



EMPLOYMENT TRIBUNALS

Claimant: Mr Samuel Hughes
Respondent: South Western Ambulance Service Trust
Heard at: Exeter
On: 10 October 2018
Before: Employment Judge Housego

Representation

Claimant: In person
Respondent: Nathaniel Caiden, of Counsel

JUDGMENT

The Employment Judge considers that the claimant's allegations or arguments that he was constructively unfairly dismissed, and that he suffered deductions from his pay have no reasonable prospect of success, and accordingly the are dismissed under Rule 39.

REASONS

1. The claimant is a paramedic. He worked for some 10 years in an NHS trust in the Midlands. He left that employment on 23 December 2012. He was then a Band five on spine point 23.
2. On 01 March 2013 the claimant commenced a "bank" contract for the respondent. He was paid at the bottom of band five. This is spine point 16.
3. On 01 September 2014 the claimant became a full-time employee with the respondent.
4. On 26 August 2017 claimant resigned, giving a week's notice, so that his employment ended on 19 October 2017.
5. The claimant then resumed working as a bank paramedic.

6. The claimant claims unfair dismissal. He also makes a claim for arrears of pay stemming from his time as a bank paramedic.
7. The claim for unfair dismissal is one of constructive dismissal. In his claim form the claimant asserted that the working relationship with his managers broke down and that this was their fault.
8. The reasons he gave were:
 - (i) that he was paid at the wrong rate when a bank paramedic,
 - (ii) that he was not given the correct level of sickness pay entitlement when an employee,
 - (iii) poor management of some distressing jobs,
 - (iv) not being able to take necessary "time out", and
 - (v) this led to a breakdown in communication with managers and a decline in his coping mechanisms such that he was forced to resign.
9. The claim for unpaid wages is based on his time as a bank paramedic prior to 01 September 2014. The claimant asserts that he should have been paid at spine point 23 throughout that time, and he was not.
10. The respondent asserts that these claims have no (or little) reasonable prospect of success and so should be struck out under Rule 37(a), or if not that a deposit order should be made under Rule 39 in respect of any claim not struck out.
11. The respondent says that the claim for unpaid wages as a bank paramedic is over 4 years old and is out of time and should be struck out for that reason. They take this preliminary jurisdictional point, and also say that there was no carry over from the previous employment so that there is no merit in the claim either.
12. The respondent says that there was no breach of contract by them and so no constructive dismissal.
 - (i) The pay issue was a long time ago and is not part of a series of matters, as there has been no issue with pay since 01 September 2014. Even if there was a breach of contract it was so long ago that it could not found a constructive dismissal for that reason, and even if not, and even if the claimant had been an employee at the time the contract had been affirmed by 4 years work since.
 - (ii) For every sickness absence the claimant had been paid in full, so there was no loss and no breach of contract. This was in 2016, so too far back to found a claim. The contract clearly provided for sickness pay at the level stated by the respondent at the time.
 - (iii) Poor management of distressing jobs was totally unparticularised, and there was no record of any request for support.
 - (iv) There was no request for "time out" for stress related reasons.
 - (v) The breaches of management were unparticularised and the ET1 was the basis for assessment of the claim.

13. In submissions the claimant accepted that in his discussions with the respondent when considering leaving his previous employment in order to come to join the respondent he had assumed that he would be on the same pay rate. There had been no telephone conversation or email or any other assurance that he would transfer on the same pay grade.
14. After he raised this with management the claimant accepts that he was put onto the pay grade that he should, in his view, always have been on. That was in November 2014. He was also allowed leave based on continuity of service. If there was merit in the claim for pay before the claimant became a salaried employee any such claim is out of time by a matter of years, because there was no asserted underpayment after November 2014.
15. In addition the claimant expressly stated that he does not assert that any promise was made to him about commencing work on the same pay grade as in his previous job. He assumed that it would be the same but did not check. While perhaps this was not an unreasonable assumption I make no decision to that effect, and the question is whether there was a breach of contract by the employer. Since there was no representation of pay at a higher rate than he was eventually offered there can be no such breach of contract.
16. Accordingly, I conclude that the claim in respect of unpaid wages has no reasonable chance of success, both on the merits and because it is so far out of time, and therefore I am obliged to strike it out.
17. I turn to the claim for unfair dismissal. I note that the contract of employment signed by the claimant, commencing 01 September 2014 provides at point 12.5 that there is continuity of employment for the purposes of entitlement to sickness payments only if breaks in service are of 12 months or less. This refers to salaried contracts not bank engagements, and the gap between the claimant leaving his job in the West Midlands and commencing salaried employment with the respondent was well in excess of that period. The contractual sick pay was therefore as applied by the respondent.
18. In November 2014 the claimant was put onto the pay band he considered appropriate does not alter that fact. While he was also given enhanced leave entitlement at that time there was never said to be any assurance that his sick pay entitlement would be other than as the contract set out. Therefore there can be no breach of contract in respect of sick pay entitlement.
19. Even if there was such a breach the claimant says that the sick pay was an issue in September 2016, so any such breach has been waived or the contract affirmed.
20. Accordingly the issue of sick pay cannot found a constructive dismissal claim.
21. In the hearing the claimant identified the management issues that he said meant he should be considered constructively dismissed.

22. There was an issue about boots; the claimant says that the wrong footwear was issued to him and that this caused him to have an infection, and that the management actions in respect of obtaining proper footwear were too slow, and he got one pair not two. This predated the sickness absence in September 2016 (it was the foot infection said to cause the sickness absence). The claimant says that he was forced to return to work for financial reasons with inadequate footwear. Again, this was all long before he left. If there was a breach of contract, it was waived, or the contract affirmed.
23. The claimant raised an issue with stress management, but again the issue was about a Coroner's Court matter that he said occurred in 2016. He asserted that the absence was incorrectly recorded as "other" not "stress". If there was such a breach, the contract was affirmed and any breach waived by continuing to work.
24. The matters said to be breaches of contract are all too far in the past to found a constructive dismissal claim.
25. The matters relating to the boots, and not categorising absence as "stress" but as "other" are not a breach of a fundamental term even if made out, and so cannot found a constructive dismissal claim.
26. The text of the resignation letter of 25 August 2017 is also important. While sometimes employees write polite letters even when there has been a fundamental breach of contract, and are entitled to work a period of notice even if not obliged to do so, this letter is not a bland letter of resignation but gives clear reasons for resigning. It states:
- "After careful consideration, I feel that there are currently limited opportunities for career progression at SWASfT, and that in order to achieve my career goals, the time is right to move on. Also the current contractual problems with pay during my initial bank contract, leave and sickness entitlement all leading to me looking to achieve more and move on with greater caution and knowledge.*
- However, I would like to take this opportunity to thank you for the professional guidance and support provided during my period of employment..."*
27. This is not indicative of acceptance of a fundamental breach of contract by the employer.
28. For all these reasons I consider that the claim for unfair dismissal also has no reasonable prospect of success, and I am obliged to strike that claim out also.

Employment Judge Housego
Date: 10 October 2018