EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mrs D Petrova	v	Royal Mail Group Ltd

PRELIMINARY HEARING

Heard at: Reading Employment Tribunal by CVP
On: 2 May 2023
Before: Employment Judge George

Appearances:
For the Claimant: In person
For the Respondents: Ms K Faulkner, solicitor

JUDGMENT

1. The Employment Tribunal has no jurisdiction to consider a claim by the claimant under the Employment Tribunal's Extension of Jurisdiction (England & Wales) Order 1993 because her employment by the respondent is continuing and was continuing at the time the claim was presented.

2. The claimant is to write to the Tribunal and to the respondent no later than **3 July 2023** to show cause why the claim should not be struck out on the basis that it has no reasonable prosects of success.

REASONS

1. Following a period of conciliation that lasted from 9 to 25 April 2022, the claimant presented a claim form on 5 November of the same year. The response is dated 5 December 2022. Her claim arises out of her employment as a Postwoman delivery driver (as she puts it in her claim form) or, as the respondent describes it, an Operational Postal Grade or OPG. Her continuous employment started on 24 February 2020 and still continues to date.

2. By the claim form, in box 8.1, the claimant ticked only the box which says, "I am making another type of claim which the employment tribunal can deal with" and said as follows:

> "Unagreed change to my contract, in relation to changing my contract from Monday to Friday working to Monday to Saturday working. Royal Mail HR have blocked my emails and have failed to respond to my emails and have failed to respond to my emails. They communicate with me by my husband's email".

3. Further information was given in box 8.2 with a narrative about the background to the dispute. Then in box 9.2, where the claimant was asked to explain what compensation or remedy she was seeking, she said that she was seeking "compensation for mental anguish and inconvenience" and that the outcome she wished for was for Royal Mail to honour her contract of Monday to Friday which she states was originally agreed, or, alternatively, to be transferred to a different depot.

4. The respondent entered a grounds of response by which they stated that if the claim was brought under the Employment Tribunals Extension of Jurisdiction (England & Wales) Order 1994 (hereafter referred to as the Extension of Jurisdiction Order) then the Employment Tribunal had no jurisdiction to hear it because the employment was continuing. They also responded substantively to the complaint.

5. The employment tribunal listed today's hearing by notice of hearing dated 22 January 2023 with the following explanation for the purpose of today's hearing:

> "At the hearing, an Employment Judge will consider whether the claim should be struck out, as the Tribunal does not seem to have the power to hear it.
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> Employment Judge R Lewis writes as follows:
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> I have reviewed the ET1 and ET3 in accordance with Rule 26. It appears to me that this case should not have been accepted by the tribunal staff. I have therefore listed it for a public preliminary hearing to consider whether it should be struck out.
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> My reasons are (1) The Tribunal has no power to decide workplace grievances. They are a question for the respondent. (2) The Tribunal cannot hear a claim for breach of contract in a case where the Claimant is still employed by the Respondent on the day the claim was presented."

6. He goes on to suggest that the claimant take expert advice. In fact, the claimant has explained to me that the claim form was presented with the advice of her union.

7. The complaint that is clear on the face of the claim form is that the respondent is said to have unilaterally changed what the claimant regards as being the terms and conditions of employment as to the days of the week on which she should work. She stated before me that she did not receive in writing a written statement of the days that she should work at. The gist of what she complains about in the claim form is that there was a previous agreement that she should work Monday to Friday; that she had done so for two years of her employment so she did not think that the respondent had acted in accordance with the previous agreement when they told her she had to work on Monday to Saturdays with one rotating day of rest during that six day period.

8. However, it is equally clear that in so far as the claim is brought under the Extension of Jurisdiction Order which gives the Employment Tribunal limited

power to consider breach of contract claims, there is no jurisdiction because the claimant remains in employment. That is clear from the wording of Art.3 of the Order.

9. The limited jurisdiction under the Employment Rights Act 1996 (hereafter the ERA) to consider contractual matters is set out in Part 1. I explored with the claimant and the respondent at this hearing whether in fact the claim contains a reference rather under s.11(2) ERA for the Tribunal to determine particular terms of a kind which fall within s.1.

10. The respondent provided an electronic file of documents of some 29 pages which I have taken into account. Page numbers in these reasons refer to that file. The claimant had sent to the respondent and the Tribunal 6 electronic files, 2 of which contained a number of contractual documents. Bearing in mind that this is a preliminary hearing during which I have not heard oral evidence, I am taking the documents I have been shown at face value. One document put forward by the claimant was a letter which she refers to in the claim form. The copy I have been shown may not be complete. She apparently wrote it on 8 April 2020 and refers to having taken some advice and being informed that her written contract lacks some details as to how many and which days a week she has to work.

11. Section 1 ERA sets out what the necessary contents of initial employment particulars are. In s.1(4) it provides that a statement of particulars of employment there has to be provided at the outset of employment and shall contain *any* particulars that relate to the hours of work including any terms and conditions relating to the days of the week the worker is required to work; to whether or not such hours or days may be variable and if they may be, how they vary or how that variation is to be determined. I have emphasized the word “any”. That seems to me to imply that it is not necessary that there should be contractual employment particulars as to the days of the week on which work should be done but if there are such contractual terms they should be in the initial statement of particulars.

12. Section 4 ERA provides for statement of changes of employment particulars to be provided and the reference that can be made to the Employment Tribunal in respect of those rights is under s.11. In particular, under s.11(2), where a statement of the employment particulars has been given pursuant to s.1 ERA and a question arises as to the particulars which ought to have been included or referred to in the statement so as to comply with the requirements of the part, either the employer or the worker may require the question to be referred to an Employment Tribunal. As I have explained to the claimant, the right to go to the Tribunal under that section is limited in that the Employment Tribunal does not have a power under that section to interpret terms if they are unclear; it does not have the power under that section to make a decision about whether terms have been broken or whether one party has acted not in accordance with the agreement. The power of the Tribunal is to decide whether there exist contractual terms about various matters and declare what those terms are. If what has been agreed is uncertain then what the Tribunal declares will be uncertain.

13. There was an inconclusive discussion at this hearing about whether the claimant considered herself to have brought, or wished to bring, such a claim. The time

limit for bringing a claim under s.11 is within a period of three months beginning with the date on which the employment ceased (in the case of an employment that has ceased). Section 11 does not expressly state what the time limit is in relation to an employment that is continuing.

14. When asked what outcome the claimant was seeking she said she wished to know what was wrong with her claim and how to proceed. However, as I explained to her it is not the role of the Employment Judge to advise her on what she should do. The Employment Judge cannot provide advice and she should consult an appropriate legally qualified professional; possibly she could return for advice from her union. What I can decide and do decide is that taking into account the phrasing in the claim form that I referred to earlier (quoted above) and looking at the claim form as a whole, I am of the view that at present there is no claim under s.11 ERA. The complaint is about a breach of contract.

15. It is clear to me that there is no jurisdiction under the Extension of Jurisdiction Order and I therefore make a judgment to that effect. However, I do take into account that the claimant is not legally qualified. Not only does she represent herself, although she speaks clear and relatively easy to understand English, English is her second language and it therefore seems to me right that she should have a period of time to reflect on what she wants to do in the light of my judgment. Not only may she need to take advice about other legislation that the Employment Tribunal has jurisdiction under, but also because she perhaps needs a cooling off period to consider what the effect would be on any County Court claim if this claim is dismissed.

16. On the other hand, the respondent should not have to continue to face litigation that as it is presently worded appears to not be within the jurisdiction of the Employment Tribunal and that is why I directed that the claimant should have a little over 14 days from the date of today's hearing to show cause why the claim should not be struck out on the basis that it has no reasonable prospect of success. Since there has been an unfortunate delay in sending these reasons, that time is extended to 7 days from the date on which this judgment with reasons is sent to the parties.

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Employment Judge George

26 June 2023

Sent to the parties on:

26 June 2023

For the Tribunal: