



EMPLOYMENT TRIBUNALS

Claimant: Mr K Abayomi

Respondent: Serco Limited

RECONSIDERATION JUDGMENT

The claimant's application for reconsideration of the judgment sent to the parties on 15 September 2023 dismissing his claim for unfair dismissal is refused as there is no prospect of the decision being varied or revoked.

REASONS

1. On 7 July 2023 the claimant, Mr Abayomi, presented a claim to the Employment Tribunal in which he included a complaint of unfair dismissal. At box 5 of his claim form he said that his employment had begun on 24 April 2023 and had ended on 6 June 2023. Under section 108 of the Employment Rights Act 1996 an employee does not acquire the right not to be unfairly dismissed until they have been continuously employed for a period of not less than two years. This requirement applies to complaints of constructive unfair dismissal just as much as it does to complaints of actual dismissal. On the claimant's own account he does not meet the requirement in section 108.
2. On 11 August 2023 the Tribunal wrote to the claimant asking him to show cause why this aspect of his claim should not be struck out. The claimant replied on 9 August 2023 saying that it was "permissible" to pursue a complaint of constructive dismissal despite his employment having lasted less than two years. He did not provide any authority for this proposition. His assertion is simply wrong in law. I nevertheless had regard to it when considering whether to strike out his complaint of unfair dismissal and I also considered whether any of the exceptions to the 2-year service requirement applied. I concluded that they did not.
3. My judgement dismissing the unfair dismissal complaint was sent to the parties on 15th September 2023: the claimant's other claims were unaffected by this. His application for reconsideration was first made on 17 September 2023 but was not referred to me by the Tribunal's administration until the beginning of November 2023. I accept that the application for reconsideration was made within the time limit contained in Rule 71 of the Tribunal's rules.

4. I refuse the application however as the Tribunal simply does not have jurisdiction to hear the unfair dismissal complaint because the claimant does not meet the the two year service requirement. His assertion that this does not apply to complaints of constructive dismissal is wrong in law. There is no prospect of the judgment being varied or revoked.

Regional Employment Judge Foxwell

9 November 2023

Sent to the parties on:

28 November 2023

For the Tribunal: