



EMPLOYMENT TRIBUNALS

Claimant: Mr D Barker

Respondent: A R Wholesale Ltd

Heard at: Newcastle Employment Tribunal

On: 23rd May 2023

Before: Employment Judge McGregor

Representation

Claimant: Litigant in person

Respondent: Miss Ajebade

JUDGMENT

1. The claim for unfair dismissal is dismissed as the Tribunal has no jurisdiction to consider it.

REASONS

1. The claimant Mr Barker, was employed as an HGV driver by the respondent A R Wholesale Ltd, from the 1st November 2021 and the 2nd of December 2022. A period of one year one month and one week. On the 2nd December 2022, he was dismissed for misconduct due to negative conduct with other staff and customers.
2. The claimant was dismissed and paid one week's pay in lieu of notice.
3. The claimant says that the respondents failed to follow any proper procedure and that the outcome of the procedure was unfair.
4. The claimant complains of unfair dismissal.
5. The case was listed on the 23rd May 2023 for a full merits hearing. The claimant attended and appeared as a litigant in person. The respondent appeared represented by Miss Ajebade. At the end of the hearing, the claimant requested my written reasons.

6. Section 94 of the Employment Rights Act 1996 provides that an employee has the right not to be dismissed unfairly.
7. Section 108 of the Employment Rights Act 1996 requires a claimant, as at the effective date of termination, to have not less than two years' continuous service in order to make a complaint of unfair dismissal. This is subject to specific exceptions contained within s108(3) of the Employment Rights Act 1996.
8. It was an agreed fact that the claimant was employed by the respondent for one year, one month and one week. I therefore found that the claimant does not have the two years continuous service which would allow him to bring these proceedings. That is, unless any of the sections or subsections referred to in sections 108(3) to (5) applies to his case.
9. By "Notice and Order" dated the 9th May 2023, the claimant was given the opportunity to identify how, he says, his claim falls within the statutory exceptions within s108 of the Employment Rights Act 1996. I considered the claimant's written submissions, provided on the 15th May 2023 and I heard oral submissions today, as to why the claim should not be struck out.
10. The claimant referred to a number of factors and reasons relating to his dismissal that had not been raised previously in the pleadings. I considered that all of the reasons put forward by the claimant, related to the procedure which had been followed by the respondent and the decision that they took following a number of appeals. I considered that the reasons put forward related to the fairness of the dismissal. The claimant could not identify that his case was a case of dismissal within one of the exceptions, to which the two year limit does not apply. He was not asserting a case that the reason for his dismissal was one which was automatically unfair.
11. Accordingly, the claim is dismissed as the Tribunal has no jurisdiction to consider it.

Employment Judge

Rebecca McGregor

Date: 23.5.23