Unfair dismissal: interim relief applications should be heard in public

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Unfair dismissal: interim relief applications should be heard in public

In Queensgate Investments LLP v Millet the Employment Appeal Tribunal (EAT) ruled that applications for interim relief should be heard in public, save where an order is made to

restrict publicity. This is the first appellant authority on this point, with BDBF acting for the successful respondent to the appeal.

What does the law say?

Interim relief is a powerful remedy open to claimants in a small number of specific claims for automatic unfair dismissal, namely where the dismissal is for one of the following reasons:

- making a protected disclosure (whistleblowing);
- trade union membership or activities; and
- activities as a representative for health and safety, collective redundancy, TUPE or working time purposes or as a pension scheme trustee.

Where a Tribunal grants interim relief, the consequences for the employer are particularly onerous. The Tribunal will order that the employer either reinstates or reengages the claimant, pending the outcome of the unfair dismissal claim (which could be many months after the interim relief application hearing). If the employer is unwilling to do this, the Tribunal will order the employer to pay the claimant's wages as if the employment contract was continuing, again pending the outcome of the unfair dismissal claim. What's notable is that even if the claimant loses the unfair dismissal claim, they do not have to repay these sums to the employer.

Applications for interim relief have to made within seven days of the date of dismissal, with the hearing of the application following as soon as practicable thereafter. Interim relief will only be granted where the Tribunal is satisfied that the claimant is likely to succeed in their claim for automatic unfair dismissal. In practice, this means that the allegations surrounding the dismissal are ventilated at a much earlier point in proceedings than would otherwise have been

the case.

BDBF has advised on many applications for interim relief. In each case, the hearing of such applications has been held in public. However, until now, there has been no binding authority on this point.

What was decided?

Put simply, the EAT's decision was that the Employment Tribunal Rules of Procedure 2013 (**ET Rules**) require interim relief hearings to be held in public. The EAT ruled that interim relief applications involve the determination of a preliminary issue and the ET Rules provide that hearings of such matters are held in public.

The EAT also noted that the principle of open justice required hearings to be held in public absent any clear statement in the ET Rules to the contrary (and there was no such statement). Furthermore, holding interim relief applications in private could infringe a claimant's right to a fair and public hearing and/or freedom of expression under the European Convention on Human Rights.

Therefore, the default position is that an interim relief application must be heard in public, although an exception may be made where an order is made restricting publicity of the claim. However, such orders are not made lightly. A risk that the employer will suffer commercial embarrassment is not enough. Instead, the employer would need to demonstrate that publicity could have catastrophic consequences for the business, such that justice could not be done unless the hearing was held in private. The burden is on the employer to prove such circumstances exist and compelling evidence must be provided with the application.

What does this mean for employers?

If you are on the receiving end of an interim relief

application, you should work on the assumption that the hearing will be held in public. This is something you will need to factor into your overall litigation strategy, particularly where the allegations are potentially damaging to your business.

In appropriate cases, you may be able to secure an order restricting publicity. Where this is not possible, and you wish to proceed with defending the application, then you may wish to consider engaging the services of a media consultant to optimise your media strategy and protect your interests. Alternatively, you may take the commercial decision to settle the claim. Here, it's important to remember that the hearing will take place quickly and so the time available to negotiate a settlement will be very limited.

The key point is that time will be extremely short and legal advice should be sought as soon as possible.

Queensgate Investments LLP v Millet

If you would like to know more, or your business needs advice on how to respond to an interim relief application, please contact Amanda Steadman (amandasteadman@bdbf.co.uk) or your usual BDBF contact.

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