



EMPLOYMENT TRIBUNALS

Claimant: Mr J Humphreys

Respondent: London Breads and Cake Co

JUDGMENT

The complaint that the claimant was unfairly dismissed is struck out.

REASONS

1. The claimant complains of unfair dismissal. Section 108 of the Employment Rights Act 1996 requires a claimant to have not less than two years service to make an unfair dismissal complaint.
2. The claimant was employed by the respondent for less than two years. Therefore the claimant is not entitled to bring such a complaint.
3. The claimant has failed to give an acceptable reason, despite being given the opportunity to do so, why the complaint should not be struck out. The allegation that he would he would have been employed for 2 years but for the fact that he was dismissed while on furlough is not a valid argument as to why the unfair dismissal claim should continue.
4. Accordingly, the complaint of unfair dismissal is struck out. The claim form contained no other complaints.
5. The letter dated 18 February 2021 (received by tribunal service on 2 March 2021) states that claimant would also like to claim for breach of contract (failure to give notice) and possibly deduction from wages (although the letter only speculates that his pay might have been incorrect, as opposed to asserting that it was actually incorrect). However, to the extent that this letter is an application to amend the claim, the application is refused.
 - a. The nature of the proposal is to add brand new allegations. The original claim form merely disputed that the claimant could be dismissed while on furlough, and said nothing about notice, or notice pay, or arrears of pay.
 - b. The manner of this application is that the comments are made as an aside in a letter which mainly asserts the right to claim unfair dismissal. While the notice pay claim is clear, the claim for arrears of pay contains no information at all, and could not sensibly be responded to in its present form. The letter

does not specify what the pay dates were, or which pay periods are alleged to contain shortfalls.

- c. The timing is that employment ended on 17 July 2020, meaning that ACAS early conciliation would have had to commence by 16 October 2020 in relation to a breach of contract claim. In relation to wages, even if the final salary payment was not until early August, and even if it contained an alleged shortfall, ACAS early conciliation would have had to commence by early November. In fact, ACAS early conciliation did not commence until 11 December 2020, meaning that the claims were already out of time before early conciliation started. Day B was also 11 December 2020, but the claim was not presented by 11 January 2021. A further 45 days elapsed from the end of early conciliation until the claim was presented on 26 January 2021. The application to amend was not made until 2 March 2021. For both a breach of contract claim and an unauthorised deduction claim, the reasonable practicability test is used to consider whether time might be extended. It seems unlikely that time would be extended in the circumstances.
- d. Given the length of time since the end of employment, the employer would be disadvantaged if having to defend itself. Given that the claim form itself was submitted out of time (and the application to amend was later still), time is unlikely to be extended in the claimant’s favour even if the amendment were allowed. Thus that reduces the disadvantage that he is suffering from a refusal of the amendment. On balance, there would be greater hardship and injustice to the respondent if the amendment were allowed than there is to the claimant if the amendment application is refused.

6. Accordingly, the entire claim is struck out.

Employment Judge **Quill**

Date: 08/04/2021

JUDGMENT SENT TO THE PARTIES ON

.....04/05/2021.....
THY

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FOR THE TRIBUNAL OFFICE