# EMPLOYMENT TRIBUNALS

**Claimant:** Mr G Uppal

**Respondent:** Fortel Services Limited (1)
HRAI Constructions Limited (2)

**Heard at:** Birmingham (hybrid) **On:** 3 May 2025

**Before:** Employment Judge Maxwell

**Appearances**
For the Claimant: in person
For the Respondents: Mr Katz, Consultant (1)
No attendance (2)

# JUDGMENT

The Claimant's claims of unfair dismissal and for a redundancy payment are not struck out.

# REASONS

**Preliminary Issues**

1. This hearing was listed to determine:

   1.1 what claims and complaints does the claimant want to make against either or both respondents?

   1.2 are any of those claims or complaints, or any part of them, not in the claim form and if so should the claimant be given permission to amend to that he can make them?

   1.3 if and only if and to the extent the Tribunal dealing with the hearing thinks it is able to decide this and that it would be appropriate to do so, were any claims and complaints that are in the claim form made within the relevant time limit not reasonably practicable

1.4 does any part of the claim have no reasonable prospects of success because of time limits, and if so should it be struck out pursuant to rule 37 of the Rules of Procedure?

## Claims

2. The Claimant wishes to pursue complaints of unfair dismissal and for a redundancy payment against the First and / or Second Respondents. He says so clearly in his statement prepared for this hearing and confirmed that was so when I asked him today.

## Amendment

3. By a claim form presented on 29 August 2023, the Claimant presented claims against the First and Second respondents. The Claimant did not tick the boxes for either unfair dismissal or redundancy pay in his form ET1. He did, however, tick the box at section 8.1 for another type of claim, writing:

> **I was transferred over to this company without any notice by Fortel, whom I worked with for over 15 years, no paperwork or options were offered**

4. At section 8.2, the Claimant wrote:

> **I worked for Fortel for over 15 years and on the 4th of January was transferred over to Hrai constructions without any notice or paperwork, I worked for these guys and have been messed around since the start, I didn't want to leave my job at Fortel as I'd been there for so long and felt safe. I feel they have got rid of me by passing me over to this other company, they have now got rid of me as they say they have no work for me. I feel they have got rid of me in this way so that they wouldn't have to take my service into consideration. I have been left in great difficulty and they have ignored me since, this is the reason I am now in this position**

5. At section 9.2, the Claimant wrote:

> **I would like for the 15+ years of service to be taken into consideration and the difficulties they have left me and my family in, without consideration and also in the manner they have done this to us**

6. In construing the Claimant's claim, I take into account the fact he was drafting this without the benefit of legal advice and remind myself that I must read it in a fair and non-technical way.

7. It appears to me the Claimant was complaining that in circumstances where the company he was working for until end December 2022 (Fortel) wished to dispense with his services ("get rid of me") rather than simply dismissing him at that time, in order to avoid his employment rights ("so they wouldn't have to take my service into consideration") they adopted the mechanism of sending him to work for another company ("HRAI"). Thereafter, he was dismissed with the explanation there was no work for him to do. Notwithstanding he failed to tick either relevant box, I'm satisfied these particulars do in substance include complaints of unfair dismissal and for a redundancy payment. The Claimant is

saying that a device was used to dismiss him in breach of his employment rights. On the face of matters, if he had continuous employment and was dismissed after 15 years for lack of work that would likely amount to a redundancy situation.

8. For these reasons, I am satisfied the Claimant's claim form already includes complaints of unfair dismissal and about redundancy pay.

9. Accordingly, the question of permission to amend does not arise.

**Strike out**

10. Following a discussion with the parties at the beginning of the hearing today, I indicated my view that it may be inappropriate for me to deal with issue three per EJ Camp, as that might involve making findings of fact about, whether the purported resignation letter dated 28 October 2022 was a fabrication, what the Claimant was told in January 2023, by whom and indeed with respect to subsequent events at work. These are findings that would likely be relevant to the issues at any final hearing, if there were to be one, and it was not appropriate for me to decide the same without an opportunity to hear evidence from all parties on such contentious matters.

11. Issue four, however, was appropriate for determination separately. As I could hear the Claimant's account, not as evidence but as submission, and then consider whether, taking this at its highest, it appeared he had no reasonable prospect of showing that his claims were in time.

12. As far as unfair dismissal is concerned, if the Claimant's employment was terminated by the First Respondent on 4 January 2023, then he had until 3 April 2023 in which to present a claim. Given he did not contact ACAS until 11 July 2023, the primary time limit had already expired and there was no extension. On this basis, his claim on 29 August 2023 would have been more than 4 months late. If his employment was continuous with the Second Respondent, then a complaint of unfair dismissal with an effective date of termination of 7 July 2023 (as the Claimant contends) would be in time. If his employment was not continuous, the Claimant would have no right to bring an unfair dismissal claim against the second Respondent at all.

13. As far as redundancy pay is concerned, the Claimant had 6 months to present a claim. If dismissed on 4 January 2023, time expired on 3 July 2023, prior to the commencement of ACAS conciliation. His claim on 29 August 2023 would have been nearly two months late. Again a claim against the Second Respondent would be in time and indeed could only proceed at all if his employment was continuous.

14. In the course of his representations today, the Claimant told me that on 4 January 2023, he was told by his supervisor, Salil Lamba, "you are not working in this role you are going to be transferred over to a different company". He was provided with details of HRAI. Whereas previously his job with Fortel had involved travelling to various construction sites to supervise the security operation provided, with HRAI he would be going to construction sites seeking to

obtain new business, in particular with respect to concrete. Although unhappy with the situation, as he would have preferred to continue in his former job, he was given no choice in the matter. His understanding was that he was being "rolled over" from one company to another. He believed these companies to be connected and that his employment was ongoing. Whilst the Claimant was introduced to Hussain (presumably the H of HRAI) he was also still dealing with Narrinder Nijja, who he had worked with at Fortel. Indeed, on occasions when he was not paid by HRAI and complained of this to Mr Nijja, he was paid directly by that person. When his work subsequently came to an end he complained to Mr Nijja. The Claimant showed me what he said was a WhatsApp exchange with Mr Nijja on 1 July 2023, which read:

> **C – Bro you took a risk taking me out I lost nearly 20 years service now I'm struggling to feed my kids**
>
> **Nini New – Bro I supported you 20years you hardly went to work, even last 6 months supported you still no work to do. I think I helped you more thank anyone you know**

15. The Claimant says the unsigned resignation letter produced by the First Respondent and dated 28 October 2022, giving notice advising of his intention to pursue new opportunities, is a fabrication.

16. I have made no findings of fact about any of these matters. But in considering strike out I must take the Claimant's case at its highest.

17. Section 218 of the **Employment Rights Act 1996** ("ERA") provides:

> **(6) If an employee of an employer is taken into the employment of another employer who, at the time when the employee enters the second employer's employment, is an associated employer of the first employer—**
>
> > **(a) the employee's period of employment at that time counts as a period of employment with the second employer, and**
> >
> > **(b) the change of employer does not break the continuity of the period of employment.**

18. Accordingly, an employee may have continuous service for the purposes of bringing an unfair dismissal or redundancy pay claim where they have transferred (not in the TUPE sense) between associated employers.

19. ERA Section 231 provides:

> **For the purposes of this Act any two employers shall be treated as associated if—**
>
> > **(a) one is a company of which the other (directly or indirectly) has control, or**
> >
> > **(b) both are companies of which a third person (directly or indirectly) has control;**

**and "associated employer" shall be construed accordingly.**

20. Mr Katz on behalf of the First Respondent says the second Respondent is not an associated employer and this can be ascertained by looking at the information on Companies House with respect to both companies. He says the Claimant could have accessed this information at the time and discovered for himself the true position.

21. I was not taken to the Companies House records by either party during the course of this hearing. It appears to me, however, even if Mr Katz is correct in his contentions, that is not necessarily determinative of the time issue.

22. If as at January 2023, the Claimant had a genuine and reasonable belief that his employment was continuous, that is something which may mean it was not reasonably practicable for him to present either an unfair dismissal or redundancy pay claim. In order to be able to bring such claims, an individual must first understand their employment has been brought to an end. The Claimant says he believed otherwise. Whilst I make no finding of fact in that regard, I cannot say he has no reasonable prospect of satisfying an Employment Tribunal of this. Given what the Claimant says about his direction from Mr Lamba on 4 January 2023 and the continuity of his dealings with Mr Nijja before and after that point, it may be found that the Claimant had a reasonable belief in that regard.

23. I am not much persuaded by the argument the Claimant ought to have scrutinised the Companies House records for these two companies in January 2023. He was a security supervisor and not someone expected to be well-versed in company law or the provisions relating to associated employers in ERA. In any event, that is a point the Respondent can take again if it thinks it a good one, as I am not deciding the claims were in time, my ruling is limited to not being persuaded the Claimant has no reasonable prospect on that issue. I should also add that if the resignation letter were found to be a fabrication that suggest subterfuge on the part of the First Respondent, which might tend to support the Claimant in arguing he was misled (if as a matter of fact and law he was).

24. I do not, therefore, strike out his claims on the basis he has no reasonable prospect of establishing that they were in time / it was not reasonably practicable for him to have presented them within the primary limitation period.

EJ Maxwell

Date: 3 May 2024