



EMPLOYMENT TRIBUNALS

Claimant: Mr S Shaw

Respondent: DPD Group Limited

Heard at: Birmingham by Video

On: 3 November 2020

Before: Employment Judge Dean

Representation

Claimant: in person

Respondent: not in attendance

JUDGMENT

The Claimant's application for interim relief in respect of a claim presented to the Tribunal on 13 October 2020 for interim relief has failed to comply with the provisions of s161(3) of Trade Union & Labour Relations (Consolidation) Act 1992. The tribunal does not have jurisdiction to entertain the claimant's application which is dismissed.

REASONS

Background

1. By way of background in this case, a claim form was presented to the Employment Tribunal on 13 October` 2020. The Claimant brought complaints of automatically unfair dismissal pursuant to Section 152 of the Trade Union and Labour Relations (Consolidation) Act 1992 (“TULRCA”) for having been dismissed for trade union the reason or if more than one the principal reason being that the employee:
“b. Had taken part in or proposed to take part in activities of an independent trade union at an appropriate time”
2. The application contained an application for interim relief and this Hearing has been listed to consider that application for interim relief.
3. The only documents before me are the claim form together with the claimant’s email communication sent on 3 November 2020 setting out more detail of the reasons for his Interim Relief application. The respondent who was sent notice of the hearing on 21 October 2020 has not been in attendance and the response to the complaint is not due to be presented until 18 November 2020.
4. The Claimant’s application is that having attended a meeting with union officers and fellow union representatives he was dismissed. The claimant asserts for the reason or if more than one the principal reason of his taking part in Trade Union activities for Unite the Union. The Claimant asserts that he has been dismissed by the Respondent on the 13 October 2020 and that the dismissal was an automatically unfair dismissal in breach of the provisions of Section 152(b) of TULRCA. The claimant claims for Interim Relief having been unfairly dismissed “for the reason or, if more than one, the principle reason) for the dismissal is that the employee having taken part in trade union activities – attending a meeting with union officers on 9 September 2020

5. The issue that I will be required to determine in considering the application for initial relief, is whether or not:
- a. The claimant was dismissed by the respondent.
 - b. The complaint is that it is alleged that the claimant was dismissed for the reason of his trade union membership of activity in breach of s152(1)(b) of the Trade Union & Labour Relations (Consolidation) Act 1992 ("TULR(C)A").
 - c. The application for Interim Relief was presented to the tribunal before the end of the period of seven days immediately following the effective date of dismissal as required by s161(2) of TULR(C)A.
 - d. In support of the application for Interim Relief a certificate in writing signed by an authorized official of the independent trade union of which the employee was a member presented to the tribunal before the end of the period of seven days immediately following the effective date of dismissal as required by s161(3) of TULR(C)A. The certificate stating:
 - i. That on the date of the dismissal the employee was or proposed to become a member of the union, and
 - ii. That there appear to be reasonable grounds for supposing that the reason for his dismissal (or, if more than one, the principal reason) was one alleged in the complaint.
 - e. If on hearing the application for interim relief it appears that it is likely that on determining the complaint to which the application relates it will find that, by virtue of s152 the complainant has been unfairly dismissed.

6. In addition the provisions of s161(3) of TULRCA provide that
- S161 Application for interim relief.**

(1)An employee who presents a complaint of unfair dismissal alleging that the dismissal is unfair by virtue of section 152 may apply to the tribunal for interim relief.

(2)The tribunal shall not entertain an application for interim relief unless it is presented to the tribunal before the end of the period of seven days

immediately following the effective date of termination (whether before, on or after that date).

(3) In a case where the employee relies on [F1 section 152(1)(a), (b) or (ba), or on section 152(1)(bb) otherwise than in relation to an offer made in contravention of section 145A(1)(d),] the tribunal shall not entertain an application for interim relief unless before the end of that period there is also so presented a certificate in writing signed by an authorised official of the independent trade union of which the employee was or proposed to become a member stating—

(a) that on the date of the dismissal the employee was or proposed to become a member of the union, and

(b) that there appear to be reasonable grounds for supposing that the reason for his dismissal (or, if more than one, the principal reason) was one alleged in the complaint.

(4) An “authorised official” means an official of the trade union authorised by it to act for the purposes of this section.

(5) A document purporting to be an authorisation of an official by a trade union to act for the purposes of this section and to be signed on behalf of the union shall be taken to be such an authorisation unless the contrary is proved; and a document purporting to be a certificate signed by such an official shall be taken to be signed by him unless the contrary is proved.

(6) For the purposes of subsection (3) the date of dismissal shall be taken to be—

(a) where the employee’s contract of employment was terminated by notice (whether given by his employer or by him), the date on which the employer’s notice was given, and

(b) in any other case, the effective date of termination.

Consideration

7. The complaint was presented within 7 days of the Effective date of termination of employment

8. There is not attached to the complaint a certificate in writing signed by an authorised official of the independent trade union of which the claimant was a member stating and that there appear to be reasonable grounds for supposing that the reason for his dismissal (or, if more than one, the principal reason) was one alleged in the complaint.

9. The claimant has confirmed that he is not in possession of a certificate required signed by an authorised official of Unite the Union. He states that the events which led to his dismissal were in relation to an false accusation made by a trade union officer who falsely accused him of having done something which he not done. The claimant asserts that h has had difficulties in communicating with his union who are not supporting his case and that he has not asked for a certificate to be provided by the union.

10. In the circumstances the claimant has failed to comply with the provisions of s161 (3) of TULR(C)A. The provisions for interim relief application providing a draconian remedy in favour of the claimant and the conditions for proceeding with an application are strict. As a result of the claimant's failure to satisfy the statutory conditions the employment tribunal shall not entertain his application for interim relief which is dismissed.

Employment Judge Dean

5 November 2020

