



EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case No: 4100471/2020 (P)

Preliminary Hearing Held on written submission on 2 July 2020

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Employment Judge A Kemp

Mr E Robertson

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**Claimant
In person**

Motor Mile Motors (Tayside) Limited

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**Respondent
Represented by:
Mr R Russell
Solicitor**

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JUDGMENT

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The Tribunal does not have jurisdiction to consider the claims for unfair dismissal and for a statutory redundancy payment, and those claims are dismissed.

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REASONS

Introduction

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1. This Preliminary Hearing was held on written submission following the earlier Preliminary Hearing before me. The Claim is one for unfair dismissal, redundancy, breach of contract in respect of notice pay, holiday pay, and an unlawful deduction from wages in respect of arrears of pay
E.T. Z4 (WR)

due by a former employer. The respondent denies the claims, and argues that there is no jurisdiction for the first two claims in a written submission submitted timeously.

2. The claimant however did not submit anything in writing on time, but thereafter on 26 June 2020 sent 19 emails to the Tribunal with copy documentation, some of which appeared to be duplicates, but without making specific reference to the issues of jurisdiction before the Tribunal. The respondent replied to that making that point by email on 29 June 2020.
3. What the claimant has largely done, in effect, is to send evidence. What he has not done is to set out in the form of pleadings what his position is in a number of respects, firstly about the jurisdiction matter which relates to whether or not continuity of service was broken by his receipt of a redundancy payment, and secondly in relation to the issues raised in the Note and Orders with regard to his argument that there was a relevant transfer. I make allowance for the fact that he is a lay person, but he has not complied with the terms of the Order it appears to me.

Facts

4. Neither party has written to dispute the facts that were proposed in the Note following the earlier Preliminary Hearing. The facts referred to are repeated in this Judgment for ease of reference:
- (i) The claimant was initially employed by Motor Mile Motors Limited (it is hereafter referred to as “the former employer”).
 - (ii) His employment with the former employer commenced on 16 May 2016.
 - (iii) The former employer became insolvent and went into administration on or around 30 August 2019.
 - (iv) On or around 3 September 2019 the claimant commenced employment with the respondent.
 - (v) After the commencement of his employment with the respondent the claimant made claims which included for a redundancy payment from the Insolvency Service (IS).

- (vi) The claimant received a statutory redundancy payment from the IS for the period from the commencement of his employment with the former employer to its termination on or around 30 August 2019.
- (vii) The claimant's employment with the respondent terminated on 28 October 2019.

Law

5. The Employment Rights Act 1996 has provisions as to continuity of service for the purposes of claims for unfair dismissal and a statutory redundancy payment, which in each case require that for a minimum period of two years, found at sections 108 and 155 respectively. What service is continuous is set out within Part XIV of that Act. Section 214(2) states

“The continuity of a period of employment is broken where—

(a) a redundancy payment has previously been paid to the employee (whether in respect of dismissal or in respect of lay-off or short-time), and

(b) the contract of employment under which the employee was employed was renewed (whether by the same or another employer) or the employee was re-engaged under a new contract of employment (whether by the same or another employer)”

Discussion

6. The first part of the provision applies, as a redundancy payment was paid to the claimant. There is no statutory requirement that that payment be from the former employer, and the fact that it was from the Insolvency Service is not, I consider, relevant.

7. The respondent does not appear to have been aware of that payment at that time. The respondent continued to employ the claimant. I consider that the payment of the redundancy payment and the continued employment of the claimant does amount to the renewal of employment for statutory purposes.

8. The respondent relied on the authority of ***Secretary of State for Trade and Industry v Lassman [2000] IRLR 411*** which I consider supports the conclusion of renewal of employment, but that payment of a statutory redundancy payment in such circumstances breaks continuity of service.
- 5 The claimant in that case was employed at a business (R) when they went insolvent and he applied to the Secretary of State for a redundancy payment. He received a payment for when he started with R to when he was made redundant. Shortly, afterwards, L was re-employed by PGI, the company that bought the insolvent business of R. When some years later
- 10 PGI also became insolvent and the claimant was made redundant he applied to the Secretary of State for a redundancy payment again. The Secretary of State paid a redundancy payment calculated from when he started with PGI until he was made redundant by them. The claimant argued that there was no break in his continuity of employment as a result
- 15 of a transfer of undertaking from R to PGI, and he sought a payment from the start of his employment with R. The Secretary of State appealed against the Employment Tribunal decision awarding the claimant a sum on that basis. The Secretary of State's appeal was allowed. It was held that that the redundancy payment made in respect of L's employment with
- 20 R had operated to break his continuity of employment, such that the period of continuity of service started after that payment.

Conclusion

9. In light of the foregoing analysis, the claimant's continuity of service for statutory purposes was broken by the payment of the redundancy payment. The result of that is that he does not have the necessary
- 25 continuity of service to claim unfair dismissal, or a further redundancy payment (although that is not the claim that the respondent sought to be struck out it must be in light of the finding above). Those claims have accordingly been dismissed.

30 Remaining claims

10. The respondent did also seek in its written submission the dismissal of the claim as to unlawful deduction from wages, but that claim is not dependent

on continuity of service, and is one that might be within the jurisdiction of the Tribunal.

11. It is understood that that claim relates to sums said to be due from the time of employment with the former employer, and it is also I consider alleged
5 that the sum is due by the respondent as it was a liability that the claimant says was transferred under the Transfer of Undertakings (Protection of Employees) Regulations 2006.
12. A separate issue of jurisdiction may arise in regard to such a claim for
10 unlawful deduction from wages, although not specifically raised by the respondent. As it goes to jurisdiction it is necessary that the Tribunal raise it itself. Section 23 of the Employment Rights Act 1996 requires the claimant to commence a claim within three months. That period is in effect extended where there is a series of deductions, when the period starts at the end of that series. It is not clear if the claimant is contending that there
15 was such a series, and if so when it ended. It is also not clear whether he is arguing that it was not reasonably practicable to have presented the claim in time, and that he did so within a reasonable time, for the purposes of section 23(4). Nothing in relation to this point appears from the emails he sent to the Tribunal referred to above, although this point has not been
20 raised specifically until now.
13. If the claimant wishes to make such arguments on the jurisdiction of a
claim for unlawful deduction from wages he is directed to provide them in writing by email to the Tribunal with a copy sent to the claimant at least one hour prior to the next Preliminary Hearing on 6 July 2020. Should he
25 fail to do so, a further Judgment may be given regarding the issue of jurisdiction over that claim on the basis of the information before the Tribunal.
14. What remains separately are claims for breach of contract which is
30 understood at present to be solely in respect of notice, and which in light of the finding as to continuity may be for a period of one week. The breach of contract claim could conceivably include the claim for sums that transferred from the former employer, and for outstanding holiday pay if there was a relevant transfer, but if the claimant wishes to make a claim

for breach of contract on that basis for these matters he requires to specify that in his pleadings, and the respondent may seek to object to that as an amendment which (the respondent may argue) ought not to be granted. This issue can therefore be addressed at the next Preliminary Hearing.

- 5 15. There is also a potential claim for holiday pay, but it is not clear on what basis the claimant seeks that. It does not appear to me that he has provided a Schedule of Loss as the Orders granted earlier required.
16. The claimant had been required in the Orders from the earlier Preliminary Hearing to provide further specification of the claims, and of the basis on
10 which he argued that there had been a relevant transfer. He has not complied with that adequately. He has in some emails made comments on the issues that required an answer, but in the most general terms, which I consider do not meet the terms of the Order. In the absence of specification of the basis on which he contends that there was a transfer
15 his claims must largely fail.
17. A further Preliminary Hearing has already been fixed for 6 July 2020. I consider that it is in accordance with the overriding objective that I set matters out as I have done above in advance of that so that both parties but particularly the claimant are aware of the view I formed from reading
20 the documentation submitted by email, and the emails themselves. The claimant will have an opportunity to provide written notice of the basis on which he alleges that there is jurisdiction for a claim of unlawful deduction from wages, and the facts on which he argues that there was a relevant transfer, and to provide a Schedule of Loss, all in terms of the Orders
25 granted previously, in advance of that Preliminary Hearing. Doing so would be late, but I can consider matters further in light of representations made by both of the parties.
18. Should the claimant not do so, I shall consider whether to arrange a further hearing to consider the strike out of the remaining parts of the Claim on
30 the basis either that there was a material failure to comply with the terms of the Orders under Rule 37(1)(c) or that it has no reasonable prospects of success under the terms of Rule 37(1)(b) within Schedule 1 of the

Employment Tribunals (Constitution and Rules of Procedure) Regulations
2013.

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Employment Judge:
Date of Judgment:
Date sent to parties:

Alexander Kemp
02 July 2020
03 July 2020