



## EMPLOYMENT TRIBUNALS

**Claimant**

Mrs E Belson

v

**Respondent**

Jewellery Validation Services Ltd

## PRELIMINARY HEARING

**Region:** London Central

**On:** 19 April 2022

**Before:** Employment Judge Brown

**Appearances**

**For the Claimant:** In Person

**For the Respondents:** Mr T Belson, Director

## JUDGMENT

**The Judgment of the Tribunal is that:**

1. It is not likely that, on determining the complaint to which the application relates, the Tribunal will find that the reason or principal reason for the Claimant's dismissal is that specified in s103A ERA 1996.
2. Interim relief is therefore not appropriate in this case.

## REASONS

**The Complaints and Interim Relief Application**

1. By a claim form presented on 4 March 2022, the Claimant brought a complaint of automatically unfair dismissal as a result of making a protected disclosure. The claim contained an application for interim relief. This hearing was to determine that application.
2. Whilst witness statements were provided for the hearing, there was no live evidence. I had a witness statement from the Claimant. I had a witness statement from: Mr Timothy Belson, Director of the Respondent; from Mr Henrik Kjellin, the Respondent Company's Chairman; and from Mr Martin Griffiths, accountant, for the Respondent. Each party provided a Bundle of documents. Page references in these reasons refer to pages in their respective Bundles.

3. The Claimant was employed by the Respondent. She contends that she was dismissed summarily on 28 February 2022.
4. The Respondent contends that the Claimant was dismissed for the potentially fair reason of redundancy. The Claimant claims that the redundancy was a sham, and that she was not dismissed by reason of redundancy pursuant to s.139 ERA, but because of her alleged disclosures within s.103A ERA.
5. In the Claimant's claim form the Claimant said, "On the 28th of February I received an email from Tim Belson director and owner of Jewellery Validation Services Ltd that I have been made redundant with immediate effect without any notice period. I have been employed from 01.05.2016.... despite of Tim Belson's promise I learned in March 2021 (just two months after previous criminal case) that he is a subject of a new criminal investigation against him by Wilsons Solicitors for theft and embezzlement. I immediately started checking company documents and have discovered on the company bank accounts suspicious financial transactions both incoming and outgoing two days apart for a total £175,000.00 on the bank statement. The transactions appear to be a money laundering transaction. .... I am convinced that making me redundant with immediate effect was just another illegal action against me. It is an act of revenge for my whistleblowing about Tim Belson's illegal criminal activities to Wilsons Solicitors. It is why I am claiming Interim relief."
6. At a preliminary hearing on 31 March 2022 it was established that the Claimant was relying on the following 6 alleged protected disclosures:
7. The first disclosure was said to be made to Mr Martin Griffiths of Westell Accountants 29 August 2021 at 17:50. The parties agreed that Westell Accountants are the accountants for the Respondent company.
8. The second disclosure was said to be an email dated 2 September 2021 to the Chairman of the Respondent, Mr Henrik Kjellin.
9. The third disclosure was said to be made to Wilson Solicitors. The Claimant said that this firm now act for Mr Belson's brother and originally acted as family solicitors. Mr Belson said that Wilson Solicitors act for his sister. It was agreed by both parties that this firm does not act for the Respondent Company Jewellery Validation Services Ltd. The document relied upon is not dated and has no names or address on it, but the Claimant said she sent it at some point in September 2021.
10. The fourth disclosure was said to be information sent to Wilsons Solicitors. The Claimant said that she sent an official set of accounts for 2020 for the Respondent Company to Wilsons Solicitors on 30 September 2021.
11. The fifth disclosure was to the Respondent Company Chairman Mr Kjellin on 28 January 2022 saying: "*Hi, Please find attached JVS LTD Preliminary Accounts 2021. This doesn't make any sense sorry*".
12. The sixth disclosure was to Wilsons Solicitors on 28 January 2022, sending the preliminary accounts of the Respondent Company for 2021.

13. The parties also agreed, at that preliminary hearing, that Mr Belson was the dismissing officer.
14. I was told that Mr and Mrs Belson were married but are now divorced.

### **The Claimant's Case and Witness Statement**

15. The Claimant's witness statement said that Mr Belson and previous Companies of which he had been a Director had settled legal proceedings against them in January 2021. She said that, at the end of March 2021, she was informed that Mr Belson was subject of a legal investigation by Wilsons Solicitors regarding the disappearance of £91,500.00 from his disabled relative's account.
16. Regarding the first disclosure, the Claimant produced an email from her to Martin Griffiths, the Respondent's accountant, on 29 August 2021 at 17.50 which said, inter alia,

"Currently I am still an employee of JVS Ltd and a small shareholder in JDS Ltd (24% as per your confirmation)

As you are well aware Tim is currently from last year's insisting on putting all revenue through a JVS Ltd/Prestige Valuations and currently on accounts JVS LTD/Prestige doesn't have any single supplier.

While all Suppliers/Creditors invoices, business rent, business rates and bills (basically all Direct and all indirect cost of both business on JDS Ltd) that obviously leads to deliberate devaluation of my small shareholding.

My greatest concern now is the fact that I have been recently approached by Tim's sister and Tim's disabled brother, John Belson regarding his missing inheritance money.

I have been forwarded an email from their solicitor stating that Tim has informed their solicitor that John Belson's money was invested in his business and not available now.

....

As you know there was a Court order settlement of £300 k before 30.11.2020 and I can see there are some significant ingoing and outgoing transactions on JDS Ltd in November that Tim has refused to explain. It is my suspicion that Tim has used John's inheritance money to pay off the debt." P20 Claimant's documents.

17. In her witness statement, the Claimant said she had visited Mr Belson's relative's Care Home in Colchester on the 26 August 2021 and was told by the relative, in the presence of his care workers, that funds had been taken from his Trust Fund account without his permission or knowledge. She said that the relative had asked her to help him buy a second-hand iPad, because Mr Belson had told the relative that the relative did not have enough money in his account. The Claimant also said, in her witness statement, that she was informed that, in a telephone conversation on 13 August 2021, Mr Belson was asked to return the money, but said that the inheritance money was not available.
18. Regarding the second disclosure, the Claimant produced an email from her to Henrik Kjellin, Respondent Company chairman, saying that she was an employee and small shareholder of JVS limited. She said that Mr Belson had put all revenue

from his 2 companies through one company, with direct and indirect costs of both businesses through the other company. She said, That obviously leads to deliberate devaluation of my small shareholding.” P22 Claimant’s documents.

19. Regarding the third protected disclosure, the Claimant relied on an email sent to Wilson’s solicitors on 14 September 2021, p23 Claimant’s documents,

“Follow up your information from emails that I have received that Tim Belson has “invested” his relative money in Jewellery Direct Supply Ltd in 2020 where Tim is a the solo proprietor and according to Tim answer to solicitor that money are currently not available. I am a small shareholder in Jewellery Direct Supply Ltd. ( I have 24% of ordinary Shares) I am attaching the Jewellery Direct Supply Ltd. Ltd Profit and Loss operating account for January to October 2020 that clearly shows that Jewellery Direct Supply Ltd was making a loss. Please also see attached is Jewellery Direct Supply Ltd Bank Transactions report for November 2020 showing the suspicious transactions. 1. JDS Ltd has suspicious transactions made by Tim Belson on the Bank statement in November 2020 stating: incoming amount loan on 16.11.2020 of £175,000.00, follow up outgoing transaction on the same day of £50,000 with reference repayment of the loan, 3 days later on 19.11.2020 outgoing bank loan transaction of £97,023.00 and another outgoing transaction few days later loan on 24.11.2020 of £80,023 –Making in total outgoing of £227,046 within just a few days after receiving £175,000?!!! Which is possibly John and Tim’s combined inheritance funds. 2. Being aware of the fact that a Court order payment Settlement after previous legal case of £300k was made in November 2020 – I’ve have written email/statement to our accountant highlighting the suspicious nature of Bank transactions and expressing my serious concern. 3. Detailed Jewellery Direct Supply Ltd Accounts stating that on the 30.10.2020 ( just a few days before the time when Tim has decided to “invest “ his disabled relative money in his company) Jewellery Direct Supply Ltd business was making operating loss of £56,627.00; already had one business loan of £ 50,000 (received on 22.05.2020) and had other credit liabilities. In addition Jewellery Direct Supply Ltd doesn’t have any employees. Tim has “invested” his disabled relative money in a loss making business. Tim did not advise John of this transaction nor did he obtain John’s permission. Tim was fully aware that John can’t read or write –that is a true indication of Tim’s criminal intention, financial abuse and embezzlement.”

20. With regards to the fourth disclosure, The Claimant relied on a further email sent to Wilson’s solicitors on 1 October 2021, p 27 Claimant’s documents, saying, “Follow up my previous email please note that despite of the fact that I have previously alerted company accountant and company Chairman Official accounts of Jewellery Direct Supply Ltd for 2020 that just have been failed with Companies House are not showing investment of £91,500 from the Trust Fund. What is more that official accounts are stating that Jewellery Direct Supply Ltd made a Loss of £38,592 and business has “0” Employees. (Please see attached Official Accounts for 2020 that just have been failed with Companies House on the 30th of September 2021.)”

21. The Claimant also relied on an email she sent Mr Kjellin, the Respondent Company’s Chairman, on 10 November 2021, p28 Claimant’s documents. The email said,

“I am very stressed out by Tim’s reckless and unscrupulous business dealings (that I have countless amount of evidences)

Tim also has declared to me in December last year during our recorded conversation his plans to bankrupt JDS Ltd that I was obviously objecting during our conversation as I had enough after B&S Ltd case – so that all together was too much for someone like me who has just experienced clinical death and not feeling good.

Wilson's Solicitors are trying to protect inheritance of totally innocent and naïve people like James and Tim's disabled brother John, who's inheritance Tim is trying to steal from them!"

22. In her fifth alleged disclosure, the Claimant relied on an email she sent on January 2022 to Mr Kjellin. Her version of this, p29 Claimant's documents, said simply, "Please find attached JVS LTD Preliminary Accounts 2021. This doesn't make any sense sorry."
23. At the hearing it became clear, from the Respondent's documents, that this was not the full text of the email. The full text of the email suggested that the email exchange concerned the valuation of the Respondent company for the purposes of the divorce proceedings. Mr Kjellin said, " – any re-valuation is based on pre-divorce trading." P6 Respondent's documents.
24. I expressed concern about the Claimant's editing of the email exchange. I said that the parties should provide the full text of documents so as not to mislead the Tribunal.
25. In her sixth alleged disclosure the Claimant relied on an email to Wilson's solicitors on 28 January 2022, p30 Claimant's documents. The email said, "Please see attached 2021 preliminary accounts of Jewellery Direct Supply Ltd where allegedly £ 91.500 Trust fund money were invested showing a big loss of almost £162.000.00 whilst Jewellery Validation Service Ltd preliminary accounts showing a big profit of around £204.000.00. Those accounts made me incredibly anxious. I am so worry and I have expressed my greatest concern again to our Chairman but sadly with no effect."
26. The Claimant contends that Messrs Belson and Kjellin realized, after her persistent whistleblowing, that she would not allow them defraud potential investors into Jewellery Validation Service Ltd by misrepresenting the profitability of JDS Ltd and JVS Ltd, portraying a favourable and false valuation of Jewellery Validation Service Ltd. She refers to Jewellery Validation Service Ltd/Trading as Prestige Valuations and Jewellery Direct Supply Ltd accounts for 2021, Claimant's documents pages 31-34.
27. She contends that Jewellery Validation Service Ltd deals directly with members of general public as well as Insurance Brokers and Insurance companies. She says that she believed that that the true financial condition of Jewellery Validation Service Ltd was being deliberately concealed.
28. The Claimant also contends that her protected disclosure about Mr Belson's use of his disabled relative's money was made in the public interest because disabled vulnerable people who cannot properly read or write because must be safeguarded from being financially abused.

29. The Claimant also relies on an email dismissing the Claimant 28 February 2022. The email states, "We have had a meeting of The Board of Directors of Jewellery Validation Service Ltd and decided to manage our Accountancy systems in a different way to the current methods. The Board have therefore decided to make your position redundant with immediate effect..." p14 Claimant's documents.

### **The Respondent's Contentions and Evidence**

30. In summary, the Respondent disputes the truth of the Claimant's alleged disclosures. It says that her dismissal was by reason of redundancy and was nothing to do with any protected disclosures.

31. Mr Belson's witness statement said that the Respondent had appointed a new accountant, Gerard O'Driscoll, in summer 2021, who advised that the Claimant's role was redundant and her duties could be done by another employee in minimal time. The statement said that the Claimant had gone abroad to Antigua for 4 months in 2021 and that, when she returned, she said that her marriage to Mr Belson was at an end. His witness statement said that Mr and Mrs Belson appointed a mutual friend, Mr Kjellin, to mediate on the financial terms of the divorce.

32. The witness statement said, during the divorce settlement negotiations, it was agreed that the Claimant would be employed until June 2022, but that the Claimant and her son's salaries after November 2021 would come out of the divorce settlement.

33. Mr Belson contended that, therefore, the Claimant had accepted that her role was redundant.

34. He did not have any documents recording the negotiations, but said that these were conducted directly between the Claimant and Mr Kjellin. The lack of documentary evidence in this regard was unsatisfactory.

35. Mr Belson contended that the negotiations were derailed when he discovered that the Claimant and her new partner had had bought a property for £1.15M. He said that this made a massive difference to divorce settlement; instead of Mr Belson owing the Claimant £150,000, the Claimant would owe Mr Belson £400,000.

36. Mr Belson said that the Claimant did not accept the terms of the proposed settlement and that Mr Kjellin withdrew as a mediator.

37. He contended that this brought forward the Claimant's intended redundancy; the proposed arrangement had been that the money paid to the Claimant as salary would come out of settlement, but, as there would be no settlement from Mr Belson to the Claimant, her employment was ended.

38. Mr Kjellin submitted a witness statement to the Tribunal. This supported Mr Belson's broad chronology of the divorce negotiations. It said that Mr Kjellin had agreed to mediate the parties' separation, that it had been agreed that the Claimant would leave the Respondent company in June 2022, but that her salary after November 2022 would be part of any money that Mr Belson had to pay the

Claimant in the divorce settlement and that Mr Kjellin had resigned as mediator from 6 March 2022, when he discovered that the Claimant had not disclosed to him as mediator that she had bought a flat jointly with a Mr Henry, in which her share was worth £600,000.

39. The Claimant disputed this chronology and said that the settlement negotiations had ended in about November 2021.

### **Legal framework**

40. *Section 128 Employment Rights Act 1996* provides:

#### **'128. Interim relief pending determination of complaint**

(1) An employee who presents a complaint to an employment tribunal that he has been unfairly dismissed and –

(a) that the reason (or if more than one the principal reason) for the dismissal is one of those specified in –

(i) section 100(1)(a) and (b), 101A(1)(d), 102(1), 103 or 103A, or

(ii) paragraph 161(2) of Schedule A1 to the Trade Union and Labour Relations (Consolidation) Act 1992, or

(b) that the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was the one specified in the opening words of section 104(1) and the condition in paragraph (a) or (b) of that subsection was met,

may apply to the tribunal for interim relief.

(2) The tribunal shall not entertain an application for interim relief unless it is presented to the tribunal before the end of the period of seven days immediately following the effective date of termination (whether before, on or after that date).

(3) The tribunal shall determine the application for interim relief as soon as practicable after receiving the application.

(4) The tribunal shall give to the employer not later than seven days before the date of the hearing a copy of the application together with notice of the date, time and place of the hearing.

(5) 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'.

41. The question to be considered upon an application for interim relief is set out in *s129 ERA 1996*:

#### **'129. Procedure on hearing of application and making of order**

(1) This section applies where, on hearing an employee's application for interim relief, it appears to the tribunal that it is likely that on determining the complaint to which the application relates the tribunal will find –

(a) that the reason (or if more than one the principal reason) for the dismissal is one of those specified in –

(i) section 100(1)(a) and (b), 101A(1)(d), 102(1), 103 or 103A, or

(ii) paragraph 161(2) of Schedule A1 to the Trade Union and Labour Relations (Consolidation) Act 1992, or

(b) that the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was the one specified in the opening words

of section 104(1) and the condition in paragraph (a) or (b) of that subsection was met....”.

42. Interim relief can therefore be ordered where the Tribunal finds that it is likely that a final hearing will decide that the reason (or principal reason) for dismissal was the employee having made protected disclosures contrary to s 103A ERA1996. It is not available to an employee where the Tribunal considers their dismissal is likely to be found to have been unfair pursuant to s105 ERA 1996. S105 ERA is not one of the automatically unfair provisions mentioned in ss128 & 129 ERA 1996 in respect of which interim relief is available.
43. The meaning of the word 'likely' for these purposes has been considered in several cases. In *Taplin v C Shippam Ltd* [1978] IRLR 450, [1978] ICR 1068 EAT, decided under similar provisions relating to interim relief applications in dismissal for trade union reasons, the EAT (Mr Justice Slynn) held that it must be shown that the claimant has a 'pretty good chance' of succeeding, and that that meant something more than merely on the balance of probabilities. That approach to the word 'likely' has been followed in subsequent decisions, *Dandpat v University of Bath* (2009) UKEAT/0408/09 UKEATPA/1284/09 UKEATPA/1285/09 UKEATPA/1391/09 unreported at para 20, *Ministry of Justice v Sarfraz* (2011) UKEAT/0578/10, [2011] IRLR 562 at paras 16–17 and *His Highness Sheikh Khalid Bin Saqr Al Qasimi v Robinson* UKEAT/0283/17/JOJ, unreported (Qasimi v Robinson), at paras 8–11.
44. A 'pretty good chance' of success was interpreted in the whistleblowing case of *Ministry of Justice v Sarfraz* [2011] IRLR 562, EAT, as meaning 'a significantly higher degree of likelihood than just more likely than not'. Underhill P stated in *Ministry of Justice v Sarfraz* [2011] IRLR 562 that,  
  
“in this context ‘likely’ does not mean simply ‘more likely than not’ – that is at least 51% - but connotes a significantly higher degree of likelihood.” (para 16).
45. There are policy reasons why the threshold should be thus. Underhill P said, in *Dandpat v The University of Bath and anor* (unrep, UKEAT/0408/09/LA),  
  
“If relief is granted the respondent is irretrievably prejudiced because he is obliged to treat the contract as continuing and pay the claimant, until the conclusion of proceedings: that is not a consequence that should be imposed lightly.” (para 20)
46. The Claimant must show the necessary level of chance in relation to each essential element of s103A ERA 1996 automatic unfair dismissal, see *Simply Smile Manor House Ltd and ors v Ter-Berg* [2020] ICR 570.
47. The Claimant must therefore show that it is likely that the Tribunal at the final hearing will find that:
  - 47.1. she made the disclosure(s) to the employer (or in accordance with any of sections 43C to 43H);
  - 47.2. she believed that it or they tended to show one or more of the matters itemised in the ERA 1996 s 43B(1);
  - 47.3. her belief in that was reasonable;
  - 47.4. the disclosure(s) was or were made in the public interest; and
  - 47.5. the disclosure(s) was or were the principal cause of the dismissal.



48. "Protected disclosure" is defined in s43A Employment Rights Act 1996: "In this Act 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."

49. "Qualifying disclosures" are defined by s43B ERA 1996,

"43B Disclosures qualifying for protection

(1) In this Part 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...

(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."

50. The disclosure must be a disclosure of information, of facts rather than opinion or allegation (although it may disclose both information and opinions/allegations), *Cavendish Munro Professional Risk Management v Geldud* [2010] ICR [24] – [25]; *Kilraine v LB Wandsworth* [2016] IRLR 422. The disclosure must, considered in context, be sufficient to indicate the legal obligation in relation to which the Claimant believes that there has been or is likely to be non-compliance, *Fincham v HM Prison Service* EAT 19 December 2002, unrep; *Western Union Payment Services UK Limited v Anastasiou* EAT 21 February 2014, unrep.

51. The test for "reasonable belief" is a subjective test. The Tribunal should consider whether the belief was reasonable for the Claimant in her circumstances. What is reasonable for a lay person to believe may not be reasonable for a trained professional (see *Korashi v Abertawe Bro Morgannwg University Local Health Board* [2012] IRLR 4 at 62).

52. In determining whether the reason for the Claimant's dismissal was her alleged disclosure, it is not sufficient for the disclosure to be "in the employer's mind" or for it to have influenced the employer. The Tribunal must consider whether that disclosure was the "sole or principal reason" for her dismissal, *Eiger Securities LLP v Korshunova* [2017] IRLR 115).

53. A qualifying disclosure is made in accordance with s43C ERA 1996 if the worker makes it to his employer.

54. By s43G ERA 1996

“ **Disclosure in other cases**

(1) A qualifying disclosure is made in accordance with this section if—

...

(b) [the worker] reasonably believes that the information disclosed, and any allegation contained in it, are substantially true,

- (c) he does not make the disclosure for purposes of personal gain,
- (d) any of the conditions in subsection (2) is met, and
- (e) in all the circumstances of the case, it is reasonable for him to make the disclosure.

(2) The conditions referred to in subsection (1)(d) are—

(a) that, at the time he makes the disclosure, the worker reasonably believes that he will be subjected to a detriment by his employer if he makes a disclosure to his employer or in accordance with section 43F,

(b) that, in a case where no person is prescribed for the purposes of section 43F in relation to the relevant failure, the worker reasonably believes that it is likely that evidence relating to the relevant failure will be concealed or destroyed if he makes a disclosure to his employer, or

(c) that the worker has previously made a disclosure of substantially the same information—

- (i) to his employer, or
- (ii) in accordance with section 43F.

(3) In determining for the purposes of subsection (1)(e) whether it is reasonable for the worker to make the disclosure, regard shall be had, in particular, to—

- (a) the identity of the person to whom the disclosure is made,
- (b) the seriousness of the relevant failure,
- (c) whether the relevant failure is continuing or is likely to occur in the future,
- (d) whether the disclosure is made in breach of a duty of confidentiality owed by the employer to any other person,
- (e) in a case falling within subsection (2)(c)(i) or (ii), any action which the employer or the person to whom the previous disclosure in accordance with section 43F was made has taken or might reasonably be expected to have taken as a result of the previous disclosure, and
- (f) in a case falling within subsection (2)(c)(i), whether in making the disclosure to the employer the worker complied with any procedure whose use by him was authorised by the employer.

(4) For the purposes of this section a subsequent disclosure may be regarded as a disclosure of substantially the same information as that disclosed by a previous disclosure as mentioned in subsection (2)(c) even though the subsequent disclosure extends to information about action taken or not taken by any person as a result of the previous disclosure.]”

55. Redundancy is defined in s139 ERA 1996,

“ .. an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to –

- (a) the fact that his employer has ceased or intends to cease –

- (i) to carry on the business for the purposes of which the employee was employed by him, or
- (ii) to carry on that business in the place where the employee was so employed, or

(b) the fact that the requirements of that business –

- (i) for employees to carry out work of a particular kind, or
- (ii) for employees to carry out work of a particular kind in the place where the employee was employed by the employer,

have ceased or diminished or are expected to cease or diminish.'

56. By s105 ERA 1996

**“Redundancy**

(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if—

(a) the reason (or, if more than one, the principal reason) for the dismissal is that the employee was redundant,

(b) it is shown that the circumstances constituting the redundancy applied equally to one or more other employees in the same undertaking who held positions similar to that held by the employee and who have not been dismissed by the employer, and

(c) it is shown that any of subsections [ (2A) to [(7N)]3]2 applies.

.....

(6A) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was that specified in section 103A.

.....

(9) In this Part “redundancy case” means a case where paragraphs (a) and (b) of subsection (1) of this section are satisfied.”

57. The application of (equivalent Northern Irish provisions to) ss139 & 105 ERA 1996 to interim relief was considered in *Bombardier Aerospace v McConnell and ors* [2008] IRLR 51 at 19. In that case, the Northern Irish Court of Appeal decided that it was not possible for a Claimant to obtain interim relief in a redundancy case, even when they were selected for redundancy on trade union grounds. The Claimant must show that the Respondent’s redundancy process was entirely fabricated for the purposes of dismissing her, or that it was a sham, per LJ Girvan in *Bombardier* at para. 14 and Campbell LJ at para 9 - 11.

58. *Bombardier* (Campbell LJ) explains that, if an employee makes the case that, although there was redundancy, the reason why he was selected and not a fellow employee for dismissal, is that he made a protected disclosure, it does not follow that this becomes the principal reason for his dismissal though he is to be regarded as unfairly dismissed. If, in such circumstances, it could displace redundancy as the principal reason for dismissal, the employee would come within s103A ERA 1996 and be regarded as unfairly dismissed. There would be no

requirement for *s105 ERA 1996* if unfair selection could become the principal reason.

59. However, if an employer decides to dismiss an employee because of a protected disclosure and creates a sham redundancy for this purpose, the principal reason for dismissal would not be redundancy and the employee would be unfairly dismissed within *s103A ERA 1996*.
60. *S105 ERA 1996* is intended to cover redundancy situations. Once it is established that there is redundancy within the meaning of *s139 ERA 1996* and that this is the principal reason for dismissal, unfair selection may make the dismissal unfair but it does not become the principal reason for dismissal.

### **Discussion and Decision**

61. I had to assess whether it appeared likely that a Final Hearing would find that the Claimant had succeeded in each of the elements of an automatically unfair dismissal claim under *s103A ERA 1996*.

#### *Qualifying Disclosure*

62. The Claimant contends that she disclosed information which she believed tended to show that a person had committed a criminal offence or had failed, was failing or was likely to fail to comply with any legal obligation to which he was subject.
63. I considered that it was likely, in the sense of 'a significantly higher degree of likelihood than just more likely than not' that a Tribunal would conclude that the Claimant had made protected disclosures.
64. In particular, I considered that it was likely that a Tribunal would find that her second and fifth disclosures were made to her employer, as it did not appear to be in dispute that Mr Kjellin was the Company chairman. Further I considered that it was likely that a Tribunal would conclude that she disclosed information in these emails; in her second alleged disclosure that she disclosed information about the way in which profits and liabilities were being recorded in respect of 2 different companies; and, in her fifth email, that she disclosed information by attaching the draft accounts and commenting on what they showed.
65. Further, I considered that it was likely that a Tribunal would find, from the wording of the emails themselves, that the Claimant had a reasonable belief that the Company figures were being misrepresented and that, either a crime was being committed, or would be committed by that misrepresentation, or that legal obligations were being breached by the way the figures were being presented. I considered that it was likely that a Tribunal would conclude that the disclosure was made in the public interest as disclosures regarding the alleged mismanagement of companies relate to the safeguarding of investment monies and general national economic well-being.
66. Furthermore, I considered that it was likely that a Tribunal would conclude that on 10 November 2021 the Claimant had disclosed to Mr Kjellin that she believed that Mr Belson was trying to steal his disabled relative's money.

67. As a result, I considered that it was likely that a Tribunal would conclude that the Claimant had made a disclosure to Wilsons Solicitors on 28 January 2021 in accordance with s434G ERA 1996, in that she had previously disclosed substantially the same information to her employer. I also concluded that it was likely that a Tribunal would find that on 28 January 2021 the Claimant had disclosed information to Wilsons, in that she disclosed figures from Company accounts and commented on them; and that, in the Claimant's reasonable belief they tended to show that a criminal offence was being committed (theft) or that a legal obligation was being breached. A Tribunal was likely to find this from the Claimant's reference to the relative's money and her description of unexplained payments in and out of the accounts.
68. The relevant legal obligation was likely to be Mr Belson's duties as a trustee of his brother's funds to safeguard those funds and not to use them for his own purposes.
69. I considered that it was likely that a Tribunal would find that the Claimant had a reasonable belief that the information was disclosed in the public interest. The proper administration of funds by a trustee, particularly for vulnerable people, is a matter of acute public interest and concern.
70. I therefore assessed that there was a 'pretty good chance' that a Tribunal would find that the Claimant had made protected disclosures.
71. I make clear that I have made no assessment of the truth of any of the Claimant's allegations.
72. Regarding the first, third and fourth disclosures, to an accountant and to Wilsons' solicitors, I did not consider that there was a more than 50% chance that the Claimant would show that she had made these disclosures in accordance with ss43C – G ERA 1996. The Claimant had not produced evidence showing that she had satisfied the relevant legal tests.

*Reason for Dismissal*

73. In order for the Claimant to be entitled to interim relief, I would need to assess that it was likely that the Tribunal would find that protected disclosures were the principal reason for the dismissal (rather than redundancy).
74. On the facts alleged by the Respondent, at this stage, it did not appear that this was a case in which there was a general redundancy situation and the Claimant was selected for redundancy from a number of potential candidates. Rather, the Respondent appeared to suggest that it was the Claimant, in particular, who was redundant.
75. Accordingly, I did not consider that the Claimant needed to show that the redundancy situation was a sham in order to satisfy me that interim relief was appropriate.
76. However, I did not assess that there was 'a significantly higher degree of likelihood than just more likely than not' that the Tribunal would decide that the protected disclosures were the reason or principal reason for dismissal.

77. The factual background to the Claimant's application included her divorce from Mr Belson and the divorce settlement negotiations between Mr and Mrs Belson.
78. On the few documents presented to me, I considered that there was a lack of full and reliable contemporaneous evidence on both sides. This necessarily affected my ability to make an assessment of the merits of the case and to be satisfied to the requisite degree of probability regarding the Claimant's contentions.
79. I took into account the fact that the Claimant was dismissed following her alleged protected disclosures and without any fair process. I viewed this as likely to be a significant factor in the Tribunal's decision-making. Evidentially, it was likely to require considerable explanation by the Respondent.
80. On the other hand, I noted that Mr Kjellin's statement appeared to support Mr Belson's assertion that the divorce settlement negotiations had broken down very close to the date of dismissal. On that basis, the breakdown in the divorce negotiations appeared to be the most proximate event to the dismissal, rather than any of the alleged protected disclosures. That tended to support the Respondent's contention that the reason or principal reason for dismissal was indeed the breakdown of divorce negotiations activating a previously agreed dismissal for redundancy.
81. At this stage, I considered that the Respondent's contention that redundancy was the reason for the Claimant's dismissal was as likely to succeed as the Claimant's case that her protected disclosures were the principal reason for her dismissal. It was certainly not possible for me to say that there was 'a significantly higher degree of likelihood than just more likely than not' that the Tribunal would decide that the protected disclosures were the reason or principal reason for dismissal.

### **Final Hearing**

82. The claim will be listed for a case management Preliminary Hearing.

26 April 2022

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**Employment Judge Brown**

Sent to the parties on:

26/04/2022

For the Tribunal: