

Legal Information Briefing

Interim Relief

Although it is seldom used, a tribunal can make an order for what is known as “*interim relief*” compelling an employer to continue an employee’s contract after it has been terminated and to continue to pay salary pending a full hearing of an unfair dismissal claim.

This right is only available in limited circumstances, which include whistleblowing, health and safety and working time cases, those involving pension trustees or employee representatives dealing with collective redundancies and various trade union recognition cases.

An interim relief order preserves the status quo until the substantive tribunal hearing. If it is successful, the employer will be ordered to reinstate or re-engage the employee pending the outcome of the case. If the employer is unwilling to agree to either, the tribunal may make an order continuing the employee’s contract of employment until the full hearing has concluded and the tribunal has ruled on the claim. This means that the employee is ‘*suspended*’ on full pay pending the conclusion of his case.

An interim relief case is likely to succeed only if there is a reasonable basis for the unfair dismissal claim:

“The Tribunal should ask itself whether the Applicant has established that he has a pretty good chance of succeeding in the final application to the Tribunal¹.

The application must form part of an unfair dismissal claim which must be lodged in the tribunal within seven days of the termination of the contract of employment. It is then given priority in the tribunal system with the parties being given an early hearing date.

¹ *Wollenberg v Global Gaming Ventures (Leeds) Limited* (EAT, 31 1 2019).

The circumstances in which interim relief can be claimed are contained in Article 163 (1) of ERO 1996 and relates to dismissals where the reason the principal reason for dismissal related to:

1. Employee is a designated health and safety officer.
2. A pension trustee.
3. An employee representative dealing with working time rights, collective redundancy or TUPE rights.
4. A whistle blower.
5. There is an issue about trade union blacklisting or
6. The issue relates to trade union activity and the employee was dismissed for a reason relating to union recognition or bargaining arrangements.

Interim relief is also available where the employee was dismissed for a reason relating to the right to be accompanied at disciplinary or grievance hearings.

The tribunal must determine the application for interim relief as soon as practicable after receiving the application. The papers are copied to the employer, and he is advised of the date and time of the hearing.

The tribunal must be satisfied that it is likely that on determining the complaint it will find that the reason (or, if more than one, the principal reason) for the dismissal is one of those specified above. The tribunal invites the employer to say if he will reinstate or reengage the employee. If the employer fails to attend or is unwilling either to reinstate or re-engage “*the tribunal shall make an order for the continuation of the employee’s contract of employment.*”

The tribunal may order the continuation of the employment contract *for the purposes of pay or any other benefit derived from the employment, seniority, pension rights and other similar matters, and for the purposes of determining for any purpose the period for which the employee has been continuously employed from the date of its termination (whether before or after the making of the order) until the determination or settlement of the complaint.*”²

If an interim relief order is made it suspends the dismissal and if the employer refuses to comply with the order the tribunal may award compensation.

The time limits are strict. If the employee has been dismissed without notice, time runs from the day that the dismissal occurred, and an application for interim relief, together with the claim for unfair dismissal must be lodged within seven days of that date.

² Article 165(1), *ibid*

Where an application for interim relief is being made with an unfair dismissal claim there is no requirement for early conciliation.