



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4109611/2021
Employment Judge Ian McPherson

Mr Dylan Coates

Claimant

The Crab Company (Scotland) Limited

Respondents

JUDGMENT

(1) The unfair dismissal part of the claim is struck out under Rule 37 of the Rules contained in Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 on the grounds:

- that it has no reasonable prospect of success, in terms of Rule 37(1)(a), the claimant not having 2 years' qualifying service with the respondents to complain of unfair dismissal contrary to Sections 94 to 98 of the Employment Rights Act 1996;
- of non-compliance with the Rules of Procedure or an Order of the Tribunal, in terms of Rule 37(1)(c), the claimant having failed, despite reminders, to provide information as ordered by Employment Judge O'Donnell on 18 June 2021, on the legal basis on which he says the Tribunal has the power to hear the claim of unfair dismissal in circumstances where he does not have two years' service with the respondents; and
- that the part struck out has not been actively pursued in terms of Rule 37(1)(d).

(2) The unlawful deduction from wages part of the claim, pursued in terms of Section 23 of the

Employment Rights Act 1996, is unaffected, and continues as per the Unless Order of even date issued to the claimant in terms of Rule 38, seeking additional information, and sent under separate cover.

REASONS

1. The claimant presented his claim on 16 May 2021, complaining of unfair dismissal, and alleging that he was owed arrears of pay. His claim was defended by the respondents by response received on 15 June 2021.

2. On 18 June 2021, Employment Judge O'Donnell required the claimant to provide further information with a view to confirming that there were arguable complaints within the jurisdiction of the Tribunal. Albeit the Judge directed compliance within 14 days, the Tribunal administration's letter to the claimant did not specify a date for compliance.

3. On 12 July 2021, a Legal Officer acknowledged receipt of emails sent on 17 June 2021 from a George Coates, the claimant's father, who appeared to be acting on his son's behalf. His emails were not copied to the respondents' representative, as required by Rule 92, so they were copied by the Tribunal, and the claimant's father was directed to provide a detailed response to the Tribunal's letter of 18 June 2021, and to do so by no later than 19 July 2021.
4. On 3 August 2021, on direction of another Legal Officer, the claimant was directed to reply to the Tribunal's letter dated 12 July 2021, and to do so by no later than 10 August 2021. He was advised that if no reply was received, an Employment Judge or Legal Officer might consider issuing a strike out warning letter to the claimant on the grounds that the claim was not actively being pursued.
5. There still being no reply from the claimant, or on his behalf, on 23 August 2021, on direction of Employment Judge Hoey, the Tribunal gave the claimant an opportunity to give written reasons by 6 September 2021 or to request a hearing in order that the claimant could put forward his reasons in person to consider why the claim or part of the claim should not be struck out.
6. The claimant has failed to give any reply, or any acceptable reason why such a judgment should not be made or to request a hearing.
7. Having carefully considered matters, having regard to the Tribunal's overriding objective under Rule 2, to deal with the case fairly and justly, and taken into account that the claimant appears to have autism and dyslexia, as disabilities noted on his ET 1 claim form, I have decided that it is appropriate, at this stage, to strike out only the unfair dismissal part of the claim, as that part of the claim has no reasonable prospects of success.
8. The Tribunal has no jurisdiction to deal with any ordinary unfair dismissal complaint on account of the claimant's lack of qualifying service in terms of Section 108 of the Employment Rights Act 1996. No argument has been advanced by the claimant, or on his behalf, that any of the exceptions to the qualifying period of employment, as per Section 108(3) apply to the claimant's case.
9. The Tribunal therefore strikes out the unfair dismissal part of the claim. The unlawful deduction from wages part of the claim, is unaffected, and continues as per the Unless Order of even date issued to the claimant in terms of Rule 38, seeking additional information, and sent under separate cover.

Employment Judge: Ian McPherson
Date of Judgment: 05 October 2021
Entered in register: 07 October 2021
and copied to parties