



EMPLOYMENT TRIBUNALS

Claimant: Mr D Sherlock

Respondent: Panad Site Services Ltd

Heard at: Manchester (by CVP video link)

On: 8 September 2020

Before: Employment Judge McDonald

REPRESENTATION:

Claimant: In person

Respondent: Ms S Younus (Litigation Consultant)

JUDGMENT

1. The claimant's complaint that he was unfairly dismissed (included in his claim form received by the Tribunal on 17 December 2019) is dismissed because it was brought prematurely and the Tribunal does not have jurisdiction to hear it.
2. The claimant's complaint that he was entitled to a redundancy payment (included in his claim form received by the Tribunal on 17 December 2019) is dismissed because it was brought prematurely and the Tribunal does not have jurisdiction to hear it.
3. The claimant's complaint that the respondent breached his contract by failing to pay him notice pay (included in his claim form received by the Tribunal on 17 December 2019) is dismissed because it was brought prematurely and the Tribunal does not have jurisdiction to hear it.
4. The claimant's complaint that he was entitled to a lay off payment under s.147 of the Employment Right act 1996 is struck out because it has no reasonable prospect of success.
5. The claimant's remaining complaints are unaffected by this judgment and will proceed to a final hearing.

REASONS

Introduction

1. I conducted a public preliminary hearing on 8 September July 2020 by CVP video link. The matters discussed at that preliminary hearing are set out in the document headed "Record of a Preliminary Hearing" dated the same day as this Judgment. This Judgment deals only with those of the claimant's complaints which I dismissed or struck out at that hearing. It should be read alongside the Record of Preliminary Hearing.

The complaints of unfair dismissal, failure to pay redundancy pay and failure to pay notice pay

2. The claimant told me at the hearing that his case is that he was constructively dismissed on 16 January 2020 when he resigned with immediate effect. That means he had not been dismissed when he filed his claim form received by the Tribunal on 17 December 2019. He also accepted that he had not been given notice of termination of employment by the respondent when he filed his claim form.

3. The claimant's claim form included complaints of unfair dismissal, failure to pay redundancy pay and failure to pay notice pay in breach of his contract of employment. Since the claimant had not been dismissed or given notice at the point when he filed his claim form, the Tribunal does not have jurisdiction to hear those complaints. Those complaints are therefore dismissed.

The claimant's claim for a lay off payment under s.147 of the Employment Rights Act 1996 ("the ERA")

4. The claimant's claim form included a claim for what he referred to as "lay off pay" under s.147 of the ERA. S.147 provides that an employee can claim redundancy pay from their employer after they have been laid off for a specified period. However, in order to make such a claim the employee has to give a notice in writing in accordance with s.148(1) ERA. The claimant accepted he had not given such a notice in this case.

5. In those circumstances I decided that his claim under s.147 ERA had no reasonable prospect of success and struck it out under rule 37(1)(a) of the Employment Tribunal Rules of Procedure 2013.

Employment Judge McDonald

Date: 14 September 2020

JUDGMENT AND REASONS SENT TO THE PARTIES ON

16 September 2020

FOR THE TRIBUNAL OFFICE

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