



EMPLOYMENT TRIBUNALS

Claimant: Mr A Kuczkowski

Respondent: Centrebus Ltd

Heard at: Leicester **On:** Monday 10 September 2018

Before: Employment Judge P Britton

Representatives

Claimant: No attendance

Respondent: Mr David Brookes Operations Director

JUDGMENT

- 1. The claim for unfair dismissal is dismissed for lack of qualifying service.**
- 2. The claim of race discrimination is dismissed for want of any particularisation it thus being misconceived.**
- 3. The claim for non payment of wages (SSP) is dismissed as being out of time and additionally as being misconceived.**

Introduction

1. The Claim (ET1) was presented to the Tribunal on 10 May 2018. It had been preceded by a first application which on 15 March 2018 was rejected as the Claimant had not obtained an ACAS Early Conciliation Certificate. This he did before presenting the second claim. This was accepted by the tribunal secretariat but not presented to a judge. This is important because in terms of the narrative to the ET1 albeit that there was a claim for unfair dismissal was clear, he had also ticked the box for race discrimination but given no reasons at all why. Furthermore he did not have the required 2 years service to bring the unfair dismissal claim. There was also a claim for non payment of wages it seems based upon that he should have received SSP. The final point to make is that as he was dismissed on 28 July 2017, the ET1 was substantially outside the three months time limit applicable to all three heads of claim as to which the ACAS EC process could not engage as it was commenced well after the expiry of the deadline. Thus if this ET1 had been put before a judge upon presentation, that which occurred on 2 August, and to which I hereinafter refer, would have occurred much earlier. As it is the claim was accepted; served upon the respondent; and inter alia a telephone case management discussion (TCMPH) listed for today. This all occurred on 12 June.

2. In due course a response (ET1) was presented. First the lack of qualifying service as to the unfair dismissal was raised. Second, the complete absence of any particulars viz the race based claim. Third, that the claim for SSP was misconceived as it relates to after the claimant was summary dismissed without notice. Fourth that all three claims were out of time. Finally that on the merits all claims were misconceived in that the claimant was dismissed without notice on the 28 July 2017 for gross misconduct in his work as a bus driver, essentially for have been engaged in a road traffic accident and failing to report the same.

3. The file was referred to this judge on 2 August 2018 and who issued an Order which was sent out that day. I ordered that first the Claimant was to provide particulars of his claim for race discrimination as otherwise pursuant to Rule 27 of the Tribunals 2013 Rules of Procedure, it would be dismissed. The deadline was 9 August 2018. He was directed to do so by email because the Tribunal was aware that he was communicating by email and the letter was also addressed to his home address now in Poland. Second the order made plain the out of time issue; finally the claim was in any event on the face of it misconceived. This would amongst other things go to the two year qualifying service rule. Thus I ordered that the TCMPH be replaced by this attended hearing today at 10:00 am, albeit that the parties were informed on 7 September 2018 by email, that it would actually take place today at 2:00 pm.

4. The Claimant did not reply to my order and he did not attend today.

5. Thus the Claimant having not attended and without any explanation, I proceeded. As it the next day by e-mail the Claimant explained that he had only belatedly opened the e-mail and as of yesterday thought it was a TCMPH and had dialled in accordingly to no avail. He still completely failed to address the issues in my Order. So his absence makes no difference to my adjudication.

Decision and reason thereto

6. As was clear from a read of the response (ET3) and was confirmed by Mr Brookes today, the Claimant was summarily dismissed. He was supposed to wait for a letter which simply confirmed the decision which had been given in the disciplinary hearing held by Jon Howes, but he left angry and upset. The fact that the following day he may have sent in a sick note and therefore was seeking in his ET1 to claim for failure to pay him statutory sick pay thereafter cannot hold water because of course he was dismissed on 28 July 2017, that is to say a day before he went off sick. The fundamental is that he was only employed between 14 November 2016 and 28 July 2017. To bring a claim to the Tribunal for unfair dismissal, he has to have been employed for a minimum period of 2 years as to which, see Section 108 of the Employment Rights Act 1996; and he has not.

7. Thus it follows, him having not got 2 years qualifying service, he cannot bring his claim to the Tribunal. This is before we even get to the issue of the explanation of why it was brought so late. That it seems from the ET1 would have been on the basis that he only found out about his dismissal some 4 months later when a colleague gave him the dismissal letter which the Claimant was saying had been sent to the wrong address. It is irrelevant in terms of today, and because the Claimant has not got the 2 years qualifying service to found the jurisdiction.

8. As to the claim for SSP it cannot but be misconceived as is clear from the

summary I have given. The Claimant has made no submissions as per my order of 2 August to the contrary.

Employment Judge P Britton

Date: 13 September 2018

JUDGMENT SENT TO THE PARTIES ON

FOR THE TRIBUNAL OFFICE