



EMPLOYMENT TRIBUNALS

Claimant: Mr S Orakzai

Respondent: Linens Limited

HELD AT: Manchester

ON: 1 August 2017

BEFORE: Regional Employment Judge Parkin

REPRESENTATION:

Claimant: No attendance

Respondent: Mr S Mutch, Solicitor

JUDGMENT having been sent to the parties on 2 August 2017 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

1. By his claim presented on 8 May 2017, the claimant initially claimed a redundancy payment, notice pay and other payments relating to his employment as a Stock Publisher with the respondent between 1 February and 27 February 2017. He set out that he sustained a car accident on the 9 February after being sent home from work and was then off work for two weeks, in effect showing that he only worked for the respondent between 1 and 9 February, then again on 22 to 23 February and finally on the 27 February, the date on which he was dismissed. He set out that he had not been paid as expected on 28 February but was then paid on 1 March 2017.
2. By a response presented on 16 June 2017, the respondent set out in detail the ways in which it maintained the claimant had not been a satisfactory employee during his brief period of employment and resisted the monetary claims in full.
3. By a Schedule of Loss and additional documents provided on 21 June 2017, the claimant indicated that he was in fact seeking to claim unfair dismissal which prompted two warning letters from the Tribunal: firstly a strike out warning letter

dated 3 July 2017 notifying the claimant that he appeared to lack the necessary two years' continuous employment for a redundancy payment and a further letter from the Tribunal dated 6 July 2017 directing him that a complaint of unfair dismissal also required two years' continuous employment and that unless he identified how he had the right to bring an unfair dismissal complaint his claim would be treated as one for breach of contract and unlawful deductions from pay only.

4. The Tribunal's letter of 6 July 2017 followed the claimant's own email on 3 July when he spelt out that he was not claiming a redundancy payment but unfair dismissal under the Employment Rights Act 1996. When asked to provide his comments upon the respondent's letter dated 12 July 2017, in which it spelt out that the claimant's limited length of service meant there was no jurisdiction for an unfair dismissal or redundancy payment claim, that he had been employed for less than one month and therefore did not qualify for the statutory minimum notice period of one week under Section 86 of the 1996 Act and that no outstanding wages were due, the claimant again replied by letter dated 15 July 2017 making clear that he did pursue an unfair dismissal claim but without setting out any basis for doing so.

5. On 20 July 2017, the Tribunal wrote again requiring the claimant to clarify what he was claiming given that the short duration of his employment meant he could not bring an unfair dismissal claim. Finally by letter dated 28 July 2017, he was instructed to reply to the Tribunal's letter of 20 July 2017 by return with a warning that his claim may be struck out if he did not attend the hearing on 1 August 2017.

6. The claimant did not attend his hearing on 1 August 2017 and the respondent applied for his claim to be dismissed having regard to the claimant's confirmation that he sought unfair dismissal yet lacked the necessary service to bring such a claim.

Conclusion

7. Applying the statutory provisions at Section 108 within Part 10 of the Employment Rights Act 1996, the Tribunal concluded that the claimant lacked the necessary two years' qualifying service to bring an ordinary unfair dismissal claim and had failed to show that he fell within any of the inadmissible reason exceptions which did not require the two years. His claim of unfair dismissal is accordingly dismissed.

8. For completeness, the Tribunal records that the claimant's redundancy payment claim is likewise dismissed pursuant to Section 155 of the 1996 Act which similarly requires continuous employment of not less than two years. The claimant's notice pay claim pursuant to Section 86 of the 1996 Act read together with the Employment Tribunals Extension of Jurisdiction (England & Wales) Order 1994 is also dismissed because the claimant never completed one month's continuous service so as to engage the right to a week's minimum notice of termination of employment. Finally, the claimant has failed to establish any shortfall in earnings giving rise to an unlawful deduction by the respondent. In these circumstances, all claims whether presented initially within the framework of the ET1 claim form or subsequently as an unfair dismissal claim are dismissed.

Costs application

9. Finally, the respondent made an application that the claimant pay the respondent's costs, either the entire costs in resisting the claim put forward at £1876.50 exclusive of VAT in accordance with a schedule of costs or in the alternative limited to the respondent's attendance on the day of hearing estimated at 2½ hours of Mr Mutch's time, charged as a Senior Associate Solicitor at £525 exclusive of VAT. It was urged that the claim either had no reasonable prospect of success from the outset or otherwise that the claimant had acted unreasonably in pursuing his claims in particular once advised by the Tribunal of the difficulties facing him on 6 July and then in failing to respond to the Tribunal's letters of 20 and 28 July 2017 and finally in failing to attend the hearing without explanation. In summary, the claimant's failure to withdraw his claim was unreasonable.

10. The Tribunal was satisfied in these circumstances within Rule 76 of the Employment Tribunals Rules of Procedure 2013 that the threshold was reached that the claimant had indeed acted unreasonably in pursuing his proceedings once notified of the difficulties facing him in respect of his unfair dismissal claim. Whereas the commencement of the proceedings was not itself unreasonable or clearly bearing no reasonable prospect of success, in pursuing the proceedings after sight of the respondent's response and the protracted correspondence from the Tribunal without withdrawal and then in failing to attend the hearing, the claimant undoubtedly acted unreasonably.

11. However, in the exercise of its discretion whether to make an award of costs within Rule 76, the Tribunal takes into account the very clear statement by the claimant initially in his Schedule of Loss that he was suffering from mental health issues and had not regained employment, backed up by his letter dated 15 July 2017 in which he spoke of suffering mental breakdown and having very considerable debts. His claim form stated that he had not secured employment since dismissal. In these circumstances, and having regard to Rule 84 of the 2013 Rules and the claimant's ability to pay, the Tribunal considers that making even a small order for costs against the claimant is unrealistic and refuses the application.

Regional Employment Judge Parkin

Date 15 August 2017

REASONS SENT TO THE PARTIES ON
30 August 2017

FOR THE TRIBUNAL OFFICE

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