



EMPLOYMENT TRIBUNALS

At an Open Preliminary Hearing

Claimant: Mr A Stoynov
Respondent: EMS Security Services Ltd
Heard at: Midlands (East) Region by Cloud Video Platform
On: 21 April 2022
Before: Employment Judge P Britton

Representation

Claimant: In person
Respondent: Mr F Molloy, Litigation Consultant, Peninsula

JUDGMENT

The remaining claim of unfair dismissal is struck out, the Claimant not having the necessary two years' qualifying service pursuant to Section 108 of the Employment Rights Act 1996.

REASONS

1. This claim (ET1) was presented to the Tribunal on 21 June 2021. The Claimant had prepared it himself. He set out how he was employed by the Respondent as a security officer between 20 June 2019 and 20 May 2021. He ticked the boxes denoting that he was claiming for unfair dismissal and disability discrimination.
2. By its Response (ET3), the Respondent did not accept that the Claimant was a disabled person pursuant to the provisions of the Equality Act 2010 (the EqA). It therefore required that he provide evidence to show that he was; the conditions relied upon appearing to be ones of sinusitis and anxiety. Otherwise, it denied the basic facts in this case; and the issue between the parties would be as to whether or not the Claimant was entitled to exempt himself from wearing a mask in the course of his duties by reason of sinusitis. The Response was that he provided no evidence that he was exempt and that the end user, namely Derby City Council, required him to wear a mask because of the corona virus pandemic and that he was working in a test centre.
3. The matter came before my colleague, Employment Judge Blackwell, at a case

management hearing on 23 November 2021. The Respondent appeared but the Claimant did not, and his explanation subsequently appears to be that he did not realise he had to attend and was not contacted. Suffice it to say that Judge Blackwell made specific orders for the Claimant to provide his medical notes and also an impact statement setting out why the disabilities relied upon had a material impact on his ability to undertake normal day to day activities.

4. Suffice it to say that the Claimant never provided his medical notes but instead relied upon two tape recorded conversations with his doctor and a scan result obtained on 22 January this year. That scan does not show that he has what he described to me today to be chronic sinusitis. The scan result as confirmed by his doctor in the second of these tape-recorded conversations pointed out that the condition was one of: *“mild chronic sinusitis ... all the other sinuses are fine”*. The doctor went on to say that he could reassure the Claimant that the sinusitis was: *“not as bad as you thought it was.”*
5. To turn it around another way, the Claimant never supplied his actual medical notes or an impact statement. I only so observe because the Respondent had pointed out this and, on 23 February 2022, my colleague Employment Judge Adkinson made an Unless Order whereby if the Claimant did not comply with the orders of Judge Blackwell in full by 14 days from the issue of Judge Adkinson’s Orders (and they were issued on 25 February), then the claim for disability discrimination would be struck out. I make plain that this would leave for adjudication the issue of the Claimant’s lack of 2 years’ qualifying service and thus jurisdiction to hear his unfair dismissal claim as per s95 and s98 of the Employment Rights Act 1996 (the ERA).
6. On 3 March 2022, Employment Judge Welch gave him another opportunity to comply with the Unless Order as he was still not doing so by extending the Unless Order deadline to 11 March 2022. The Claimant still did not comply by providing his full medical notes or an impact statement. Therefore, his claim was struck out for failure to comply with the Unless Order on 22 March 2022.
7. That leaves before me the claim for unfair dismissal. Pursuant to s108 of the ERA, the Claimant has to have not less than 2 years’ continuous employment with the Respondent at the effective date of termination in order to bring his claim.
8. Whatever way I look at it in that respect, the Claimant has not got the necessary 2 years’ qualifying service because he states that he was employed on 20 June 2019 and dismissed on 20 May 2021. That dismissal is disputed by the Respondent is irrelevant and because he had commenced a new employment by 1 June 2021 and ceased working for the Respondent. So it means that he has not got 2 years’ qualifying service and none of the exemptions as per Section 108(3) apply.
9. The Claimant did not understand this before me today. His English in fact is good. He was in effect seeking to argue that he should be entitled to bring his disability claim because he had complied with the Unless Order and that, second, this was an unfair dismissal; but he failed to consider the need for 2 years of qualifying service.

10. Insofar as he might now seek to argue that he is bringing a breach of contract claim, this was never a claim as per the ET1 and he has never sought leave to amend.
11. Even if he did, then the only claim he would have would be for one week's statutory notice and in that respect the Respondent argues that he in fact resigned. But it does not matter to me because there is no such claim before me.
12. As regards the EqA based discrimination claim, I endeavoured to explain to him that he cannot bring it because it has been struck out for the reasons I have gone to. As regards the unfair dismissal claim, that he cannot bring it because he has not got 2 years' qualifying service.
13. The Claimant became upset and quit the CVP to call his friend, who I could not see on camera but I learned was there to try and help him; the friend explained that he was upset at what had happened and therefore I will not place any weight on remarks that the Claimant made before me and which he had also put in an email to the Tribunal on 1 April 2022, the contents of which is very abusive and indeed threatening. The Claimant did not resume participation in the hearing before me.
14. So, all that needs to be said is that the claim for disability discrimination has already gone because of the non-compliance with the Unless Order and the issuing therefore of confirmation of strike out on 22 March 2022. The remaining claim of unfair dismissal cannot be continued before the Tribunal because it has no jurisdiction to deal with it, the Claimant not having the necessary 2 years' qualifying service. Thus it is dismissed.

Employment Judge P Britton

Date: 3 May 2022

JUDGMENT SENT TO THE PARTIES ON

10 May 2022

FOR THE TRIBUNAL OFFICE

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