



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr A Pickering

**Respondent:** Sandcastle Care Limited

**Heard at:** Manchester (by CVP)

**On:** 9 August 2022

**Before:** Employment Judge Sharkett

## REPRESENTATION:

**Claimant:** Ms Sutton -Postlethwaite – family friend

**Respondent:** Mr Rowell - solicitor

## JUDGMENT ON PRELIMINARY HEARING

The judgment of the Tribunal is that:

1. The Tribunal does not have Jurisdiction to hear the claimant's claim of unfair dismissal and the same is struck out

## REASONS

1. This was a Preliminary Hearing to consider
  - a. what complaints (if any) the claimant has brought that the Tribunal has jurisdiction to determine;
  - b. Whether the claim should be struck out on the basis that it contains no complaints that the Tribunal to determine
  - c. Whether a Deposit Order should be made in respect of the claim or any part of it;
  - d. The arrangements for the final hearing and any necessary case management orders.

2. In preparation for the Hearing I had been provided with a bundle of documents consisting of 43 pages and had reviewed the correspondence held on file by the Tribunal.
3. The respondent was represented by Mr A Rowell – solicitor. The claimant was represented by Ms T Sutton-Postlethwaite. Ms Sutton Postlethwaite confirmed that contrary to what had been indicated on the ET1 Unison were not representing the claimant. She explained that she was employed by Unison as a Branch Secretary and had experience of giving employment advice to Union members. However, in respect of this claim she was not acting in an official capacity, the claimant was a family relative and she was merely assisting him.
4. I first of all explained the role of the Tribunal and the basis of the power it had to hear complaints. I explained the statutory basis on which the Tribunal could hear complaints and the extension of jurisdiction it had been given to hear certain claims for breach of contract.
5. Whilst Ms Sutton-Postlethwaite initially described the claimant's claims as breach of employment rights, after some exploration she confirmed that the only complaint pursued by the claimant was one of unfair dismissal arising from procedural fairness. Although both the claimant and Ms Sutton-Postlethwaite accepted that the claimant did not have two years' continuous service, Ms Postlethwaite maintained that a claim could still be pursued on the basis that the procedure followed was unfair. It was clear that the claimant could not understand why he was unable to bring his claim before the Tribunal and I spent some time explaining to him how a claim of unfair dismissal is decided, and how procedural fairness comes into that decision, including the principle in Polkey. I explained that whilst the claimant may feel aggrieved, in the absence of a claim for automatic unfair dismissal, which there was not, the Tribunal did not have the power to consider his claim.
6. Ms Sutton-Postlethwaite having confirmed that the claimant was not pursuing any other claims, I confirmed the Tribunal did not have jurisdiction to hear the claim and it is struck out.
7. Having delivered my Judgment Mr Rowell raised the issue of costs and submitted that this was a case that clearly had no prospects of success. Whilst no formal application had been made nor schedule of costs served or available today, In accordance with Rule 76(1) (b) of the Employment Tribunal Rules 2013, I determined that whilst the claim may have had no reasonable prospects of success the claimant is a lay person who clearly did not understand the need to have two years continuous service in order to bring his complaint. Whilst he had been advised by Ms Sutton-Postlethwaite it is clear her understanding of the need to consider Part 10 ERA as a whole was confused. She is not a professional lawyer and, in the circumstances of this case, I do not consider an award of costs against the claimant to be appropriate or proportionate.

Employment Judge Sharkett  
Date 9<sup>th</sup> August 2022

JUDGMENT AND REASONS SENT TO THE PARTIES ON  
16 August 2022

FOR THE TRIBUNAL OFFICE

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