



EMPLOYMENT TRIBUNALS

Claimant: Mr J Massa

Respondent: Salvation Army Trustee Company

Heard at: Bristol **On:** 4th August 2022

Before: Employment Judge Cadney

Representation:

Claimant: In Person

Respondent: Ms H Bollard

PRELIMINARY HEARING JUDGMENT

The judgment of the tribunal is that:-

- i) The claimant's claim for constructive unfair dismissal is dismissed as the tribunal has no jurisdiction to hear it.

Reasons

1. By an ET1/claim form submitted on 5th August 2021 the claimant brought a claim for constructive unfair dismissal. He was employed from 26th April 2020 until 19th July 2021 and did not have two years continuous service. In those circumstances the claim would ordinarily have been rejected by the tribunal. However it was not easy to understand the claimant's claim and EJ Rayner listed the case for this preliminary hearing to give the claimant the opportunity to explain the basis of his claim and to assess whether it was arguable that it fell within one of the exceptions to the requirement for two years continuous service (in particular as identified by EJ Rayner whether it might arguably fall within s100 Employment Rights Act 1996).

2. In the course of this hearing the claimant has agreed that he makes the following broad complaints:
 - i) That he was compelled to work in an unsafe environment and/or that there was a failure to supply appropriate protective equipment and/or appropriate risk assessments and/or appropriate supervision/training;
 - ii) As a result he was unnecessarily exposed to the risk of injury, which eventuated in that he contracted hepatitis B;
 - iii) That he lodged a formal grievance but the respondent did not accept any of the failures alleged at i) above and/or that the condition was contracted during the claimant's employment with the respondent.
3. As stated orally during the hearing, of those allegations the allegation that the respondent had negligently or in breach of a duty owed caused him to contract hepatitis B is a claim for personal injury which does not fall within the jurisdiction of the employment tribunal and would have to be brought in the County Court in any event. For the avoidance of doubt the EJ indicated that he was not advising the claimant to, or encouraging or discouraging the claimant from, bringing any such claim but simply identifying the correct forum in which it would have to be brought.
4. Again as stated orally the other allegations are on the face of it capable individually or cumulatively, if proven, of constituting a fundamental breach of the claimant's contract of employment and could clearly found the basis of a claim for constructive dismissal if the claimant had two years continuous service.
5. The question for me, as the claimant does not have two years' service, is whether it is arguable, taken at their highest that could fall within any of the categories of automatic unfair dismissal.
6. EJ Rayner speculated as to whether it might fall within s100 ERA 1996. Of that section it appears to me that the only one which could be engaged is s100 (c) that he had had drawn to his employers attention by reasonable means circumstances connected with his work which he believed were harmful or potentially harmful to health. The difficulty for the claimant is that he has never alleged that he suffered any detriment because he had drawn these allegations to the respondent by way of his grievance, which might be the basis for an allegation of a fundamental breach of contract; and self-evidently he was not expressly dismissed for having done so.
7. Similar difficulties arise if the grievance is treated as a public interest disclosure (S103A). Again the claimant is not alleging he suffered any detriment for having done so, which again might be the basis for an allegation of a fundamental breach of contract; and self-evidently he was not expressly dismissed for having done so

8. It follows that making every assumption in the claimant's favour there is no basis for concluding that this case is anything other than a standard claim for constructive unfair dismissal which requires two years' service. As the claimant does not have two years' service this is not a claim falling within the jurisdiction of the tribunal and it is bound to be dismissed.

Employment Judge P Cadney
Dated: 5th August 2022

JUDGMENT & REASONS SENT TO THE PARTIES ON
18 August 2022 by Miss J Hopes

FOR THE TRIBUNAL OFFICE