety with the Respondent directly without having involved the trade union.

The Respondent agreed to reinstate the Claimant.

What does this mean for employers?

This case demonstrates what a powerful weapon interim relief can be for a claimant. In the midst of the pandemic, and with a backlog of 45,000 employment tribunal claims, employees may be more willing to pursue interim relief in order to secure their income until the final hearing.

Although dismissals for trade union-related reasons are relatively rare, where an employee has been dismissed after having made a protected disclosure (e.g. about COVID-related health and safety dangers), they may have a whistleblowing claim and be entitled to apply for interim relief. Employers should be mindful of this risk and ensure that the reason for any dismissal is unconnected to any protected disclosure.

This case also underlines the importance of conducting thorough COVID-19 risk assessments in consultation with staff. Where an employer does this, it is arguably more difficult for an employee to maintain that they had a reasonable belief that there was COVID-19-related danger to health and safety. In turn, this may mean that they have not made a protected disclosure at all.

Morales v Premier Fruits (Covent Garden) Ltd

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