



EMPLOYMENT TRIBUNALS

Claimant

Mr Samuel Giddings

v

Respondent

Anglian Demolition & Asbestos
Limited

Heard at: Norwich (in person)

On: 14 May 2024

Before: Employment Judge Postle

Appearances

For the Claimant: In person

For the Respondent: Mr Cuthbert, Counsel

JUDGMENT

The Claimant's Claim brought under Section 100 of the Employment Rights Act 1996 (Health and Safety dismissals) is struck out under Rule 37 of the Employment Tribunals Constitution and Rules of Procedure Regulations 2013, on the grounds that the Claim has no reasonable prospect of success.

REASONS

1. The Claimant filed a Claim on 24 July 2023 in which he said,

“I am making a claim for unfair dismissal because of health and safety issues whereby my employer caused my detriment by not acting on my training requests and their own training promises.

The company stated I was dismissed for capability (performance) reasons with regard to the effect on, amongst other points, health and safety, which I feel was the fault of the company in view of the inadequate or lack of training I received to address my lack of experience...”

2. The Claimant then provided some additional information regarding incidents at work in which he was found at fault.

3. The Claimant did not have sufficient continuity of employment to bring a Claim for ordinary unfair dismissal under s.98 of the Employment Rights Act 1996, his employment it being accepted commenced on 10 January 2022 and he was dismissed on 26 April 2023.
4. The Respondents filed their Response on 1 November 2023 resisting the Claim on the grounds that the Claimant, as a result of three incidents at work whilst the Claimant was driving plant machinery, caused damage to the said machinery. Following an Investigation and an Appeal, the Claimant was dismissed for capability on the grounds that on three occasions on 12, 19 and 21 April the Claimant was operating plant machinery and caused sustained damage with Health and Safety implications and a financial impact on operations as a result of the damage to the vehicle. The company had no alternative but to dismiss the Claimant for capability reasons.
5. The Claimant Appealed and again that decision to dismiss was upheld on the grounds of the Claimant's capability and to continue to employ him in his capacity as a Plant Operator was a danger to himself and other employees.
6. When the Claimant was first employed by the Respondents he had Induction Training and we see all the various Induction Training that the Claimant received in the Bundle at pages 61 – 76.
7. At the outset of the Full Merits Hearing the Respondent made an Application, under Rule 37 of the Employment Tribunal Rules of Procedure 2018, that the Claim be struck out on the grounds that it had no reasonable prospect of success.
8. Mr Cuthbert for the Respondent indicated in his submissions, looking at s.100 Health and Safety cases, clearly subsection (a) did not apply to the Claimant. The Claimant was not designated by the Respondents to carry out activities in connection with preventing or reducing risks to the Health and Safety.
9. In relation to subsection (b), the Claimant was not a representative of workers on matters of Health and Safety, therefore that did not apply.
10. In relation to subsection (c), there clearly were representatives or a Safety Committee and even if there was not, it would have been reasonably practical for the Claimant to raise any such matters, but he did not in any event.
11. In relation to subsection (d), that did not apply as the Claimant was not at any stage or could reasonably believe to be in serious, imminent danger where he left, proposed to leave or refused to return to the workplace. That clearly does not apply.
12. In relation to subsection (e), in circumstances of danger which the employer reasonably believed to be serious and imminent, he took

appropriate steps to protect himself or others from the danger. That clearly did not apply to the Claimant.

13. Therefore to pursue a Claim under s.100 is doomed to fail. It has no reasonable prospect of success.
14. The Claimant was then given an opportunity to respond. He seems to have misunderstood the legislation, perhaps understandably as a litigant in person. He now says he is not pursuing a Claim for ordinary unfair dismissal, or a Claim under s.100, but a Claim for wrongful dismissal.
15. He then went on to say that he had raised at various times during his employment the need for training.

The Tribunal's Conclusion

16. Rule 37 of the Employment Tribunal Rules of Procedure gives Tribunals the power at any stage of the proceedings on the Application of a party to strike out a claim on a number of grounds, but in this case subsection (a) applies, that the Claim has no reasonable prospect of success.
17. Even if the Claimant could fall within s.100, the Tribunal reminds itself the burden of proof is on the Claimant to show an automatically unfair reason, in other words to show that the reason for his dismissal or the principle reason was because he did anything under s.100 in relation to Health and Safety matters.
18. The Tribunal would then, seeking to establish the reason or principal reason for dismissal, ask the employer why they acted as they did and can then strike out if the Claimant is unable to establish the necessary causal link between his raising Health and Safety concerns and the subsequent disciplinary action taken that led to dismissal.
19. What is clear in this case is that on three occasions in April 2023, particularly 12 April, 19 April and 21 April, the Claimant was involved in an incident in which following the briefing from the Site's Supervisor he damaged the Respondent's machinery causing financial loss. Even if the Claimant could fall within s.100, he is in difficulty because when one looks at the meeting held by Mr Bacon of HR at the Respondent's on 26 April 2023, it is quite clear that the principal reason why the Claimant was dismissed was because he had damaged plant machinery whilst operating it and those incidents were down to the Claimant's poor judgement, not lack of training.
20. Therefore the Tribunal repeats, even if the Claimant could fall within s.100 of the Employment Rights Act 1996, it is quite clear there is no causal link between the Claimant and Health and Safety matters. The principal reason for the Claimant's dismissal was his capability.

21. In those circumstances the Claim has no reasonable prospect of success and therefore should be dismissed at the outset of this Full Merits Hearing.

Employment Judge Postle

Date:31 May 2024.....

Sent to the parties on: 27 June 2024

For the Tribunal Office.

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