



EMPLOYMENT TRIBUNALS

Claimant: Luke Harrowsmith

Respondent: Hmi Elements Ltd

RECORD OF A PRELIMINARY HEARING

Heard at: Leeds (in private by telephone) **On:** 16 July 2020

Before: Employment Judge R S Drake (sitting alone)

Appearances

For the Claimant: In Person

For the Respondent: Mr Brian Addlestone (Solicitor)

JUDGEMENT

- (1) The Claimant's unfair dismissal claim is dismissed because having commenced employment on 18 April 2018 and his employment having ended according to the Respondents on 28 February 2020 (or according to the Claimant on 31 March 2020), for the purposes of Section 108 Employment Rights Act 1996 ("ERA") he does not have two continuous years qualifying service to enable him to pursue a claim for unfair dismissal under Section 94 ERA.

Findings and Reasons

- (2) It was common ground that the Claimant was employed by the Respondent latterly as an electronic assembly technician, from 18 April 2018 until dismissal with effect on 28 February 2020 following which he was paid in lieu of notice which expired on 31 March 2020. By a claim form presented on 27 April 2020, following a period of early conciliation, the Claimant brought a single and discrete complaint of unfair dismissal. He sought to argue today that it included a claim that, as he had had to issue a Subject Access Request/Enquiry, this amounted

to a Public Interest Disclosure and that thus he could bring a claim related thereto at any time despite less than two years continuous service.

- (3) In summary, the Respondent's defence is no Public Interest Disclosure had been made by the Claimant at any time both before and within this claim, that he doesn't complain about this in his claim form as a basis for his claim for unfair dismissal or as a stand-alone claim. Further, they assert that as he has less than two years' service as at the effective date of termination of his employment, his claim for unfair dismissal was excluded from right of pursuit and should be dismissed as he had been warned they would so apply.
- (4) I find that the claim form makes no reference to any Subject Access Request as argued orally today and no mention of any act that could be inferred as being a Public Interest Disclosure nor that the Respondent's treatment of the Claimant could be said to be because of having made a protected disclosure.

S47B Employment Rights Act 1996 ("ERA") provides: -

"A worker has the right not to be subjected to any detriment by any act or any deliberate failure to act by his employer done on the ground that the worker has made a protected disclosure..."

In defining a "protected disclosure" S43B ERA provides: -

"A qualifying disclosure means any disclosure of information which in the reasonable belief of the worker making the disclosure is made in the public interest and tends to show one of several specific (matters)"

In this case, there is nothing in the pleading by the Claimant in his ET1 that points to anything which could be interpreted as being a "protected disclosure" as defined by S43B nor of any subjection to detriment on the grounds of having made such a disclosure for the purposes of S37B.

- (5) S108 ERA provides as follows: -

"The right to pursue a claim for 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 of employment ... "

In this case the effective date of termination of employment for the purposes of the definition thereof in S97 ERA is the date it took effect and thus 28 February 2020, but if there were any doubt about that, then on the Claimant's own case it ended 31 March 2020 and thus before the second anniversary of commencement of his employment. Accordingly, I had no alternative but to dismiss the claim in its entirety.

- (6) Despite prior warning by the Respondent of consideration of this, as no application was before me, I made no order in respect of costs.

Employment Judge R S Drake

21 July 2020