



EMPLOYMENT TRIBUNALS

Claimant: Mr L Lawrenson

Respondent: Royal Mail Group Limited

Heard at: Manchester

On: 1 November 2018

Before: Regional Employment Judge Parkin

REPRESENTATION:

Claimant: No attendance but emails received

Respondent: Ms L Roberts, Legal Executive

JUDGMENT ON PRELIMINARY HEARING

The judgment of the Tribunal is that the claimant's unfair dismissal claim is dismissed for want of jurisdiction in circumstances where he lacks two years' continuous service at the effective date of termination. Accordingly, the final hearing listed on 6 December 2018 is cancelled.

REASONS

1. By a claim form presented on 23 July 2018 the claimant claimed unfair dismissal in respect of his employment as a Graduate Operations Manager which he stated commenced on 2 November 2015 and ended on 30 June 2018. This was a constructive dismissal claim raising concerns at lack of structure in the training regime offered to him and lack of support and bullying by management. The notice of claim was sent out by the Tribunal on 2 August 2018, listing the claim for a final hearing on 6 December 2018. The claimant was also ordered to provide written particulars of the repudiatory breach of contract relied upon as entitling him to resign but it appears that this was never done.

2. The respondent presented its response on 30 August 2018 dealing with the merits of the claimant's claim but raising the jurisdictional obstacle that the claimant simply lacked two years' continuous service at the effective date of termination for a claim of ordinary unfair dismissal. In its response it maintained that he commenced employment on 2 November 2015 but then resigned with effect from 30 March 2016, only re-joining the respondent on 5 September 2016 before his resignation on 30 June 2018, less than two years later.

3. The respondent sought a preliminary hearing to determine the continuity and jurisdiction point but originally only a case management preliminary hearing was listed. The respondent renewed its request by a letter dated 3 September 2018 and in the event a revised notice of hearing dated 17 October 2018 was sent out, making plain that the preliminary issue was "to consider whether the claimant has sufficient service" and to deal with case management. Whilst that notice of hearing was non-specific, the claimant was in no doubt as to the subject matter of the preliminary hearing by reason of the respondent's response and repeated applications for a preliminary hearing at which the Tribunal could consider whether it had jurisdiction to deal with the claimant's unfair dismissal claim.

4. On the morning of hearing, the Tribunal received early notification by email from the claimant that he was likely to be late:

"I must apologise as I'm having car trouble and the breakdown mechanic has informed me that it could be up to two hours before he arrives. Could this be adjourned to this afternoon or will it proceed without my attendance?"

5. Upon hearing from the respondent's representative that there was no objection to the hearing being postponed to 2.00pm that afternoon, the Regional Employment Judge agreed to such a postponement and the Tribunal emailed the claimant at 10.32am:

"Regional Employment Judge Parkin directs me to inform you that the preliminary hearing listed today at 10.00am has now been postponed and will now be heard at 14:00pm this afternoon. Please can you confirm that you have received this email and also update the Tribunal on whether your situation has been resolved."

6. The claimant responded promptly at 10.52am:

"Thank you for your understanding of my current situation. Unfortunately, the problem with my car cannot be resolved today and therefore I will not be able to make it this afternoon."

7. There was no further application for postponement on the part of the claimant and the Tribunal proceeded to hearing as it had indicated.

8. The respondent provided a bundle of documents numbered 65 pages which had previously been provided to the claimant. In addition there was an email from the claimant dated 19 October 2018 which itself contained a chain of earlier internal emails in March 2017. Finally, the respondent had prepared a written submissions document which its representative spoke to at the hearing. No evidence was heard

by the Tribunal but the bundle of documents provided documentary evidence which was relied upon.

9. For the purposes of the preliminary hearing, the Tribunal made the following brief key findings of fact. After short employment with the respondent from 2 November 2015 to 30 March 2016, when the claimant resigned, he took up employment elsewhere between April and August 2016 with a new employer, Calderstones NHS. He re-joined the respondent on its Graduate Scheme with effect from 5 September 2016 but unfortunately did not enjoy that employment and resigned with effect from 30 June 2018. There was no specific agreement or arrangement at the time the claimant left employment at the end of March 2016 whereby he would enjoy any continuity of service if he were to be re-employed at some point in the future by the respondent. Accordingly, as at 30 June 2018, the claimant was a few months short of two years' continuous employment in his second stint with the respondent.

10. The respondent relied upon its written submissions, contending that continuity of employment was a statutory concept and referring the Tribunal expressly to the provisions at sections 210-212 of the Employment Rights Act 1996. In particular it was contended that there was no arrangement or custom to regard employment as continuing which would fall within the exception at section 212(3), and the respondent expressly drew attention to the precedent authorities of the Employment Appeal Tribunal in Morris v Walsh Western UK Limited [1997] IRLR 562, Murphy v A Birrell & Sons Limited [1978] IRLR 458 and Welton v Delux Retail Limited [2013] IRLR 166, together with the Court of Appeal authority of Curr v Marks and Spencer PLC [2002] EWCA Civ 1852.

11. The Tribunal applied the law relating to unfair dismissal at Part X of the Employment Rights Act 1996 together with the continuous employment provisions at Part XIV. In particular, the Tribunal applied section 108(1) in circumstances where none of the exceptions to the two year rule under subsection (3) applies. The Tribunal next applied the continuity of employment provisions, especially those relating to a year at section 210(2), and weeks counting within the computing period at section 212(1) and (3). Finally, the Tribunal reminded itself that the burden of proof lay with the claimant to establish that he had sufficient continuous service to be able to pursue an ordinary unfair dismissal claim.

Conclusion

12. Ultimately, the claimant simply failed to establish on the balance of probabilities that the Tribunal had jurisdiction to hear an ordinary dismissal claim, since he lacked two years' continuous service. Whatever the claimant's understanding about the position internally in March 2017 when he may have been facing disciplinary or attendance procedures, he did not begin to establish any custom or arrangement entered into before leaving the respondent's employment in March 2016 which could in any way have bridged the gap before his re-employment. There is no evidence of any expected re-employment at the time he resigned in March 2016, and the contrary evidence of a gap of some 5½ months with employment for about five months with another employer is entirely convincing that no such custom or arrangement had been agreed.

13. In all the circumstances, the claimant lacks the necessary continuous two years' service at the effective date of termination and his claim is dismissed for want of jurisdiction.

Regional Employment Judge Parkin

Date 5 December 2018

JUDGMENT AND REASONS SENT TO THE PARTIES ON

5 December 2018

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