



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr S Egan

v Kinetic Recruitment Services Limited

Heard at: Manchester (by Cloud Video Platform ('CVP'))

On: 14 April 2021

Before: Employment Judge Johnson

Appearances

Claimant: in person

Respondent: Mr R Taylor (solicitor)

JUDGMENT

(made at the hearing of the preliminary issue as ordered by Employment Judge Hodgson on 15 January 2021)

1. The claimant was a worker and not an employee within the meaning of section 230(3) of the Employment Rights Act 1996 and he worked for the respondent at the material time.
2. The claim form and grounds of complaint identified that the only detriment relied upon by the claimant in relation to a complaint of whistleblowing under section 47B of the Employment Rights Act 1996 related to unfair dismissal for raising health and safety concerns.
3. In accordance with sub-section 47B(2), where the detriment amounts to a dismissal within the meaning of part X of the Employment Rights Act 1996, it should be treated as a complaint under section 103A, being a complaint of unfair dismissal for making a protected disclosure.
4. Section 94 of the Employment Rights Act 1996 provides that only an employee has a right to bring a complaint of unfair dismissal. The claimant being a worker cannot bring such a claim and as a consequence, the Tribunal does not have jurisdiction to hear the claimant's complaint that he was unfairly dismissed for raising health and safety concerns.

5. The claimant's application to amend his claim made at the hearing without notice, to include a detriment that he was ignored and shunned by the respondent following a conversation on 8 April 2020 is unsuccessful and not allowed.
6. As a consequence, the Tribunal is unable to accept the detriment relied upon in the claimant's claim form which he says arises from the alleged protected disclosure. This means that the sole complaint of whistleblowing has no reasonable prospects of success in accordance with Rule 37(1)(a) of the Employment Tribunals Rules of Procedure and having been given the claimant a reasonable opportunity to make representations in accordance with Rule 37(2), the claim must be struck out.

Employment Judge Johnson

Date: 15 April 2021

Sent to the parties on: 22 April 2021

For the Tribunal Office

Note

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.