



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4102634/2019 & 4102635/2019

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Held in Glasgow on 17 June 2019

Employment Judge F J Garvie

10 **Mr J Hollas**

**First Claimant
In Person**

15 **Ms S Tayleur**

**Second Claimant
In Person**

20 **HF Irvine Hotels Ltd**

**Respondent
Represented by:
Mr W Templeton -
Employment Law
Consultant**

JUDGMENT

25 The Judgment of the Tribunal is that:

1) the claim insofar as it is brought by the first claimant is dismissed as he does not have the requisite two years' qualifying service in terms of section 108 of the Employment Rights Act 1996 and

2) in respect of the second claimant the claim will now proceed to a final hearing.

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REASONS

Background

1. In his claim presented on 22 February 2019, the first claimant alleges that he was unfairly dismissed. He gave his dates of employment in the claim form (the ET1) as 24 April 2017 and the termination date is 29 December 2018. The claim was submitted online. There is also attached to the ET1 a Form ET1a which refers to that online submission which indicates that there is another claimant, namely the second claimant and that the relevant required information for all the additional claimants (in this case the second claimant) is the same as stated in the claim brought by the first claimant.
2. Apart from the second claimant's name, no further information was provided.
3. The ET1 was acknowledged by letter dated 27 February 2019 addressed only to the first claimant although it refers to both claimants in the heading.
4. A Notice was then sent to the respondent on the same date with the direction that they provide a response, (the ET3) by 27 February 2019.
5. By email of 6 March 2019, Mr Templeton for the respondent referred to this separate form (the ET1a), noting that it appeared that there are two cases which are identical save for the claimant's names. Mr Templeton pointed out that the first claimant appeared to have less than two years' service whereas the second claimant had several years' service. He wanted to know if there was an ET1 for the second claimant. Employment Judge Robert Gall directed that it be confirmed that this ET1 was being treated as a group claim and there was only one ET1 received.
6. The letter dated 11 March 2019, setting out Judge Gall's direction was copied to the second claimant.
7. Mr Templeton then submitted a response, (the ET3) on 18 March 2019 in which the respondent submitted that as first claimant has less than two years' service this meant that the tribunal had no jurisdiction to hear the claim and, separately, in relation to the second claimant there was no ACAS early

conciliation certificate number. Instead, there was only one early conciliation certificate number provided in this claim when it was presented online on 22 February 2019.

5 8. The parties were informed that the case was to proceed to a preliminary hearing. By letters dated 22 March 2019, they were advised that there would be a three hour preliminary hearing to consider the following:

- (i) Whether the first claimant has qualifying service (two years) to claim unfair dismissal;
- 10 (ii) Whether the claims are based on the same set of facts entitling the claimants to include their claims on the same claim form;
- (iii) Further case management as appropriate.

9. That direction was made by Employment Judge Frances Eccles following receipt of an email from Mr Templeton attaching a letter of 21 March 2019.

15 10. That appears to have crossed with Employment Judge Eccles' directions and accordingly the file was referred to me. I confirmed that, as already indicated by Judge Eccles, there was to be a preliminary hearing on these issues. Notices to that effect were issued on 4 May 2019.

The preliminary hearing

20 11. At the start of the preliminary hearing, it was explained to the first claimant that on the face of it, he did not have the requisite two years service.

12. Attention was drawn to section 94 of the Employment Rights Act 1996 which sets out that an employee has the right not to be unfairly dismissed by his employer but this has to be read in conjunction with section 108 of the same act in relation to a qualifying period of employment. It reads as follows:

25 “(1) Section 94 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.”

13. The Tribunal understood that this had not been explained to the claimant when he had contacted ACAS.

14. After discussion, it was agreed that it would be appropriate for the claimant to give evidence. No evidence was given for the respondent.

5 **Findings of fact**

15. The Tribunal found the following essential facts to have been established.

16. The claimant received an offer of employment, (document D3/3.1) which he signed on 23 April 2017. He commenced employment with Hallmark Hotels which was the employer offering the employment to him in terms of that offer letter on 27 April 2017. There was subsequently a TUPE transfer from Hallmark Hotels to the present respondent. The claimant in his ET1 ticked the box at document 1.5 claiming unfair dismissal. He did not tick the box(es) claim any other type of claim.

17. At document 1.6 (being page 7 of the ET1) he set out the position regarding his claim. He referred to a meeting on 21 December at which point the Tribunal understood he was suspended, pending a disciplinary hearing on 28 December. Thereafter on 29 December 2018, he was informed by a Mr Martin Scott of the respondent by email that his employment had been terminated, (document 7 being the minutes of the disciplinary hearing and document 8 being the outcome emailed to the first claimant).

18. The claimant contacted ACAS and the date of receipt by ACAS of the early conciliation notification was 30 January and the date of issue by them of the certificate was the same date, namely 30 January 2019, (document 1.12). That certificate provided a reference number which is the same reference number as appears on the ET1 submitted online by the claimant at document 1.1 (being page 2 of the ET1). As indicated, there is also an ET1a online application form, (document 1.13) which is as follows:

“The following claimants are represented by (if applicable) and the relevant required information for all the additional claimants is the same as stated in the main claim of Jamie Hollas v HF Irvine Hotels Ltd.”

19. Below that, the name, date of birth of the second claimant appears.
20. The claimant accepted that he did not have two years' service with the present respondent, it being accepted that his original employment had been transferred by way of a TUPE transfer from Hallmark to the present respondent although a date of that transfer was not provided. This is not material to the issue before the Tribunal in relation to the first claimant, namely whether he had sufficient qualifying service, including any earlier service with the transferor. Since he accepted that the offer from the transferor was to commence employment with them on 27 April 2017 and his employment with the present respondent ended on 29 December 2018 he had not completed the requisite two years' service even when his employment with the transferor is included.

Deliberation and determination

21. As explained above, an employee has the right not to be unfairly dismissed in terms of section 94 of the 1996 Act but this applies only where a claimant has the requisite two years' qualifying service in terms of section 108.
22. The claimant accepted that he did not have two years' qualifying service and therefore this Tribunal does not have jurisdiction to consider his application for unfair dismissal. Accordingly, his claim is dismissed.
23. There is however one further issue in that the second claimant had also made a claim in terms of that ET1, albeit there is no further information provided apart from that set out at the form ET1a, (see again document 1.13).
24. At the conclusion of the first claimant's evidence, there was discussion with the second claimant and Mr Templeton as well as with the first claimant.
25. The first claimant's position was that he had provided the second claimant's details as set out at 1.13. The second claimant then indicated that she thought she had on her mobile phone details of an early conciliation certificate which she herself had received from ACAS. She was able to find this and it was then emailed to the Glasgow Employment Tribunal, downloaded and printed out. That form is in relation to the second claimant and is stated to

be against the second respondent, albeit as Henry Fitzsimmons Riverside Lodge Hotel which is the same address for the respondent as set out in the ET1 while their name is designed as HF Irvine Hotels Ltd instead of Henry Fitzsimmons Riverside Lodge Hotel.

5 26. There was an adjournment to enable further information to be obtained from the HMCTS vetting section. It was explained that because there was more than one claimant as set out in the Form ET1a, two case numbers were provided, namely one for the first claimant, (4102634/2019) and another for the second claimant, (4102635/2019). The second claimant thought that she
10 had submitted another ET1 herself but despite a search being made on the HMCTS email, no further ET1 was found for the second claimant.

27. When the hearing was reconvened, this was explained to the parties.

28. Mr Templeton accepted that given there is an early conciliation ACAS reference number for the second claimant, the present ET1 has been validly
15 submitted. For the avoidance of doubt, while I note that there is a reference to the Riverside Lodge Hotel rather than HF Irvine Hotels Ltd, that in my view is a minor error and would not have prevented this second claimant's claim being accepted. It is not in dispute that the second claimant has more than two years' qualifying service, (document 9) which refers to the second
20 claimant having a commencement date of employment of 27 October 2015 albeit this appears to have been with a different company called Bespoke Goldie (2) Ltd.

29. Although evidence was not led from the second claimant, there is also a document, (document 10) which refers to an email to her from the respondent
25 albeit at a different hotel address email again in relation to her suspension from work following an allegation of gross misconduct.

30. My understanding is that a disciplinary hearing then took place and subsequently the second claimant was also dismissed from the respondent's employment.

30 31. This was confirmed in an email of 28 December 2018, (document 13).

32. It was thereafter agreed that certain case management direction should be made and these are set out separately from this judgment in a Note for the second claimant and the respondent.

5 33. As explained above, the first claimant does not have sufficient qualifying service to proceed with his claim of unfair dismissal and it is therefore dismissed.

34. The claim/ET1 insofar as the second claimant is concerned will proceed to a final hearing and the case management directions are set out in a separate Note also as explained above.

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Employment Judge: F Jane Garvie

Date of Judgement: 25 June 2019

Entered in Register,

15 Copied to Parties: 26 June 2019