



EMPLOYMENT TRIBUNALS (ENGLAND & WALES)

BETWEEN

Claimant Mr L Aloysius

AND

Respondents Mr Ganga Mahadevan and Mrs Vanetha Vasantharuban

HELD AT: London Central on 4/6/2019
Employment Judge: Mr J S Burns

Representation

Claimant: in person

Respondents: Mr P Collyer (solicitor)

JUDGMENT

1. The claim is struck out.
2. The final hearing which was due to start on 25/6/2019 is cancelled.

REASONS

1. The judgment follows an Open Preliminary Hearing which I held today to decide the matters below, and which were listed in the written summary of a previous case management hearing on 20/2/2019. That summary also identifies at paragraph 3(i) to (iv) the claimed protected disclosures which the Claimant relies on for purposes of his unfair dismissal claim under section 103A Employment Rights Act 1996.
2. I heard evidence from the Claimant. He had not produced a formal witness statement but I asked him questions and took him through the relevant documents so as to assist him to explain his case and his arguments on the important points. I then heard from Mrs Vanetha Vasantharuban, who had produced a witness statement which had been served on the Claimant on or before 20/3/2019 in accordance with previous directions. Where their evidence differed, (which was mainly in respect of what was said by the Claimant on 2/5/2018), I preferred the evidence of Mrs Vasantharuban, as her version was corroborated by contemporaneous documents, consistent with other events which are not in dispute, and given by her in a confident and forthright manner from the witness table, none of which applied to the Claimant's evidence.

3. The documents were in a joint bundle running to 87 pages and in addition Mr Collyer produced a short chronology.

Findings of fact

4. The Claimant started work for the Respondents on 2/1/2017. He worked part time as a cashier and "Forecourt Champion" at the Respondents' petrol station called Shell Old Brompton, which is operated by the Respondents under a franchise.
5. On 2 May 2018 at about 9.45am (shortly before the Claimant's shift was due to start at 10am) Mrs Vasantharuban called him in to the office and criticised the fact that the forecourt was not adequately cleaned and weeds were growing in some gravel, and she indicated that she wanted improved performance from the Claimant in this regard.
6. The Claimant became angry and shouted, stated that he was unhappy to receive this criticism and that he no longer wished to work for the Respondents and was leaving. As he was walking away he added that the Respondents should make sure that they paid him his outstanding holiday pay with his final wages. Mrs Vasantharuban understood from this that the Claimant had resigned with immediate effect. She asked the Claimant to make sure he brought back his uniform (work attire previously provided by the Respondents) "clean and ironed". The Claimant did not start his shift, left the site and did not work for the Respondents again.
7. The next day (3/5/2018) the Claimant brought in his uniform and left it with another employee, together with a copy of an email he had written on 2/5/2018 to Shell (the franchisor) complaining that he had been unfairly constructively dismissed on 2/5/2018. Part of the email reads "*I understood from then that she is forcing me by harassing and bullying by false statements on my workings on a constructive way so that I would leave the job by my own self-esteem of perfection which I have no other choice to accept as she is the sole proprietor of the business and I have no other ways of complaining of her treatment*"
8. On 8/5/2018 Mrs Vasantharuban wrote an email replying to the email dated 2/5/2018. Amongst other things she wrote "*You then asked if I was unhappy with your performance , which I confirmed and mentioned that I have spoken to you many times about the same complaints. At this point you explained that you no longer wanted to work for us (you were not dismissed by me) and demanded that I pay you for the remainder of your holidays*".
9. Between 8/5/2018 and the end of June there was protracted correspondence in which the Respondents tried to get the Claimant in to discuss matters. The Respondents suggested first that the Claimant come to a meeting with Mrs Vasantharuban, then that the Claimant should meet with Mr Ganga Mahadevan and then that the Claimant should meet the Respondents with a professional HR person present.

The Claimant refused to accept all these proposals. His position was that he would be willing to meet an independent HR professional only in the absence of the Respondents, which they were unwilling to agree to.

10. Certain of the correspondence written by Mrs Vasantharuban during this period could be construed, on one interpretation, as written on the basis that the employment relationship continued. For example on 9/5/2018 she wrote *"As you have confirmed you have asked to no longer work at Shell Old Brompton so we shall discuss the terms of departure and any payment owed"*; and on 5/6/2018 she wrote *"As confirmed in previous emails, you are employed with ourselves and not Shell and therefore a Shell representative will not be present at the meeting"*
11. The Claimant, who had been paid monthly in arrears was not paid at the end of May or June 2018.
12. During July the Respondents went on holiday. On 30 July 2018 Mrs Vasantharuban sent the Claimant a letter *"I write to confirm your verbal resignation on 2/5/2018 and your official date of leaving will be 2/5/2018 Please find the payslips and P45 along with the pay cheque"*. Enclosed was a P45 showing an end date on 2/5/2018 and payslips for the months of May, June and July 2018. The May payslip showed pay for one day only, June no pay and July the pay in lieu of holidays only.
13. The Claimant applied for early conciliation on 20/9/2018 and the ACAS certificate was issued on 12/10/2018. He issued his ET claim on 14/10/2018

What was the Claimant's effective date of termination?

14. The Claimant verbally resigned on 2/5/2018 which he confirmed by his further actions in walking off site, and on 3/5/2018 returning his uniform with an email alleging a constructive dismissal on 2/5/2018.
15. The Respondent held open the possibility of the Claimant returning to work by offering him a series of opportunities to meet which plainly could have lead to him retracting his resignation, but he never did so.
16. Mrs Vasantharuban's emails of 9/5/2018 and 5/6/2018 display a degree of confusion on her part as to the exact legal position on those dates, but this cannot detract from the fact that the Claimant had communicated a clear unilateral effective and immediate resignation on 2/5 and 3/5/2018, since when he had neither worked nor been paid.
17. The fact that there was delay in sending the P45 and final payslips until the end of July did not have the effect of extending the termination day until then.
18. The EDT was therefore 2/5/2018.

Were the claims submitted out of time?

19. The primary three month period for bringing an unfair dismissal claim expired on 1/8/2018. The Claimant has failed to show that it was not reasonably practicable to have claimed in time. He knew that he had resigned on 2/5/2018 and handed his uniform back on 3/5/2018. He stated that he was waiting to try to conciliate or mediate the dispute but in fact he showed little interest and it was the Respondents who took the lead in attempting this. In any event even after he received his P45 at the end of July 2018 he waited another 7 weeks before applying for early conciliation. He has failed to show (i) that it was not reasonably practicable for him to claim in time and (ii) that he claimed within a reasonable period after the expiry of the three month period.

20. Hence his claims are brought out of time and must be dismissed for that reason alone

Whether the claims should be struck out on the basis that they have no reasonable prospect of success?

21. The claimed protected disclosures, as identified in paragraph (3) of the case management summary dated 20/2/2019, all took place after the Claimant's resignation which was the event terminating the employment. Even if that resignation could be construed as a constructive dismissal (as to which I make no findings) it was plainly not caused by any of the claimed protected disclosures. Hence the Claimant could not claim unfair dismissal under section 103A, and he did not have sufficient continuity of service to be able to claim "ordinary" unfair dismissal under section 98.

22. For this reason, as well as the jurisdictional (time) point, the claim has no reasonable prospect of success as contemplated by ET rule 37(1)(a) and is therefore struck out.

4/6/2019

Employment Judge Burns
London Central

For Secretary of the Tribunals

Date sent to the Parties
6 June 2019