



THE EMPLOYMENT TRIBUNALS

Claimant: Mr R Beadnell

Respondent: Elfab Limited

Heard at: Newcastle Hearing Centre On: Tuesday 18th August 2020

Before: Employment Judge Johnson

Members:

Representation:

Claimant: In Person

Respondent: Mr M Dulovic (Solicitor)

JUDGMENT ON PRELIMINARY ISSUE

1. Pursuant to Section 108 (1) of the Employment Rights Act 1996, the employment tribunal being satisfied that the claimant did not have two years continuous service with the respondent as at the effective termination date of his employment with the respondent, the employment tribunal does not have jurisdiction to hear the claimant's complaint of unfair dismissal. That complaint is struck out.

REASONS

1. This matter came before me this morning by way of a private preliminary hearing by telephone. The claimant attended in person and the respondent was represented by Mr Dulovic.
2. By a claim form presented on 12th March 2020, the claimant brought a complaint of unfair dismissal. On that claim form the claimant confirmed that his employment with the respondent began on 30th September 2019 and ended when he was dismissed on 17th February 2020.
3. The claimant recites in his claim form that he had been invited to a meeting by the respondent to discuss the contents of social media posts made by him. The respondent expressed concern about the content of those social media posts.

The claimant acknowledged and accepted that he had made those comments, but at the meeting itself did not see any need to apologise. The claimant at the time of the meeting had not yet completed his six-month probationary period with the respondent. The respondent decided that it would dismiss the claimant on the basis that his conduct was such that he had not satisfactorily completed the probationary period. The claimant, upon learning that he was to be dismissed, did apologise for the content of the social media posts. However, the respondent maintained its decision to dismiss the claimant.

4. Section 94 of the Employment Rights Act 1996 states as follows:-

- “(i) An employee has the right not to be unfairly dismissed by his employer.
- (ii) Subsection (i) has effect subject to the following provisions of this Part (in particular sections 108 to 110) and to the provisions of the Trade Union and Labour Relations (Consolidation) Act 1992 (in particular sections 237 to 239).”

Section 108 (1) of the Employment Rights Act 1996 states as follows:-

“Section 94 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.

Section 108 (3) then sets out a list of situations which amount to an exception to the requirement to have two years continuous service. I am satisfied that the circumstances surrounding the claimant’s dismissal do not fall within any of those exceptions.

5. Because the claimant does not have two years continuous service with the respondent, the employment tribunal does not have jurisdiction to hear the claimant’s complaint of unfair dismissal. That complaint is therefore struck out.

EMPLOYMENT JUDGE JOHNSON

**JUDGMENT SIGNED BY EMPLOYMENT
JUDGE ON 27 August 2020**

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