



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4101455/2022

5

Held In Glasgow on 8 July 2022

Employment Judge F Eccles

10

Mr V McCluskey

**Claimant
In Person**

15

North Lanarkshire Council

**Respondent
Represented by:
Ms S Raza -
Solicitor**

20

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal is that the claimant resigned from his
25 employment with the respondent and that the Tribunal has jurisdiction to consider
the claim of constructive unfair dismissal.

REASONS

BACKGROUND

1. The claim was presented on 2 March 2022. The claimant claims
30 constructive unfair dismissal. The claim is resisted. In their response,
lodged on 1 April 2022, the respondent denies that the claimant resigned or
was dismissed from his employment. The respondent contends that the
claimant retired voluntarily and that accordingly, the Tribunal does not have
jurisdiction to consider the claim.

35

2. At a case management preliminary hearing held on 13 May 2022 the claim was listed for today's preliminary hearing to consider and determine the issue of "*whether or not the Tribunal has jurisdiction: whether or not there was a dismissal, in law*", The claimant was subsequently informed in
5 correspondence from the Tribunal of 6 July 2022 (copied to the respondent) that the Tribunal would consider at the preliminary hearing "*whether or not there was a dismissal "in law"; did (your) employment terminate by reason of your resignation or by reason of your voluntary retirement*" The claimant was informed that only if he proved the former would there be a basis for his
10 claim that he was constructively and unfairly dismissed. At today's hearing the claimant represented himself. The respondent was represented by Ms S Raza, Solicitor. The Tribunal heard evidence from the claimant and was provided with a Joint Bundle of Productions. The Tribunal informed the parties of its decision at the hearing. Reasons were given orally. The
15 respondent requested written reasons.

FINDINGS IN FACT

3. In relation to the issue before it, the Tribunal found the following material
20 facts to be admitted or proved; the claimant was employed by the respondent from 7 January 1991 to 15 October 2021 . He was employed as a teacher. From around June 2020 the claimant was concerned about being required to work at different schools which he considered to be a fundamental change to his terms and conditions of employment. He lodged
25 a Grievance with the respondent in February 2021 .
4. Around September 2021 the client decided to resign from the respondent's employment. The claimant had been entitled to draw his pension for around two years. He decided to draw his pension earlier than planned to mitigate
30 the loss of income from terminating his employment.
5. The claimant wrote to his Line Manager, Louise McAllister on 13 September 2021 (P13/63) as follows;

“Notice of resignation from position (Cluster Support Teacher)

5 *In line with my contractual commitments and following advice from Employment Services, I hereby tender my official notice of resignation in advance of my retirement on October 15th 2021 .*

The claimant provided Ms McAllister with his date of birth, National Insurance number and Superannuation number.

10 6. The respondent has an administrative process for employees who are resigning from their employment (P17/72-75). They request that employees process their resignation through an on-line portal known as mySelf. The claimant was not confident about using mySelf. He did not use it to process his resignation.

15

7. Louise McAllister replied to the claimant by e mail on 15 September 2021 (P19/84) as follows;

20 *'7 noticed in your letter you have mentioned resigning and retiring. I just need to clarify if you are resigning or retiring? As there are 2 different processes for this.*

The email I sent yesterday about mySelf is resigning but if you want to formally retire it is a different process.

Please let me know and we can get it sorted out”

25 8. The claimant replied (P19/84) as follows;

30 *“From my perspective I’m doing both: resigning and retiring. I suspect that the machinery of office finds this difficult to digest, so what I can add is that I definitely wish to formally retire from my post, so maybe the machine prefers retiring over resignation. Hope this is helpful.*

Thanks for our assistance in helping me escape from this maze!”

9. Louise McAllister replied to the claimant (P19/83) as follows;

"Retiring is a different process, and the notice period is longer to allow for pension etc to be in place for you"

5

Louise McAllister provided the claimant with a hyperlink to the respondent's information about retirement. The claimant completed the on-line application for retirement benefits (P21/87-1 01).

10 10. The claimant worked his contractual notice. He did not end his employment during this period to retire. The claimant's employment ended on 15 October 2021 .

ISSUE

15

11. The issue considered by the Tribunal was whether the claimant's employment terminated by reason of his resignation or by reason of his voluntary retirement.

20 DISCUSSION & DELIBERATIONS

12. In terms of Section 95(1) (c) of the Employment Rights Act 1996 an employee is dismissed by his employer if *"the employee terminates the contract under which he is employed (with or without notice) in*
25 *circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct.*

13. The respondent submitted that the claimant did not resign. He applied for retirement which is a different process. The claimant was asked which route
30 he wished to pursue and chose retirement in order to obtain the related benefits.

14. The Tribunal accepted the claimant's evidence that he decided to resign in response to what he considered to be repudiatory conduct on the part of the respondent. The Tribunal did not accept the respondent's submission that the claimant's e mail exchange with his Line Manager (P9/83-84) was inconsistent with him having resigned. It was not in dispute that the claimant struggled with the respondent's on-line system. He completed the respondent's on-line application for retirement at the respondent's request - what he described as complying with the respondent's "bureaucratic process". There was no evidence of the claimant having applied for retirement before his resignation. The Tribunal was satisfied that the claimant decided to retire in order to access his pension following resignation. It was not an alternative to resignation but as a consequence of having resigned and being left without an income from his employment with the respondent.

15

15. In all the circumstances, the Tribunal concluded that the claimant's employment terminated by reason of his resignation and that accordingly the Tribunal has jurisdiction to consider his claim of constructive unfair dismissal.

20

Employment Judge: F Eccles
Date of Judgment: 08 July 2022
Entered in register: 29 July 2022
and copied to parties

25

30