



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr R Sidonie-Edgar

v

Diligent Care Services

Heard at: Watford

On: 15 October 2018

Before: Employment Judge A Clarke QC

Appearances

For the Claimant: No attendance

For the Respondent: Mr Shah, Solicitor

JUDGMENT

1. All claims brought by the claimant are dismissed by reason of the lack of jurisdiction in the Tribunal to consider them and/or on the basis that they have no reasonable prospect of success.

REASONS

Background

1. These claims last came before the Tribunal on 20 June 2018. The case had been listed for a Full Merits Hearing, but that hearing was adjourned due to the claimant's unavailability (for medical reasons) and because the parties were agreed that to hear the claim would take some two to three days.
2. At that hearing the claimant was represented by Mr Lewis of Counsel. The hearing was converted into a Case Management Hearing. Various Orders were made, some of which I shall refer to below, and an Open Preliminary Hearing was listed for 15 October 2018 at which claim in time issues in relation to the breach of contract claims were to be considered, together with the issue of whether or not the claimant had sufficient qualifying service to bring a claim for unfair dismissal. In addition, the Tribunal was to consider whether the claim should be struck out (or a Deposit Order made) having regard to the prospects of success.

3. On 26 July 2018 the claimant's counsel (instructed on a direct access basis) notified the Tribunal that he had withdrawn from the matter with immediate effect and that the claimant would be acting as a litigant in person and should be contacted directly. That communication was sent to the Tribunal by email and copied to the claimant at an email address which the Tribunal has subsequently used to correspond with him.
4. On 12 October 2018 both the claimant and respondent were sent an email by the Tribunal reminding them of the hearing to take place on 15 October. Consequent thereupon, the respondent's representative asked for further copies of the preliminary hearing case management summary and notice of preliminary hearing which had been promulgated on 13 July 2018, following the 20 June hearing. Those copies were sent both to the claimant and the respondent by an email on 12 October 2018 timed at 11:23.
5. The claimant did not attend the Tribunal on 15 October. Eventually, he was contacted by telephone (at 10:45) and indicated that he was unaware of the hearing today and did not propose to attend. Upon being reminded, by the clerk, that he had been reminded of the hearing by email, he said that he had not had access to his telephone over the weekend. I established from the respondent that the claimant had not personally attended the hearing on 20 June. However, in all of the above circumstances, I am satisfied that it is more likely than not that he was aware of the hearing today and aware of the Orders made at that earlier hearing.

Unfair dismissal

6. At the hearing on 20 June it was contended on the claimant's behalf that whilst he had only commenced employment with the respondent in October 2016, he intended to argue that prior to that date he had been employed by the London Borough of Haringey and that there had been a TUPE transfer of that employment to the respondent. The claim form presents a very confused picture of the claimant's employment history and does not appear to support that contention. In it he claims that he was a self-employed foster carer from November 1997 in Haringey, but that this role ceased at some stage against a background of his arrest. He and his then partner are said to have become foster carers again in unspecified circumstances from an unspecified date. However, the claimant resigned from Haringey's Register of Foster Carers in July 2015. In a joint bundle of documents, I have seen a letter from Haringey to the claimant noting that resignation from their fostering panel given on 6 July and effective as of 3 August 2015.
7. The claim form contains a number of confused paragraphs regarding the period August 2015 to October 2016. The claimant asserts that he had been working for the respondent for some two months prior to his entering into a contract of employment with that body in October 2016. That is disputed by the respondent, which points out that the contract signed by

the claimant on 20 October 2016 makes clear that his employment began on that day (following an earlier interview) and that no previous period of employment was to be regarded as continuous with that employment. In any event, I note that the agreed effective date of termination (consequent upon summary dismissal for alleged gross misconduct) is 2 November 2017, hence a period of additional employment of some two months prior to October 2016 would not assist the claimant in establishing employment for the relevant qualifying period of two years.

8. As her Case Management Summary makes clear, Employment Judge McNeill QC made certain orders for the provision of (and answering of) particulars and the provision of additional disclosure. She was motivated, in part, by the absence of any support for the TUPE case found in the claim form.
9. In particular, the claimant was to produce amended particulars of claim which would focus on the period from 1 July 2015 and were to explain the claimant's case with regard to his having been employed by the London Borough of Haringey. In addition, the claimant was to provide disclosure of payslips and other contractual documentation relevant to his contractual relationship with Haringey. The further particulars and the disclosure were both to take place on or before 27 July 2018. In other words, the day after his then representative came off the record. The claimant has failed to provide any particulars or any further disclosure.
10. In all of the above circumstances, in particular the failure further to particularise the claim and provide supporting documentation, I am satisfied that the Tribunal has no jurisdiction to entertain a claim for unfair dismissal. The only period of employment by the respondent to which the claimant is able to point is from 20 October 2016 onwards, such that his employment had lasted a little over one year before his summary dismissal. In case it might hereafter be argued that I was wrong to reach this conclusion in that regard, I turn to consider the prospects of success of that claim. In order for it to have a reasonable prospect of success the claimant would have to demonstrate that he at least arguably had two years' continuous service. Given the contents of the claim form, the document from Haringey referred to above and the failure to provide any particulars, or relevant supporting documents, I consider that the claimant has no reasonable prospect of success in that regard. For those reasons the claim for unfair dismissal is dismissed and/or struck out.

Breach of contract

11. The breach of contract claim has two elements, these relate to a failure to pay notice monies and an earlier failure (dating from mid-2017) to pay wages. The respondent's case is that the claimant was lawfully summarily dismissed and that no wages are owing. The respondent raised the issue of claim in time in respect of those claims in its response. Those claim in time issues were to be considered at the hearing on 15 October. A further aspect of the Orders made by Judge McNeill QC was that the claimant was to provide "precise particulars of the remedy which he claims including

dates he said he was underpaid and the extent of the underpayment.” No such particulars have been provided. As regards the circumstances leading to the claimant’s summary dismissal, it does not appear to be disputed that a serious incident took place involving the claimant and a person under his care. It is also not disputed that the claimant failed to attend two disciplinary hearings and failed to attend his appeal hearing. As with the Tribunal hearing on 15 October, the claimant’s explanation for non-attendance was that he was unaware of the disciplinary hearings and appeal meeting. The respondent has provided a detailed refutation of that suggestion in its response. I am satisfied that the claim for unpaid wages has no reasonable prospect of success. The claimant has given no details of that claim, despite being ordered to do so. I am similarly satisfied that the claim in respect of notice monies has no reasonable prospect of success, having regard to the matters set out above. For those reasons, both elements of the breach of contract claim are dismissed. Furthermore, as Judge McNeill QC noted in the Case Management Summary, there were significant issues between the parties as to whether either of those elements of the breach of contract claim were presented in time. In the absence of the claimant and having regard to the very limited facts (and allegations) made by the claimant in the claim form and by his representative on 20 June, I consider that the claimant has failed to satisfy me that there is jurisdiction in the Tribunal to hear either element of the claim.

12. I note that the claim form also made claims for loss of non-contributory pension rights, exemplary damages and costs. I do not understand any of those claims to be self-standing claims, but to be dependent upon the existence of (and success of) one or both of the claims which can no longer continue.
13. In all of the circumstances, all of the claims brought by the claimant are dismissed and/or struck out for the reasons set out above.

Employment Judge A Clarke QC

Date: 15 October 2018

Sent to the parties on: 16 November 2018

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For the Tribunal Office