



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr A Washbrook

**Respondent:** OCS Group UK Limited

## JUDGMENT OF THE EMPLOYMENT TRIBUNAL

**Heard at:** Southampton (by video)

**On:** 16 December 2022

**Before:** Employment Judge Gray

### Appearances

For the Claimant: In person (assisted by Mr Dillworth)

For the Respondent: Ms Quigley (Counsel)

## JUDGMENT

The judgment of the tribunal is that the Claimant's complaint of breach of contract is outside of the Employment Tribunal's jurisdiction, the Claimant's employment not having terminated, the claim is therefore dismissed.

## REASONS

### **The Hearing**

1. The hearing was conducted by the parties attending by video. It was held in public in accordance with the Employment Tribunal Rules.
2. Following oral delivery of the above Judgment the Claimant requested written reasons which are also provided.

### **The Claim**

3. By a Claim Form dated 22 August 2022, the Claimant brought a complaint for ... "breach of contract or not responding to grievance as part of a disciplinary case against him."
4. The Claimant commenced the Early Conciliation process with ACAS on 10 June 2022. The Early Conciliation Certificate was issued on 21 July 2022.
5. The claim form confirms that the Claimant says he has been employed from 1 August 2005 as a Security Officer.
6. By Tribunal correspondence to the Claimant dated 31 August 2022 the Claimant was asked to identify ... "... a claim which maybe within the Tribunal's jurisdiction, with reference to Box 8.1 of the Claim Form, that was not completed.... A failure to respond to a grievance is not, without more information, a claim that the Tribunal has power to determine".
7. The Claimant confirmed by correspondence dated 5 September 2022 that:  
  
"In response to your email, I have spoken to my legal guy and he said that I'm claiming the following.  
  
1. Breach of contract on not responding to a grievance as part of a disciplinary case against me.  
  
2. Failed to follow a proper investigation process.  
  
3. Failing to supply me with documents I requested in relation to the disciplinary, and also terms and conditions of employment."
8. Then by correspondence dated 6 September 2022, the Claimant further confirmed:  
  
"By way of further clarification, the claimant contends that the respondents failure to activate the grievance process had a direct and prejudicial bearing on the investigation process which in turn led to suspension, prolonged ill health and unfair sanctions being applied. The grievance and its importance related to establishing the credibility of the claimant. Had this been resolved as per my repeated requests, it is my contention that matters could have been resolved

without such a breakdown in the mutual obligations of both parties. To date the respondent has failed to consider any issues related to my grievance and its relationship to the person who carried out the initial fact finding with a unfair bias against me. I contend this to be a valid head of complaint.”

9. The Respondent submitted a response to the claim resisting the complaint made. It included an application to strike out the breach of contract claim because, it asserted, the Tribunal did not have jurisdiction or in any event the claim did not have reasonable prospects of success. In particular, because the Claimant’s employment was continuing, a breach of contract claim would be outside of the Employment Tribunal’s jurisdiction.

10. By letter dated 27 October 2022 the Tribunal wrote:

“On the application of the respondent and having considered any representations made by the parties, Employment Judge Dawson is considering striking out the claim because

- it has no reasonable prospect of success because an employee cannot bring a breach of contract claim in the employment tribunal unless their employment has terminated.

If you wish to object to this proposal, you should give your reasons in writing or request a hearing at which you can make them by Reply by 03/11/2022.”

11. The Claimant submitted a response dated 3 November 2022. This focused in the main on the Claimant’s assertions as to why a grievance policy had contractual effect and how the findings of fact by an Employment Tribunal could then assist a separate complaint for personal injury in the County Court. The submission acknowledged the Claimant was still employed.

12. By Tribunal correspondence dated 25 November 2022 it was then confirmed to the parties that:

“The case was referred to Employment Judge Livesey who directs that;

- The Respondent’s application to strike out the claim will be determined on 16 December at the start of the hearing. If it is unsuccessful, the judge will proceed to determine the balance of the claim.

- The Judge is concerned that the Claimant has misunderstood the Tribunal’s jurisdiction; breach of contract claims can generally only be pursued if they relate to financial loss (e.g. a failure to pay notice or a breach(es) which results in constructive unfair dismissal). It is not obvious that how the Claimant’s claim satisfies that test at present.”

13. For reference at this hearing the Tribunal was sent:

13.1 A copy of the Claimant’s witness statement.

- 13.2 A 3-page pdf document containing two-character references about the Claimant.
- 13.3 Parties agreed Preliminary Hearing Bundle.
- 13.4 Index for Preliminary Hearing Bundle.
- 13.5 Witness statement of Eleanor Hill for the Respondent.

## **The Decision**

- 14. At the commencement of the hearing the above matters were summarised and discussed with the parties. It was explained that the contractual jurisdiction of employment tribunals is governed by section 3 of the Employment Tribunals Act 1996 (ETA), together with the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 SI 1994/1623 ('the Order').
- 15. Under section 3(2) of the ETA and Article 3 of the Order, for a Tribunal to be able to hear a contractual claim brought by an employee, that claim must arise or be outstanding on the termination of the employee's employment and must seek one of the following:
  - 15.1 damages for breach of a contract of employment or any other contract connected with employment
  - 15.2 the recovery of a sum due under such a contract, or
  - 15.3 the recovery of a sum in pursuance of any enactment relating to the terms or performance of such a contract.
- 16. It was confirmed by the parties that the Claimant remains employed by the Respondent.
- 17. Respondent's Counsel submitted that the Tribunal does not have jurisdiction to hear a breach of contract claim under those circumstances.
- 18. The Claimant's friend, Mr Dillworth, submitted that this being an employment related matter and them being conscious of time limits they thought it was correct to go to the Employment Tribunal first, and if necessary, to then proceed to the County Court for any contractual claim and/or personal injury claim they want to pursue. It was acknowledged though with the employment continuing (there being no asserted constructive dismissal) that this was a matter outside of the Tribunal's jurisdiction.
- 19. For these reasons the judgment of the Tribunal is that the Claimant's complaint of breach of contract is outside of the Employment Tribunal's jurisdiction, the Claimant's employment not having terminated, the claim is therefore dismissed.

**Employment Judge Gray  
Dated 16 December 2022**

Judgement sent to the Parties: 03 January 2023

For the Tribunal Office