



EMPLOYMENT TRIBUNALS

Claimant. Mr G Williams

Respondent Autotech Cylinder Heads Ltd

**Appearances: Claimant in person
Respondent. Mr Malik.**

**Before Employment Judge Hargrove sitting at Bodmin on 26 February
2019.**

JUDGMENT ON PUBLIC PRELIMINARY HEARING.

The judgement of the tribunal is that the tribunal has no jurisdiction to consider the claimants complaint of unfair dismissal because he does not have two years continuous service pursuant to section 108 (1) of Employment Rights Act 1996.

REASONS

1. Section 108 of the Act provides that the right to claim unfair dismissal does not apply to the dismissal of an employee unless he has been continuously employed for a period of not less than two years ending with the effective date of termination. The claimant commenced employment with the respondent on 14th of March 2017. The effective date of termination is agreed to have been the 7th of October 2019, but the circumstances of it are the subject of a dispute which will only arise if the tribunal has jurisdiction to consider the claim. The issue in dispute at this stage is whether or not there was a break in the continuity of his employment between 30th of September 2017 and 2 January 2018 when he resumed employment. Section 212(3) of the Act materially provides that any week during the whole or part of which the employee is absent from work on account of a temporary cessation of work counts in computing the employee's period of employment. The burden lies upon the claimant to satisfy the Tribunal on the balance of probabilities that the Tribunal has jurisdiction. I have heard evidence from the claimant and Mr Beswick, the sole Director of the respondent.
2. The essential issue for the tribunal is whether the claimant was genuinely made redundant because of a downturn in work on the 30th of September 2017 and

taken back on only when work picked up in early January 2018, as the respondent claims, or whether the redundancy was a sham in that the intention was to remove another employee with longer service, Mr Clemes, because he was not as productive as the claimant, and the claimant was assured by Mr Beswick earlier in September that if he went along with the sham, he would be taken back on in the New Year. I accept at once that if I were to be satisfied by the claimant's explanation I would have found that there was a temporary cessation of work. This is not an easy dispute to decide because both witnesses were ostensibly truthful, and there is little contemporaneous documentary or other evidence pointing to the truth. Mr Beswick did not put anything in writing to either the claimant or Mr Clemes at the time. Nor did Mr Williams challenge in writing what had happened to him at the time, nor in his ET1. It was not until the Tribunal issued a strike out warning that he claimed in an email in December 2019 to the Tribunal what he is now claiming. It is however agreed that there was a downturn in work in September, although the claimant says less of a downturn than Mr Beswick makes out. In addition, Mr Beswick has produced P45s for both employees, processed on 22 September in the claimant's case and showing a termination date of 30 September, and 13 October showing a termination date of 6 October in Mr Clemes case. I have concluded that on the basis that there was a downturn in work in September this is more likely to be the genuine reason for the dismissal of both employees. I consider it unlikely that there was a ruse to which the claimant was a party to use the claimants dismissal as an excuse also to get rid of Mr Clemes. I do not see how that ruse would have persuaded Mr Clemes to accept his dismissal without challenge, as he did. Mr Clemes did have two year's service and could have brought a claim, but I do not think that either Mr Beswick or the claimant were aware of the two year rule. On the balance of probabilities I do not accept that Mr Beswick told the claimant in September that he would definitely be taken back on in January, although he did indicate that if work picked up in the New Year, the claimant would be the first to be notified. This was not a temporary cessation of work.

Employment Judge Hargrove

Dated: 2 March 2020

Judgment sent to parties: 2 March 2020

FOR THE TRIBUNAL OFFICE

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