



EMPLOYMENT TRIBUNALS

Claimant: Mr W B Long

Respondent: Steadfast Security Solutions Limited

Heard at: Manorview, Newcastle-upon-Tyne **On:** 3 September 2019

Before: Employment Judge A.M.S.Green

Representation

Claimant: Mr F Ferguson – Sunderland Welfare Rights

Respondent: Mr M Menon - Counsel

JUDGMENT

The claimant's claim for a statutory redundancy payment is dismissed.

REASONS

1. This public preliminary hearing relates to one of five different claimants who have several overlapping and separate claims relating to their employment with the respondent.
2. The claimant was employed by the respondent as a security officer at Sunderland Football Club, at the Stadium of Light. He claimed that he was employed on a 48 hour contract by the respondent, a company providing security services. He claimed that the respondent lost its contract to provide security guards at the Stadium of Light with effect from 7 December 2017 because the contract was re-tendered and awarded to another service provider called Alpha. Although this may have amounted to a service provision change under TUPE that issue did not form the subject matter of this public preliminary hearing. A separate public preliminary hearing has been listed before me on 4 September 2019 to address that issue involving this claimant and other claimants. The claimant has applied to join Alpha as a second respondent in these proceedings.
3. The claimant's position is that he was on long term-sick leave having taken this time to receive treatment for stomach cancer. He claimed that he was given a P45 in error by the respondent on or around 9 July 2017 and that

his employment continued with the respondent, albeit on a zero hours contract basis. In other words believed that his employment was continuing. After 7 December 2017, he received no further work when returning to work in January 2018. He claims he is entitled to a statutory redundancy payment from the respondent. He also claims breach of contract. The Respondent has defended the claim. It says that the claimant resigned his position because he wanted to claim his pension. In other words he wanted to retire and he could not claim his state pension and statutory sick pay together. It says that he chose to take his state pension. The respondent issued him with his P45 with an end date of 23 September 2017 and subsequently re-employed him in January 2018. This broke his continuity of employment meaning that he did not have two years continuous service as required to for him to qualify for a statutory redundancy payment.

4. At a private preliminary hearing on 12 June 2019, employment judge Arullendran identified the following issues that should be determined by this Tribunal:
 - a. Does the claimant have 2 years continuous service with the respondent, in accordance with ERA sections 108 and 155?
 - b. Should Alpha be joined as a party in the claim brought by Mr Long?

It was agreed with the representatives that the question of joinder only required to be determined if I found that the claimant had the necessary 2 years continuous service.

5. The parties filed and served a joint evidence bundle. Mr Ferguson tendered additional documentation which I admitted into evidence at the hearing. The claimant and Mr S Littlemore, one of the other claimants in the associated claims referred to above, and Mr Hubord of the Respondent adopted their witness statements and gave oral evidence. The representatives made closing submissions.
6. The claimant must establish that he had the necessary continuity of service on a balance of probabilities.
7. In reaching my decision, I have carefully considered the oral and documentary evidence, my record of proceedings and the closing submissions. The fact that I have not referred to every document in the evidence bundles should not be taken to mean that I have not considered it.
8. On considering the evidence, I make the following findings of fact:
 - a. The claimant's employment as a security guard was transferred to the respondent under TUPE on 18 April 2016. He was transferred from another employer called Axis.
 - b. On 4 May 2017, the claimant submitted a Statement of Fitness to Work because of Adenocarcinoma NOS. This was due to expire on 9 July 2017.
 - c. There was conflicting evidence about the claimant's P45.

- i. The claimant said that he received it on or around 9 July 2017 but was told by Jacqui Honor, who worked in HR at the respondent, that it had been issued in error and he should ignore this. He took this to mean that he was still employed. Under cross examination, he claimed that he only received one P45 and he confirmed that it was the copy exhibited in the hearing bundle [90-94]. It was put to him that this could not have been given to him on 9 July 2017 for two reasons. First, the leaving date was incorrect. It should have been 23 September 2017. It was put to him that this was the date on which the claimant said that he wished to resign to claim his state pension. Secondly, the date at end of the P45 was 10 January 2018 which was relevant to when his new employment terminated. The claimant simply disagreed with this.
- ii. Mr Littlemore gave evidence in support of the claimant regarding the P45. Despite claiming that the claimant told him over the phone that he had been given a P45, he could not say exactly when that was. He thought it was around 9 July 2017. Furthermore, he had not seen the P45. I give this evidence little weight.
- iii. Mr Hubord's evidence was that the P45 was incorrect and should have shown a leaving date of 23 September 2017.

Having assessed the conflicting evidence, it cannot be the case that the claimant was given a P45 on or around 9 July 2017. More precisely, it cannot be said that the claimant was given the P45 exhibited in the bundle. It is simply not plausible that a document purporting to record a leaving date of 9 July 2017 and which purported to have been given to the claimant around that time would be dated 10 January 2018 (i.e. post dated by 6 months).

- d. The claimant continued to receive statutory sick pay until 6 October 2017. This was the date of his last payslip [104]. He claimed that he continued to be paid back tax and received further payslips from the respondent after that date. These were not produced.
- e. The claimant admitted that he elected to take his state pension rather than continue receiving statutory sick pay. He would be better off if he did so. This tallies with the last payslip. It also gives weight to the respondent's claim that the claimant told it that he was planning to retire. This adds cogency to the respondent's claim that the claimant discussed this in September 2017 and it was agreed that his employment would end on 23 September 2017.
- f. The claimant did not resign in writing.
- g. There was conflicting evidence as to whether the claimant asked to come back on a part-time basis or whether his employment simply continued.

- i. In December 2017, the respondent avers that the claimant contacted his line manager, Mr Hackworth, to say that he had been given a clean bill of health. He asked if he could return to work part-time. It is averred that Mr Hackworth agreed and the claimant returned to work at the Stadium of Light.
- ii. The claimant disagreed with this. In his evidence, he claimed that his employment had not ended and he was now working on a zero hours basis.

I preferred the respondent's account because the claimant chose to retire in September 2017. He would be better off with his state pension than continuing to receive statutory sick pay. As his health improved, he asked to come back (i.e. as a new employee). He completed a pre-employment medical questionnaire on 14 January 2018 [93-94]. Second, the respondent completed a new employee form relating to the claimant which was signed off by accounts on 15 January 2018 [95]. Under cross examination, it was put to the claimant that he completed the pre-employment medical questionnaire because he had started new employment. He admitted this and said that he had mistakenly believed that his employment had continued because the P45 had been issued in error. He accepted that he was put onto a zero hours contract whereas previously he had not worked under such an arrangement. I find that he retired and came back as a new employee. His continuity of employment was broken by more than two weeks between when he retired and resigned on 23 September 2017 and when he started his new employment with the respondent in January 2018.

9. The claimant's new employment with the respondent ended on 10 January 2018.
10. ERA section 108 provides that an employee requires two years continuous employment ending with the effective date of termination of employment in order to claim ordinary unfair dismissal. This is irrelevant for present purposes as he has not claimed unfair dismissal. ERA section 155 provides that an employee does not have the right to a redundancy payment unless he has been continuously employed for a period of not less than two years ending on the relevant date. This is relevant for present purposes as he is claiming he is entitled to a statutory redundancy payment.
11. The claimant's continuity of employment was broken when he retired with effect from 23 September 2017. When his new employment ended, he did not have the necessary 2 years qualifying service to claim a statutory redundancy payment. Consequently, his claim for a statutory redundancy payment is dismissed.

12. As agreed, as I have not accepted that the claimant has the necessary qualifying service to claim a statutory redundancy payment, I am not required to determine whether Alpha should be joined as a second respondent.

Employment Judge A.M.S. Green

Date 3 September 2019