



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr A Annette  
**Respondent:** Ministry of Defence

**Heard at:** Watford by CVP  
**Before:** Employment Judge R Lewis

**On:** 8 March 2021

**Appearances:**

For the claimant: In person  
For the respondent: Mr M Humphreys, counsel

## JUDGMENT

1. The claimant's claims are struck out because the tribunal has no power to hear them.

## REASONS

1. The claimant served as a soldier in the British Army for over eleven years. He was discharged on 30 June 2020. He told me today that the reason for his discharge related to a tattoo on his arm and wrist (which was visible to me at this hearing). He said that the same or similar tattoos are worn by many of his former colleagues and comrades, none of whom have been disciplined.
2. The claimant presented the present claim on a date in May 2020. It is a claim first for unfair dismissal. The respondent submits that the tribunal has no power to hear a claim for unfair dismissal brought by a former member of the armed forces. It submits that although that power has been created on paper in sections 191 and 192 Employment Rights Act 1996, the provisions have never been brought into force (as commented by the learned editor of Butterworths Employment Law Handbook, note to s.192). As a result, unfair dismissal rights simply do not exist for servicemen and women.
3. I agree. Although the claimant has put forward an argument on consistency in fairness which sounds troubling, the tribunal has no power to hear it, and the claim of unfair dismissal must be dismissed on those grounds alone.

4. The claimant's second claim is of race discrimination. That is a claim which a tribunal has power to hear, provided that the claimant follows the correct procedure. The respondent submits that the correct procedure is that the claimant must first submit a service complaint, and then present a tribunal claim (ss 120 and 121, Equality Act 2010). In this case, the claimant presented his tribunal claim in May, and the service complaint on 5 June 2020. The tribunal has no discretion to find an exception.
5. I agree. I make no comments on the merits of the claim of discrimination, but I accept that the interpretation of s.121 is that the claimant was required first to present his service complaint; then to present his tribunal claim; and that if he took those steps in the wrong order, the tribunal has no power to hear the discrimination claims.
6. I therefore find that the claim must be struck out entirely, on the grounds that for the above reasons the tribunal has no power to hear them.
7. I record my thanks to the claimant and Mr Humphreys for a courteous hearing.

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**Employment Judge R Lewis**

Dated: 09/03/2021

Sent to the parties on:

09 March 2021

For the Tribunal: