



EMPLOYMENT TRIBUNALS

Claimant Mr A Zatylny
Represented by in person

Respondents WM Morrison Supermarkets Plc
Represented by Mr Welch (counsel)

Before: Employment Judge Cheetham QC

Hearing held on 24 August 2020 at
London South Employment Tribunal by Cloud Video Platform

JUDGMENT

1. The application to amend the claim to add a complaint of automatically unfair dismissal on the ground of making a protected disclosure is dismissed.
2. The complaint of wrongful dismissal is dismissed, because the Claimant suffered no financial loss under the contract.
3. The employment tribunal does not have jurisdiction to hear the complaint of “ordinary” unfair dismissal, because the Claimant does not have sufficient qualifying service.
4. This claim is therefore dismissed.

REASONS

5. *This has been a remote hearing on the papers, which the parties have not objected to. The form of remote hearing was: V - video. A face to face hearing was not held because it was not practicable and the issue of the*

future determination of the claim could be resolved from the papers. The documents that I received were those contained in the Tribunal case file.

6. The Claimant was employed as an LGV Driver from 16 September to 16 October 2019 and he brought this claim on 25 December 2019. The claim was for unfair dismissal, but the Claimant was only employed for one month, so that is not a claim open to him. He also claimed wrongful dismissal.
7. At this hearing, he said that he was also claiming that he had been dismissed for making a protected disclosure. Although it is correct that he had ticked the box on the Claim Form for protected disclosures, neither I nor the Respondent had read his particulars of claim as alleging whistleblowing. Rather, they describe how he was dismissed for infringements of Regulations and that he strongly disagreed with his employer over how those Regulations should be applied.
8. Therefore, we proceeded on the basis that the Claimant should make an application to amend his claim to add a claim of dismissal on the ground of making a protected disclosure (Employment Rights Act 1996 s.103A). He did so on the basis that his particulars of claim, as currently pleaded, already disclosed this cause of action, rather than that he wished to amend by adding anything to those particulars. In other words, he wished to add a further label to his existing claim.
9. The Claimant said that his employer did not comply with EU Regulation 561/2006, which provides a common set of rules for maximum daily and fortnightly driving times, as well as daily and weekly minimum rest periods for all drivers of road haulage and passenger transport vehicles, subject to specified exceptions and national derogations. The Claimant clearly has a thorough understanding of these Regulations.
10. What his particulars of claim state is that:
 - (i) The Claimant was accused of two infringements of the Regulations (for the purpose of this application, it does not matter which).
 - (ii) He was asked to “sign these infringements”, which I think means he was asked to agree that he had committed these infringements, but he refused to do so.
 - (iii) The Respondent misinterpreted Article 7, paragraph 2 of the Regulations, which is about rest breaks.
 - (iv) A combination of those matters led to his dismissal.
11. The dispute between the Claimant and the Respondent was therefore about the interpretation and application of the Regulations. However, it is not the Claimant’s pleaded case that he gave his employer information which he reasonably believed tended to show they were in breach of the Regulations and did so in the public interest (to paraphrase s.43B of the Act) and it is certainly not his case that is why he was dismissed. He was dismissed – he says – because his employer considered (rightly or wrongly) that he was

in breach of the Regulations, whereas the Claimant was applying what he considered to be the correct interpretation.

12. In those circumstances, the application to amend the claim to add a complaint of dismissal on the ground of making a protected disclosure is dismissed.
13. That would otherwise leave the complaint of wrongful dismissal, but the Claimant said that he had suffered no financial loss under the contract, which must mean that the claim as a whole is dismissed.

Employment Judge S Cheetham QC
Dated 25 August 2020