



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr Robert Wasowski

**Respondent:** Princes Soft Drinks Bradford

**Heard at:** Manchester (in private) **On:** 25 November 2019

**Before:** Employment Judge Hoey (sitting alone)

## **Representatives**

For the claimants: Not present and not represented

For the respondent: Miss Smith (counsel)

## **JUDGMENT**

As the claimant has failed to show why his claim for unfair dismissal should proceed, given the claimant has less than the requisite 2 years' service, and given he was given the opportunity to do so, the claim is dismissed.

### **Discussion and reasons**

1. This claim called for a preliminary hearing to determine whether or not the claim should proceed given the claimant had less than 2 years' service and he was claiming unfair dismissal. The parties had been given notice of the Hearing.

### **Claimant not in attendance**

2. The respondent was in attendance (via counsel) and at the claimant's request an interpreter had been booked and was present.
3. The claimant did not appear and was not represented. I asked my clerk to contact the claimant who answered the phone and explained that he was at work. He said he thought he had let the Tribunal know that he could not attend and that he would send another email but he wanted to proceed with his case. After 20 minutes no further communication was received and I proceeded with the hearing.

## Facts

4. The respondent's counsel noted that she was aware of her duties to the court to ensure that she presented a fair summary of the position. She noted that the claimant ticked the box in his ET1 for unfair dismissal and was claiming unfair dismissal. The claimant had been asked by the Tribunal by letter dated 25 July 2019 that the claimant required 2 years' service to claim unfair dismissal (except in special circumstances) and he should explain why his claim should proceed.
5. In his ET1 the claimant says he has less than 2 years' service. He referred to "sexist and varied behaviour" of the respondent "against an agency worker with a different sexual orientation".
6. The claimant had replied to the Tribunal's request to explain why his claim should proceed by email of 8 August 2019 saying his dismissal was "discrimination in accordance with section 94 of the Employment Rights Act" and says there was no written agreement regarding a trial period being extended. He also says that there was "form of extermination of a person with a different sexual orientation which only confirms the way Princes work towards employees". He also says that if the respondent employs "foreigners" the respondent should provide bilingual documentation. He demanded "fair treatment". He said he saw no reason why his claim should not proceed.
7. The respondent's counsel submitted that it was made abundantly clear to him by correspondence what the issue is and what he had been asked to do, namely show why should his claim for unfair dismissal should proceed given he has less than 2 years' service. He was given the opportunity to do so. His email of 8 August does not do so in her submission.
8. While there is use of the word "discrimination" in his claim form, he refers to section 94 of the Employment Rights Act 1996 (which is the claim of unfair dismissal) and he ticked the box stating his claim was for unfair dismissal (with no other boxes being ticked or claims being raised). The reference to discrimination is to how the respondent allegedly treated another individual.
9. In all the circumstances, the respondent asked that the claim be dismissed, the claimant not having shown that he is entitled to bring a claim for unfair dismissal.

## The law

10. In terms of section 108 of the Employment Rights Act 1996, claimants require to have 2 years' continuous service in order to bring a claim for unfair dismissal. The claimant's claim contained within his ET1 is a claim for unfair dismissal. He complains of the way in which the respondent dismissed him. I accept counsel's submission that on a fair reading of the claim form, his claim is for unfair dismissal and unfair dismissal only. He had not shown why the Tribunal has jurisdiction to allow that claim to proceed.

### **Decision and reasons**

11. The claimant does not have 2 years' continuous service and in light of this, his claim is dismissed.
12. In making my decision I took account of the overriding objective in terms of rule 2 to Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 which require all decisions to be taken justly and fairly, which includes the need for proportionality and expedition.
13. The claimant had been advised of the hearing and an interpreter had been booked (and paid for) at his request. There was no communication from the claimant prior to the call made by the clerk that he would not attend. The respondent had also instructed counsel to attend.
14. The claimant had been given the opportunity to clarify why his claim should proceed and he had not set out any basis as to why his claim for unfair dismissal should proceed. That was, on a fair reading of the claim form, his only claim before the Tribunal. He did not have 2 years' service.
15. It was just to dismiss his claim given the Employment Tribunal does not have jurisdiction to determine it.

### **Reconsideration if new information and necessary in the interests of justice**

16. If the claimant has information which suggests that it is necessary in the interests of justice to reconsider the decision to dismiss his claim, he should consider the terms of Rules 70-72 of the Tribunal Rules and ensure he sets out his written application in good time with appropriate evidence including an explanation as to why he did not attend today (or provide any new information sooner).

**Expenses reserved**

17. Counsel for the respondent noted that the respondent had incurred counsel's fees and that the respondent wished to reserve its position in relation to costs

18. The claim is accordingly dismissed.

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Employment Judge Hoey

Dated: 25 November 2019

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JUDGMENT SENT TO THE PARTIES ON

29 November 2019

FOR THE TRIBUNAL OFFICE