



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr Raymond Thompson

**Respondent:** Sodexo Ltd (sued as Sodexo UK Ltd)

## RECORD OF A PRELIMINARY HEARING

**Heard at:** Leeds (in private by telephone) **On:** 2 July 2020

**Before:** Employment Judge R S Drake (sitting alone)

### Appearances

For the Claimant: In Person

For the Respondent: Mr G Anderson (of Counsel)

## JUDGMENT

The Claimant's claim of unfair dismissal is dismissed on it being established that his original dismissal for alleged gross misconduct on 29 November 2019 was reversed on appeal on 21 January 2020 and he was reinstated and thus his express dismissal had no legal effect, and nor as at the date of commencement of this claim had he resigned or complained of constructive dismissal.

### Reasons

- (1) The Claimant was employed by the Respondent, a service and utilities provider company that provides inter alia security services, latterly as a security officer, from 18 July 2015 until purported dismissal with effect on 29 November 2019 but subject to an appeal which concluded on 21 January 2020.

- (2) By a claim form presented on 10 March 2020, following a period of early conciliation from 7 January 2020 to 21 February 2020, the Claimant brought a complaint of express summary unfair dismissal. He did not complain of having resigned (as he had not done so) in circumstances amounting to constructive unfair dismissal.
- (3) In summary, the Respondent's defence is that by reinstating the Claimant and thus upholding his appeal against purported dismissal and there being no expressed constructive dismissal claim, there had been no dismissal as such and therefore there exists no basis for the Tribunal to have jurisdiction to hear the claim.
- (4) The hearing today was set to examine whether the claim had no reasonable prospect of success (as originally opined by EJ Jones on 21 April 2020) but subject to the Tribunal taking account (at the behest of the Order of EJ Rostant on 3 June 2020) of the Claimant's letter 21 May which had been sought to show cause what effect it had on the Claimant's reinstatement.
- (5) I heard detailed argument from the Claimant in person (whom I guided as to how to proceed in view of the fact he was unrepresented and not physically present) and from Mr Anderson for the Respondent. I also took account of a bundle of all the relevant pleadings and correspondence upon which both parties sought to rely.
- (6) I took account of the letter dated 21 May 2020 from the Claimant as sought by the Tribunal, and find it simply rehearsed the same or similar arguments about why the original dismissal was felt by the Claimant to be unfair without addressing the question as to what effect reinstatement had on that dismissal.
- (7) I find that in addition to what is recorded above, not only had the Claimant been successful on appeal against dismissal, he was also subsequently in receipt of all back pay due to him in April for the period from his dismissal to 7 May 2020. He has accepted such payment.
- (8) I find that the Claimant had received and not repaid or rejected this payment which was in a lump sum and he had not complained of constructive dismissal at any time nor done anything amounting to resigning or doing so in response to the actions of the Respondent.
- (9) A number of authorities were placed before me to give me guidance and I considered each as listed below:
  - (i) **J Sainsbury Ltd v Savage [1981] ICR – CA**
  - (ii) **Howgate v Fane Acoustics Ltd [1981] IRLR 161 – EAT**
  - (iii) **Salmon v Castlebeck Care [2015] ICR 735 – EAT**
  - (iv) **Patel v Folkestone Nursing Home [2019] ICR 273 - CA**
- (10) From these authorities, which I recognise are binding upon me coming as they do from either/both the Employment Appeal Tribunal and/or the Court of Appeal,

that I am to regard a dismissal which has been reversed on appeal as having had no legal effect, thus not constituting dismissal. The question of whether since commencement of this claim there has been any act on the part of either party amounting to express or implied termination of employment is still an open question (the Claimant has refused to return to work so the Respondents are no longer paying him) but it is not one for me to determine, because if there has been a termination, it post dates commencement of the claim and this is outside my purview.

- (11) Thus, I conclude I have no alternative but to dismiss the claim as there has been neither an express, or irrevocable on appeal dismissal, nor a constructive dismissal as alleged by the Claimant.

**Employment Judge R S Drake**

**20 July 2020**