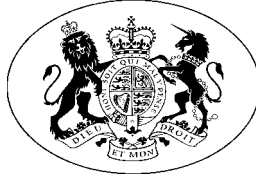


RM



EMPLOYMENT TRIBUNALS

Claimant: Mr G Testa
Respondent: Tiptree Patisserie Limited
Heard at: East London Hearing Centre
On: Wednesday 19 December 2018
Before: Employment Judge Prichard

Representation

Claimant: No appearance or representation, did not attend
Respondent: Mr M Hopkins, Solicitor, Birkett Long, Colchester also in attendance Mr S Cook, HR Manager and Mr D McGrath, Managing Director

JUDGMENT

The judgment of the tribunal is that: -

1. The claim of unfair dismissal is hereby struck out it has no reasonable prospect of success. The tribunal has no jurisdiction because the claimant did not have 2 years' continuous service for the purposes of Section 108 of the Employment Rights act 1996.
2. The case will now be listed for an open preliminary hearing with a time estimate of 1-day on Thursday 28 March 2019 where the issues for consideration will be in any order of the judge's choosing:
 - a) Does the disability discrimination claim have any reasonable prospects of success, if not, it will be struck out under Rule 37(1)(a) of the Employment Tribunal Rules of Procedure 2013.
 - b) If there is little reasonable prospect of success the claimant may be liable to to pay a deposit as a condition of continuing (and may then be subject to an adverse costs order) under Rule 39 of the Employment Tribunal Rules of Procedure 2013.

- c) **Does the age discrimination prospect complaint have any reasonable prospect of success, if not, it will be struck out under Rule 37(1)(a) and if only little reasonable prospect of success the claimant may be asked to pay a deposit under Rule 39.**
- d) **Was the claimant a disabled person within the meaning of section 6 of the Equality Act 2010.**

REASONS

1 Today the case was listed for a preliminary hearing just for case management. The claimant failed to attend. It has been extremely wasteful for the respondent who turned out with the HR Manager and Managing Director as well as their solicitor. Just this morning, at this tribunal, a hard copy letter was received from the claimant giving an overdue response to his disability questionnaire. He states that he has Freiberg disease which affects his right foot and ankle now. His only problems at the bakery seemed to be with his shoulder. This makes no sense. The tribunal has no concept of how this claim is going to play out.

2 At its consideration at a public preliminary hearing, the claim may be struck out. Similarly, the tribunal still has no concept of how the age discrimination claim might play out. The claimant has given no detail at all.

3 Despite my misgivings about the claimant's English language arising from his ET1 claim form (he is Italian), and some of his correspondence, I am reassured by Mr McGrath, the respondent's Managing Director, that his spoken English is fine and he should be able to conduct a hearing.

4 The claimant states also that he was unable to attend court on 19 December, that is today. Irritatingly he posted it (which is mad) just before Christmas. He failed to send a copy to the respondent. He should have emailed it to the tribunal copying the respondent in.

5 Correspondence from a party to the tribunal must always be copied to the other side and it must be seen to be copied to the other side. If we cannot see that it has been cc'd, the tribunal must assume that it has not been copied, and we have to copy it ourselves, which creates a lot of unnecessary work and delay.

6 This instruction has already been sent out to the parties in a case management order but the claimant has ignored it. He has an email address which works. Mr Hopkins emailed him and tribunal in the recent past. It seems, regardless of what the claimant would have said if he had come, that this case is calling out for a public preliminary hearing.

7 He states that he is going to get legal representation which is a wise thing for him to attempt to do. I am not optimistic that he will obtain any. In which case he must proceed alone anyway.

8 It is a complex claim that he purports to bring and he needs advice - advice which the tribunal cannot give. We cannot act as his advice worker. We are here to do justice neutrally as between the parties not to help one side or the other.

9 The claimant may be unaware that you cannot claim unfair dismissal if you have less than 2 years' service, but that is that. This entire breadmaking business itself lasted for less than 2 years. Nobody there had more than 2 years' service with it. The whole workforce was made redundant. Only one individual was redeployed as a delivery driver. The claimant needs to take instructions on the merits of his case. It looks like he has no claim for loss of earnings after the bakery closed.

10 There are other outstanding questions also sent to the claimant on 5 December regarding his claims for age and disability discrimination and these are now overdue.

11 The claimant should get representation as soon as possible, if he can, otherwise he should prepare to proceed alone.

12 Sympathy is extended to the claimant because he his wife is unwell. From his description, it sounds as if she is critically unwell in hospital. However, it has caused unnecessary inconvenience to us all not to have had previous notice of this. If he had notified us sooner the respondent and their solicitor could have been spared a journey.

13 We deliberately set the date of the hearing towards the end of March in order to give the claimant time to consider his position and to find legal representation.

14 The claimant should provide a copy of this record of the hearing to whoever he instructs to act for him so that they understand where we are in these proceedings and show them all the relevant paperwork.

15 The respondent is reserving its position on the question the costs of today wasted. As is common in cases like this, when a party's absence is caused by a medical emergency the tribunal requires the claimant please to provide documentary evidence of his wife's admission to hospital.

16 The claimant is please to provide this evidence within 7 days of this judgment being sent.

Employment Judge Prichard

Date : 23 January 2019