



EMPLOYMENT TRIBUNALS

Claimant: Mr A Butt

Respondent: EE Limited

Heard at: Croydon **On:** 16 December 2019

Before: Employment Judge Cheetham QC

Representation

Claimant: in person

Respondent: Mr Hall (solicitor)

REASONS

1. At this hearing on 16 December 2019, I gave the following judgment: (i) the Claimant's application to amend his claim to add a complaint that he was dismissed by reason of making a qualified disclosure is refused; and (ii) the Tribunal does not have jurisdiction to hear the claim for unfair dismissal, as the Claimant was employed for less than 2 years.
2. The hearing was originally listed as a Full Merits Hearing, but was changed to a hearing of the Claimant's application to amend his claim. I gave reasons orally at the hearing, but the Claimant has now requested those reasons in writing (email of 8 April). There was clearly a delay in sending out the Judgment, for which I apologise.
3. In his ET1, the Claimant gave his dates of employment as 9 January 2017 to 31 December 2018. He ticked the boxes for unfair dismissal, notice pay and arrears of pay and he also ticked the box to show that he was making a protected disclosure, although the particulars of claim did not mention whistleblowing.
4. The Respondent filed a response that raised the issue of jurisdiction, because the Claimant did not have 2 years' continuous employment. The Claimant was duly warned by the Tribunal that he appeared to lack the requisite continuous employment, but did not reply. On 24 June, the Respondent formalised its application to strike out the claim. The Claimant responded with reasons why he believed he had the qualifying employment, which turned on his notice period. He made no reference to whistleblowing.

5. In October 2019, there was a preliminary hearing, at which EJ Tsamados explained that the Claimant did indeed appear to have less than 2 years' continuous employment. For the first time, the Claimant mentioned whistleblowing as part of his case and that led to this application to amend.
6. The Claimant told me that he relied on an email of 5 October 2018, which he sent to his manager. This email is mentioned in his particulars of claim, where he states: "*I sent (an email) ... complaining about issues we faced due to operational issues and problems we faced dealing with customers and extra time we spend at closing of shop and not getting paid for extra time as well as full lunch breaks*". That email was in the hearing bundle (p.54).
7. I explained to the Claimant what was needed for something to amount to a qualifying disclosure. It has to be something more than a complaint. There must be a disclosure of information, in other words the communication to the employer must contain some fact or facts, which the Claimant reasonably believes tends to show – for example – that there has been a failure to comply with a legal obligation. I gave the Claimant some examples. Also, the disclosure must be made in the public interest.
8. The difficulty that the Claimant faced at this hearing is that the email does not amount to a qualifying disclosure. In my view, as I explained to him, it makes a complaint, but it does not provide any information which might show (for example) that a legal obligation has been breached.
9. The Claimant is relying upon a single communication which does not amount to a qualifying disclosure, so the application to amend to add a whistleblowing claim falls at the first hurdle. I can therefore put to one side the Respondent's additional arguments that, apart from ticking the box in section 10, the Claimant made no mention of whistleblowing until the preliminary hearing and also issues of prejudice to the Respondent over allowing an amendment that would transform the claim.
10. We then turned to the qualifying period for the unfair dismissal claim. Unfortunately for the Claimant, who was summarily dismissed for gross misconduct, even if one adds one week's statutory notice, his employment fell short of 2 years. The Tribunal therefore does not have jurisdiction to hear the ordinary unfair dismissal claim.
11. That leaves the claim for wrongful dismissal, which the Claimant wishes to pursue.

Employment Judge Cheetham QC

Date: 28 April 2020