



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr Gary Williams

v

Greener Books Limited

PRELIMINARY HEARING

Heard at: Watford

On: 18 October 2019

Before: Employment Judge Bedeau

Appearances

For the Claimant: In person

For the Respondent: Mr R Kohanzad, Counsel

JUDGMENT

1. The respondent's application to strike-out the claim is dismissed upon withdrawal.
2. The respondent's application for a deposit order is with his refused.
3. The claimant is allowed to proceed to a final hearing with his public interest disclosure dismissal claim, section 103(A) Employment Rights Act 1996.

REASONS

1. By a claim form presented by the tribunal on 22 January 2019, the claimant made a single claim of unfair dismissal for raising health and safety issues. He had been employed by the respondent from 1 July 2018 to his dismissal on 14 January 2019. He worked as a warehouse manager.
2. In the response, presented on 14 March 2019, the respondent averred that the claimant was bringing a section 98 Employment Rights Act 1996, unfair dismissal claim, but did not have the requisite two years' qualifying period of service, therefore, such a claim should be struck-out as the tribunal does not have jurisdiction to hear and determine it.

3. The respondent further asserted that the claimant was dismissed for poor performance; concerns about his honesty; the operational effectiveness of the company's management given his relationship with staff; and his attitude towards the managing director of the company, Mr Aloysius Ihezic. It applied for the claim to be either struck-out or a deposit ordered.
4. Before me, I invited the claimant to clarify how he put his case against the respondent. He told me that the managing director, Mr Ihezic, was in the habit of shouting at him and believed that he, the claimant, was in a relationship with his, Mr Ihezic's, ex-wife, who is also employed by the respondent and under the supervision of the claimant. He said that on 14 January 2019, at the end of his shift, around 5:15pm, he was outside the compound of the premises talking to Mr Ihezic's ex-wife when Mr Ihezic drove past and saw them talking. He said that he proceeded to his office to get his coat and leave for home when Mr Ihezic entered and said that he was dismissed without notice. The reason was "To protect the integrity of my family and that my clocking in times was deceitful".
5. The following day the claimant received a letter from Mr Ihezic confirming his dismissal on 14 January 2019. He wrote that it was for gross misconduct and that the claimant was summarily dismissed. The alleged misconduct being "dishonest reporting of your signing-in times on company's attendance sheets".
6. On the same day the claimant wrote to Mr Ihezic stating that his working hours were 8am to 5pm but would arrive for work at about 6am. From 6am to 8am, he would not be paid but he would use that time to organise the business of the warehouse and other departments for the day. He wrote:

"During our meeting in my office on 14 January 2019 which lasted 2.44 minutes according to the recording on my phone, your reasons for my dismissal are and I quote "To defend the integrity of your family, poor performance and deceit in my clocking-in record."

All these allegations are false and misrepresent who I am as a person. The reason behind your decision is personal and the personal reason is you think there is something going on between myself and your ex-wife, which is absolutely not true and nothing to do with my ability to carry out my duties. Please reconsider your decision which is unfair and absolutely wrong".
7. The claimant told me that in his written account, he did not mention that he was dismissed making a health and safety protected disclosure because he was focusing on the reason given by Mr Ihezic for his dismissal.
8. His letter was treated as an appeal against his dismissal and an appeal hearing was arranged on 31 January 2019 with Mr Michael Bloedorn, Managing Director, who, after hearing what the claimant had to say, dismissed his appeal.
9. On 3 February 2019, the claimant e-mailed Mr Ihezic challenging the reasons he gave for terminating his employment. It was a strongly worded document in which the claimant personally attacked the character and competence of Mr Ihezic. In it he made no reference to having been dismissed because he had raised health and safety concerns.

- 10. He told me that he spent about a week thinking about the reason given by Mr Ihezic for terminating his employment. As the reason could not be substantiated on the facts, he believed that the real reason for his dismissal was that he had raised issues to do with condition of the warehouse on 12 December 2018 to the Health and Safety Officer, Mr Chuma Udokwu, and to Mr Ihezic on 19 December 2018. He stated he raised concerns about fire hazards and rats in the warehouse, but his concerns were ignored.
- 11. Mr Kohanzad, counsel on behalf of the respondent, acknowledged that the claimant was making a qualifying disclosure in relation to health and safety concerns and that it was a claim of unfair dismissal under section 103(A) Employment Rights Act 1996. He acknowledged that there were several issues in dispute between the parties and that the bar to succeed in a strike-out application is set very high. Accordingly, he did not pursue it but invited me to consider that in this case, there was little reasonable prospect of the claimant succeeding in his automatic unfair dismissal claim.
- 12. I declined to make a deposit order as I considered that the claimant, within a week of dismissal, came to the conclusion that the reason given by Mr Ihezic could not be supported on the evidence and that the real reason was that he had made a protected disclosure by raising health and safety concerns which were ignored, resulting in his termination.
- 13. I have not considered all the evidence in the case, simply a few documents, and the contentions of both parties. I do not conclude that the claimant has little reasonable prospect of succeeding. A lot of the evidence is in dispute. All matters should be ventilated before a judge with all relevant evidence being considered.

 Employment Judge Bedeau
 Date:29.10.19.....
 Sent to the parties on: ...13.11.19....

 For the Tribunal Office