



EMPLOYMENT TRIBUNALS

Claimant: Mr S Canning

Respondent: Penn Bowling & Social Club

Heard at: Birmingham (via CVP)

On: 15 November 2021

Before: Employment Judge J Jones

Representation

Claimant: No appearance

Respondent: Ms Evans-Jarvis (senior litigation consultant)

JUDGMENT

The claim of unfair dismissal is dismissed because the claimant did not have 2 years' qualifying service at the date of dismissal as required by section 108(1) Employment Rights Act 1996.

REASONS

1. By a claim form lodged on 28 July 2020, the claimant alleged that he had been unfairly dismissed by the respondent for whom he had worked as club steward. There was a period of ACAS early conciliation between 18 June 2020 and 1 July 2020.
2. The respondent lodged a response in which it asserted that the tribunal did not have jurisdiction to deal with the claim of unfair dismissal because the claimant had less than two years' service at the date of his dismissal on 21 May 2020. The respondent alleged that it had fairly dismissed the claimant for gross misconduct due to financial discrepancies.
3. Employment Judge Monk wrote to the claimant on 19 August 2021 in these terms: "the claimant is asked to comment on the respondent's reference to the claimant not having two years' service and whether [he] accepts that the unfair dismissal claim can be withdrawn. Please reply by 26 August 2021". The claimant did not reply to this correspondence. On the same day, the tribunal sent a notice of hearing together with directions to prepare the case, stating that the claim would be heard via video on 15 and 16 November 2021.
4. The claimant sent an email to the tribunal on the morning of 15 November 2021 stating: "I have woken up this morning not very well and need to have a lateral flow test, and contact my employer. Would this be a possibility?"

5. At the outset of the hearing the claimant was in contact with the tribunal clerk and indicated that he was at work where he was unable to establish a stable Wi-Fi connection so as to be able to join the hearing by video. He referred her to his email to the tribunal requesting a postponement and re-sent the same as it had not yet been received. After a postponement to give the claimant the opportunity to make arrangements to take part in the hearing, the tribunal reconvened. The claimant was not in attendance.
6. The tribunal considered the claimant's application for a postponement but did not grant it. There was insufficient evidence to indicate that the claimant was too unwell to attend the remote video hearing and the case had been listed for a number of months. The tribunal considered the Presidential Guidance on seeking an adjournment dated 4 December 2013 in reaching this decision, and applied the overriding objective, to be found in Regulation 2 of the Employment Tribunal (Constitution and Procedure) Regulations 2013.
7. In view of the challenge to the tribunal's jurisdiction, the tribunal dealt with this matter as a preliminary issue. The tribunal received in evidence a bundle of documents that had been agreed between the parties and also heard oral evidence from Mr Roger Baker, Treasurer, and Mr Stewart Gardner, Secretary, confined to this issue. Based on that evidence the tribunal made these findings of fact.
8. The claimant commenced work for the respondent on 31 May 2018. This was the date of commencement of employment shown on the claimant's contract at page 210 in the bundle of documents. It was also the date of commencement of employment shown on the induction document (page 213). The claimant had signed both these documents.
9. Further, the tribunal heard that Mr Barker was present when the claimant commenced work on 31 May 2018 and recalled that this was a Thursday because he was to work alongside the outgoing steward for a period of time to observe the tasks when the club was at its busiest, which was the weekend.
10. The claimant's employment was terminated by a letter of dismissal dated 21 May 2020 (page 124), following a disciplinary hearing on 15 May 2020. Mr Gardner told the Tribunal that he had delivered the letter to the claimant personally by posting it through his letterbox on 21 May 2020 and further by placing it in the first class post. The claimant confirmed in his claim form that his employment ended with effect from 21 May 2020.
11. Those being the dates of employment, the tribunal went on to consider section 97 Employment Rights Act 1996 ("the Act") which defines the "effective date of termination" as follows:

Effective date of termination.

97 (1) Subject to the following provisions of this section, in this Part "the effective date of termination"—

(a) in relation to an employee whose contract of employment is terminated by notice, whether given by his employer or by the employee, means the date on which the notice expires,

(b) in relation to an employee whose contract of employment is terminated without notice, means the date on which the termination takes effect, and

(c)...

(2) Where—

(a) the contract of employment is terminated by the employer, and

(b) the notice required by section 86 to be given by an employer would, if duly given on the material date, expire on a date later than the effective date of termination (as defined by subsection (1)),

for the purposes of sections 108(1), 119(1) and 227(3) the later date is the effective date of termination.

It was also necessary to look at the wording of section 108 of the Act which states that the right not to be unfairly dismissed only belongs to those who have

“not less than [two years qualifying employment] ending with the effective date of termination.”

12. The Tribunal did not consider the merits of the claim for dismissal and therefore could not and did not conclude whether the respondent was entitled, as it alleged, to dismiss the claimant without notice. Giving the claimant the benefit of the doubt, and adding the additional week of statutory notice referred to in section 97 (2) of the Act, the latest date that the effective date of termination could have been was 28 May 2020.
13. Having commenced employment on 31 May 2018, the claimant therefore did not have the qualifying period of employment required by section 108 of the Act and the tribunal did not have jurisdiction to hear his claim of unfair dismissal.

**Employment Judge J Jones
12 November 2021**