



EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case No: S/4102132/17

Held at Aberdeen on 31 August 2017

Employment Judge: Mr N M Hosie (sitting alone)

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Mr Konstantinos Kotsis

Claimant
No Appearance

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University of Aberdeen

Respondent
Represented by:
Mr P J Sharp -
Solicitor

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

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The Judgment of the Tribunal is that the claim is dismissed.

REASONS

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1. Mr Konstantinos Kotsis, submitted a claim form to the Tribunal by post on 10 July 2017 in which he sought to bring complaints of unfair dismissal and breach of contract. On 3 August 2017, the respondent's solicitor respondent submitted a Response Form. The claim was denied in its entirety and he also took the preliminary points that the claimant did not have the requisite two years' qualifying service to bring an unfair dismissal complaint and that the breach of contract claim had no reasonable prospect of success as he had received the requisite notice of termination in terms of his contract of employment.

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ETZ4 (WR)

2. A Preliminary Hearing was fixed for 31 August 2017 in Aberdeen to determine these preliminary issues. Notices of Hearing were sent to the parties by the Tribunal on 10 August 2017. The parties were advised that:

5 *“At the Preliminary Hearing the Tribunal will determine the following preliminary issues:*

1. *Qualifying service for the unfair dismissal claim;*
2. *No reasonable prospect of success for the breach of contract claim.”*

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3. On 6 August 2017, the claimant wrote to the Tribunal to complain that the Response Form, a copy of which had been sent to him by the Tribunal, had not been signed by the respondent. He sent a letter in similar terms to the Tribunal on 15 August.

4. On 17 August, the Tribunal wrote to the claimant to advise him that there was no requirement for the Response Form to be signed by the respondent.

- 20 5. On 20 August, the claimant wrote to the Tribunal to request that the Preliminary Hearing be conducted by a full tribunal instead of an Employment Judge sitting alone.

- 25 6. By e-mail dated 28 August the respondent’s solicitor intimated that he objected to the request that the Preliminary Hearing should be before a full tribunal on the grounds that the issues to be determined were not *“peculiarly fact sensitive; the overriding objective in the rules of procedure; and that the involvement of a full tribunal would be disproportionate to the complexity and importance of the issues.”*

- 30 7. The respondent’s solicitor had copied his e-mail to the claimant by way of e-mail and on 28 August the claimant replied in the following terms: -

35 *“Regarding the e-mail, see below, by Peter Sharp (University of Aberdeen) the question appears from where or whom Peter Sharp has acquired my personal address. I have not given my personal e-mail address to any staff member of the University of Aberdeen. I have given to the Employment*

5 *Tribunals in Glasgow the permission to contact me only per post and certainly not to be contacted by e-mail by the Respondent. I have not read the content of the e-mail below by Peter Sharp. In order the objections made by the respondent to be read (sic) a letter is needed to be send by post to my home address (sic).*

Another matter that needs to be clarified as soon as possible.”

10 8. On 25 August, the claimant had also sent a letter to the Tribunal asking that:

15 *“I would like to request from the Tribunal that all the issues raised in the claim will be discussed and determined and not only the preliminary issues of 1. Qualifying Service for the unfair dismissal claim and 2. No reasonable prospect of success for the breach of contract claim.*

20 *A clarification of this matter is needed, otherwise my attendance to the preliminary hearing (due to associated time and costs expenditure) is not justified.”*

20 9. On 30 August, the Tribunal sent an e-mail to the claimant in the following terms: -

25 *“Employment Judge Hosie instructs me to advise you that the Hearing tomorrow, has noted on your Hearing Notice dated 10 August, is a Preliminary Hearing to consider whether or not you have two years’ qualifying service for your unfair dismissal claim and whether or not the breach of contract claim has any reasonable prospect of success. These are the only two issues which will be considered.”*

30 10. By e-mail dated 31 August 2017 timed at 09.21am, some 40 minutes before the scheduled commencement of the Preliminary Hearing, the claimant sent an e-mail to the Tribunal in the following terms: -

35 *“I have not received the decision by the Employment Tribunal on my application that the hearing be conducted by a full Tribunal instead of an Employment Judge sitting alone. Neither I have received a send letter of the objections made by the respondent to my home address (sic).*

40 *In my claim form I have stated to be contacted only by post which is the only way I allow to be contacted by the Respondent. This is justified by the fact that I only can accept letters signed by the Respondent.*

45 *Matters that need to be clarified as soon as possible.”*

11. The claimant did not appear at the Aberdeen Tribunal office to conduct the Preliminary Hearing at 10am. The respondent's solicitor was in attendance, having prepared, and he was ready to proceed. He had also lodged a bundle of documentary productions ("R").

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12. When there was still no appearance by the claimant at 10.30am I convened the Hearing and the respondent's solicitor applied for the claim to be dismissed.

Conclusion

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13. While I was mindful that the claimant was unrepresented, it was clear that he had received the Notice of Hearing on 10 August and that he was aware that the Preliminary Hearing was scheduled to proceed on 31 August. He was also aware of the issues which were to be considered at the Preliminary Hearing which were not only detailed in the Notice of Hearing but also in the e-mail which the Tribunal sent to him on 30 August.

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14. I was not persuaded that a full Tribunal was required for the Hearing. The respondent's representations in this regard were well-founded.

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15. In terms of Rule 47 in Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, if a party fails to attend or be represented at the Hearing the Tribunal may dismiss the claim.

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16. In his letter of 25 August, the claimant intimated that he would not attend the Preliminary Hearing until the issue of the Preliminary Hearing were clarified. In the e-mail dated 30 August the Tribunal confirmed the two issues which were to be considered.

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17. In arriving at my decision I was also mindful of the “overriding objective” in the Rules of Procedure which is in the following terms: -

“2. Overriding Objective

The overriding objective of these Rules is to enable Employment Tribunals to deal with cases fairly and justly. Dealing with a case fairly and justly includes, so far as practicable –

- (a) ensuring that the parties are on an equal footing;*
- (b) dealing with cases in ways which are proportionate to the complexity and importance of the issues;*
- (c) avoiding unnecessary formality and seeking flexibility in the proceedings;*
- (d) avoiding delay, so far as compatible with proper consideration of the issues; and*
- (e) saving expense.*

A Tribunal shall seek to give effect to the overriding objective in interpreting or exercising any power given to it by these Rules. The parties and their representatives shall assist the Tribunal to further the overriding objective and in particular shall co-operate generally with each other and with the Tribunal.”

18. I also had regard to the merits of the claim in light of the “overriding objective”. So far as the unfair dismissal complaint was concerned, in order to qualify to bring an unfair dismissal complaint an employee must have been *continuously employed for not less than two years ending with the effective date of termination* (s.108(1) of the Employment Rights Act 1996). In his claim form at para. 5 the claimant stated that he had only been employed by the respondent from 1 May 2016 to 30 April 2017. The Tribunal does not, therefore, have jurisdiction to consider this complaint. I was surprised, in light of the clear terms of the claim form, that this issue had not been addressed earlier, rather than the complaint being allowed to proceed to a Hearing.

19. So far as the breach of contract complaint was concerned, as I understood the claimant’s position this related to a failure to give contractual notice.

20. In terms of his contract of employment, the claimant was entitled to “*not less than three months’ notice*” of termination (R23). As I understand the position, it was

not disputed that he was given the requisite three months' notice, two months of which he worked and he was paid in lieu of notice for the remaining month (R71).

5 21. If I am mistaken in my understanding of the nature of the breach of contract claim, I am unable to identify from the claim form the basis for any other valid complaint of breach of contract.

10 22. I was satisfied, therefore, that the breach of contract complaint has no reasonable prospect of success, as the respondent's solicitor maintained. It is struck out, therefore, in terms of Rule 37 (1) (a) in Schedule 1 of the Employment Tribunals (Constitution and rules of Procedure) Regulations 2013.

15 23. For all these reasons, therefore, I shall issue a Judgment dismissing the claim.

Employment Judge: Nick Hosie

Date of Judgment: 05 September 2017

20 Entered in register and Copied to Parties: 06 September 2017