



EMPLOYMENT TRIBUNALS

Claimant: Mr A Walker
Respondent: SOS Wholesale Ltd
Heard at: Nottingham
On: Monday 11 December 2017
Before: Employment Judge P Britton (sitting alone)

RECORD OF AN OPEN ATTENDED PRELIMINARY HEARING

Representation

Claimant: Did not attend and no explanation provided
Respondent: Mr T Perry of Counsel

JUDGMENT

1. The claim of unfair dismissal is dismissed for want of qualifying service.
2. As to the claims for unpaid wages, including holiday pay, and unpaid notice pay, pursuant to Rule 27 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, Schedule 1, I hereby consider that those claims have no reasonable prospect of success for the reasons hereinafter set out. Thus, unless the Claimant shows cause by 4 pm on **21 December 2017**, those claims will be struck out.
3. At this stage in relation to the unfair dismissal claim the Claimant not having attended and having provided no explanation why not, and upon the application of the Respondent, the Claimant is to show cause **by the same deadline** as to why he should not be ordered to pay the costs thrown away by the Respondent on the basis that by not attending he has acted unreasonably.
4. To that end, the Respondent will send **forthwith** to the Claimant its schedule of costs.

REASONS

1. The claim (ET1) was presented to the tribunal on 22 September 2017, the Claimant then having solicitors acting for him. They pleaded that he had been employed between 1 June 2015 and 27 June 2017. If that was correct, then the Claimant had the necessary qualifying service to bring a claim for unfair dismissal pursuant to Section 108(1) of the Employment Rights Act 1996. He was not pleading any of the exceptions to that Rule pursuant to subsection (3). Also he ticked the boxes for unpaid wages and breach of contract (notice pay).

2. By its Response (ET3), the Respondent pleaded that the actual start date of this employment was 8 September 2015. Thus, when the claim was presented to the tribunal, the Claimant lacked the necessary 2 years' qualifying service to bring a claim of unfair dismissal.

3. It also pleaded that the Claimant was not owed any wages; and if it was meant to be anything other than holiday pay, then that had not been pleaded, albeit the box had been ticked. If it was supposed to be a claim for outstanding holiday pay, then the Claimant had actually taken more than his statutory leave entitlement; in this case that would be the holiday leave which he would be due in any given holiday year.

4. Finally, it pointed out, and pleaded extensively to the point, that the Claimant had been paid his one week's statutory and indeed contractual notice pay entitlement.

5. Against that background, this Judge ordered that there should be a preliminary hearing, hence today. The necessary notice went out to the parties on 15 November 2017. That notice was in relation to whether or not to strike out the unfair dismissal claim for want of qualifying service. So, that is the first issue for today.

6. I have been supplied with a bundle by the Respondent and in the absence of anything to the contrary provided by the Claimant, it shows beyond doubt that his employment started on 8 September 2015.

7. I then observe that the Claimant's solicitors withdraw from acting for him on 3 October 2017. This is circa the same time as when a Nathan Burton, who brought his claim based on the same facts via the same solicitors under 2601481/17 withdrew his claim. Employment Judge Heap had ordered the parties to show cause why the cases should not be consolidated. But Nathan Burden has withdrawn his claim and so consolidation of course becomes otiose.

8. The Claimant has not attended today and has provided no explanation for that non-attendance. Thus, I dismiss his claim for unfair dismissal for want of qualifying service.

9. I then observe pursuant to Rule 27 of the Rules that on the evidence before me, the claims for outstanding holiday pay and breach of contract (and there appears to be no other extant claim) would be misconceived; that is to say have no reasonable prospect of success, and therefore I am going to order that I shall dismiss those claims unless, by 4 pm on 21 December 2017, the Claimant has provided me with convincing grounds why not.

10. The final point to make is that pursuant to Rule 76(1)(a), the Claimant's non-attendance today and his giving no explanation why not, is prima facie unreasonable conduct. I bear in mind that the Respondent's solicitors had prepared for today by way of providing a trial bundle, a copy of which they had sent to the Claimant, and that had also instructed Counsel (Mr Perry). Therefore, pursuant to Rule 76(1)(a), I am of a mind to grant Mr Perry's application that the Claimant pay the Respondent's costs, as follows:

Counsel fee of £500 fees

Instructing solicitors for preparing etc £664

Total = £1,164.

11. The Claimant is being sent today by the Respondent its schedule of costs with a copy for the Tribunal. However I have been provided with the detail of the work undertaken and grade of fee earner deployed and I observe that prima facie the costs sought are reasonable. Therefore I hereby order that unless the Claimant shows convincing cause why not, again by the deadline of 21 December 2017, then I shall order he pays those costs.

Employment Judge P Britton

Date: 13 December 2017

JUDGMENT SENT TO THE PARTIES ON

14 December 2017

FOR THE TRIBUNAL OFFICE