



EMPLOYMENT TRIBUNALS

Claimant: Mr J McKenna

Respondent: Tesco Stores Limited

JUDGMENT

The complaint that the claimant was unfairly dismissed is struck out.

REASONS

1. The claimant complains of unfair dismissal and disability discrimination.
2. Section 108 of the Employment Rights Act 1996 requires a claimant to have not less than two years service to make an unfair dismissal complaint unless the complaint falls into one of the categories set out in section 108(3) of the Employment Rights Act 1996 where there is no minimum service requirement.
3. The claimant was employed by the respondent for less than two years.
4. By a letter dated 10 May 2024, the claimant was given an opportunity to say why the complaint of unfair dismissal should not be struck out.
5. By a letter dated 24 May 2024, the claimant set out reasons why he considered the complaint of unfair dismissal should not be struck out. He referred to his complaint of discrimination arising from disability about his dismissal and asserted that any dismissal arising from his disability would automatically be considered unfair and that there were exceptional circumstances (the only one referred to being the alleged discrimination arising from his disability) which meant his case should be exempt from the usual requirement of two years' service for unfair dismissal claims. The claimant fails to distinguish between a complaint of disability discrimination under the Equality Act 2010 and a complaint of unfair dismissal brought under the Employment Rights Act 1996. A dismissal which is an act of disability discrimination under the Equality Act 2010 is not a category of "automatically unfair" dismissals under the Employment Rights Act 1996 to

which the two year service requirement does not apply. The Tribunal has no discretion to allow a complaint of unfair dismissal under the Employment Rights Act 1996 to proceed, where the claimant does not have at least two years' service and where the claim does not fall into any of the categories defined in the Employment Rights Act 1996 where there is no minimum service requirement.

6. Since the claimant had less than two years' service and the complaint of unfair dismissal is not one to which the two years' minimum service requirement applies, the complaint of unfair dismissal is struck out. The claimant's complaints of disability discrimination brought under the Equality Act 2010 are not affected by this judgment.

Employment Judge Slater
Date: 5 June 2024

JUDGMENT SENT TO THE PARTIES ON
17 June 2024

FOR THE TRIBUNAL OFFICE