



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr M Robinson

**Respondent:** Rybrook Volvo Bolton

**Heard at:** Manchester

**On:** 9 August 2022

**Before:** Employment Judge Porter

## **Representation**

Claimant: Not in attendance

Respondent: Mr D Phillips, solicitor

**JUDGMENT** having been sent to the parties on 23 August 2022 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

## **WRITTEN REASONS**

1. This was a preliminary hearing, held by CVP, to consider, firstly:
  - a. Whether the claim should be struck out under rule 37(1) of the Employment Tribunals Rules of Procedure 2013

### **Background**

2. The claimant presented a claim of unfair dismissal on 11 November 2021. In his claim form the claimant asserted that:
  - a. He had been employed by the respondent from 21 August 2020 to 30 September 2021 as a Service Adviser;
  - b. He had been automatically unfairly dismissed because:

- i. He had been on a booked holiday from work and on his return to the UK from an “amber listed” country he was required to stay in quarantine pending the results of a number of PCR tests;
  - ii. He was instructed by the respondent to return to work on Day 10 of his quarantine when he was still awaiting the result of PCR tests;
  - iii. He followed government guidelines by refusing to return to work during his quarantine;
  - iv. He was dismissed for following the government requirements.
3. By letters from the tribunal dated 14 April 2022:
  - a. The claimant was advised of a proposal to strike out his claim of unfair dismissal on the grounds that he had less than 2 years’ service and under s108 Employment Rights Act 1996 the tribunal has no jurisdiction to hear a claim of unfair dismissal by employees with less than 2 years’ service except in certain specific circumstances which did not appear to apply in this case. The claimant was given until 28 April 2022 to state why his claim should not be struck out and to provide the grounds upon which he asserted that the dismissal was automatically unfair;
  - b. The respondent was advised that it did not need to enter a Response to the claim at that stage, and would be advised as and when it needed to enter a Response.
4. By e-mail dated 28 April 2022 the claimant objected to the strike out warning, asserting that he had been dismissed for following the legal requirements of quarantine as imposed by the government.
5. By letter from the tribunal dated 6 June 2022 the claimant was advised:
  - a. of the need to further clarify the basis of his claim and his objection to the proposal to strike out;
  - b. to consider:
    - i. s104 Employment Rights Act 1996 relating to automatically unfair dismissal for asserting a statutory right, listed under s104(4) ERA 1996;
    - ii. S100 Employment Rights Act 1996 relating to automatically unfair dismissal in certain health and safety circumstances

- c. to provide further information relating to his claim by no later than 1 July 2022 and in particular:
    - i. Whether he said that his claim fell within s104 or s100 Employment Rights Act 1996 or other statutory provision;
    - ii. If so, what part of s104 or 100 ERA 1996 or other statutory provision applied
  - d. that on the basis of the information provided it appeared that the claim had little or no reasonable prospect of success and the final hearing listed for 9 August 2022 had been converted to a preliminary hearing to consider, firstly, whether the claim should be struck out under rule 37(1) of the Employment Tribunals Rules of Procedure 2013
6. No response was received from the claimant to the letter from the tribunal dated 6 June 2022.
  7. By letter from the tribunal dated 3 August 2022 a further copy of the letter dated 6 June 2022 was provided to the claimant, who was asked to provide a response by 8 August 2022.
  8. The tribunal did not receive any response from the claimant setting out the information requested.

### **The preliminary hearing**

9. On the morning of the hearing the judge's attention was drawn to an email from the claimant dated 8 August 2022 at 18:26, received by the tribunal in response to an e-mail from the tribunal, providing the claimant with the CVP link for the hearing. The claimant's e-mail stated:

I will not be able to attend this. Based off your most recent emails I presumed it wasn't going ahead.
10. The tribunal clerk contacted the claimant to seek confirmation as to whether the claimant sought a postponement of the hearing and if so on what grounds. The claimant indicated that he did seek a postponement on the grounds that he needed to seek legal advice and obtain time off work.
11. By email dated 9 August 2022 at 10.20 the tribunal advised the claimant:

If you wish to pursue a request for a postponement of the hearing today then you must set out the reason for your non-attendance today and your failure

to reply to recent correspondence from the tribunal requesting clarification of the grounds of your complaint of automatically unfair dismissal.

12. The claimant failed to reply to that email.
13. The respondent has not been asked to provide a Response in advance of the hearing.

**Procedure**

14. The hearing started at 10:20 am. The respondent was in attendance. The tribunal did not consider any submissions from the respondent before reaching its decisions. As a matter of courtesy the employment judge commenced the hearing and explained the non-attendance of the claimant to the respondent. The employment judge then adjourned the hearing until 10.35 am, to give the claimant the opportunity to respond to the email sent to him by the tribunal at 10:20 (see paragraph 11 above).
15. Prior to announcing her decision orally EJ Porter explained the purpose of the hearing, summarised the background information listed above, and gave a preliminary indication that she intended to strike out the claim. The respondent was given the opportunity to challenge the veracity of any of the information and to provide any reasons to object to the proposal to strike out. The respondent did not challenge any of the information and provided no information to affect the tribunal's determination. The decision to strike out, with reasons, were then provided orally.
16. No evidence was heard. In reaching its determination the tribunal relied on the information contained in the claim form and on the tribunal file. No bundle of documents had been prepared by either party for the hearing.

**Request for a postponement of the hearing**

17. The request for a postponement of the hearing is refused because:
  - a. The claimant has failed to provide a satisfactory reason for his failure to attend the hearing;
  - b. The claimant was provided with notice of the hearing and its purpose;
  - c. The claimant has had reasonable time to obtain legal advice prior to the hearing and has provided no reasonable explanation as to why he should choose to seek such advice at this late stage, rather than at an earlier time;
  - d. The claimant has had reasonable opportunity to provide the grounds upon which he asserts that he was automatically unfairly dismissed but has failed to do so;

- e. An examination of the tribunal file reveals the correspondence set out above. The examination did not reveal any e-mail suggesting that this hearing was not going ahead, as asserted by the claimant;
- f. It is not in the interest of justice and is contrary to the overriding objective to postpone the hearing.

**Determination of the proposal to strike out**

- 18. The claimant had less than 2 years' service.
- 19. Under s108 Employment Rights Act 1996 ("ERA 1996") the tribunal has no jurisdiction to hear the claim of unfair dismissal unless it falls within specific circumstances as set out under the Act.
- 20. The claimant has been given reasonable opportunity to investigate and provide the grounds upon which he asserts that he was automatically unfairly dismissed and that he does not need to satisfy the condition of two years' service. He has failed to do so.
- 21. The claimant's attention was drawn specifically to s104 and s 100 ERA 1996. The claimant has not identified any relevant statutory right. He has not put forward any grounds of complaint relevant to s100 ERA 1996. He has not provided any grounds of complaint relevant to any of the other statutory provisions under which there is no requirement for 2 years' service.
- 22. In all the circumstances the tribunal finds that the claim of unfair dismissal stands no reasonable prospect of success and is struck out.

Employment Judge Porter

Date: 26 September 2022

REASONS SENT TO THE PARTIES ON

27 September 2022

FOR THE TRIBUNAL OFFICE

Note

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