



# EMPLOYMENT TRIBUNALS

Considered at: London South

On: 24 July 2024

By: Employment Judge Ramsden

In the matter of Mr S Buckingham v Maidstone and Tunbridge Wells NHS Trust

Consideration of judgment reached on: 11 July 2024

## RECONSIDERATION JUDGMENT

The Claimant's application for reconsideration of the judgment dismissing his unfair dismissal complaint given in this matter on **11 July 2024** is refused. The remaining parts of the Claimant's claim will proceed.

### BACKGROUND

1. The Claimant's Claim Form was filed on 3 December 2023. The Claimant claims that:
  - a) He was constructively unfairly dismissed by the Respondent;
  - b) He was discriminated against by the Respondent on the ground of disability; and
  - c) He is owed certain payments by the Respondent.
2. The Respondent resists these complaints.
3. The Claimant was employed by the Respondent for less than two years, and so the Tribunal wrote to him on 2 April 2024, which letter included the following:

*"In your claim form one of your complaints is that you were unfairly dismissed.*

*Under section 108 of the Employment Rights Act 1996 claimants are not entitled to bring a complaint of unfair dismissal unless they were employed for two years or more except in certain specific circumstances which do not seem to apply in your case.*

*It appears from your claim that you were employed for less than two years. If so, the Tribunal cannot consider your complaint that you were unfairly dismissed. As you do not appear to be entitled to bring that part of your claim **an Employment***

**Judge is proposing to strike it out.** *This does not affect the other complaints in your claim form.*

*You have until 16 April 2024 to give reasons in writing why your complaint of unfair dismissal should not be struck out."*

4. That letter also Ordered the Claimant to provide details of his disability discrimination complaint, but no deadline was put on when the Tribunal was to be provided with that information.
5. The Claimant wrote in reply to the Tribunal's letter on the same day. That email contained the following:  
*"I do concede that actual dismissal had not yet occurred, but that the Defendant was guilty of constructive unfair dismissal which could be causally linked to a protected characteristic, specifically disability. As such, actual dismissal would naturally fail, but constructive unfair dismissal I believe is an appropriate argument, and can be brought inside the two year period as this was causally linked to disability discrimination."*
6. The Claimant's email did not respond to the Tribunal's Order for details of his disability discrimination complaint.
7. On 10 July 2024 the Tribunal acknowledged the Claimant's 2 April 2024 email, and noted that he had not responded to the part of the Tribunal's letter requesting details of his disability discrimination complaint. The letter set a deadline of 14 days from the date of that letter for the Claimant *"to comply with Employment Judge Evans' Order of 2 April 2024 in relation to Disability Discrimination"*.
8. On 11 July 2024, I determined that the Claimant's representations were insufficient to persuade me that the Tribunal has jurisdiction to consider his unfair dismissal complaint, and I signed the judgment striking out that complaint.
9. On 21 July 2024 the Claimant sent some further submissions about why his complaint of unfair dismissal should not be struck out.
10. The judgment that is the subject of this reconsideration request was sent to the parties by the Tribunal on 22 July 2024.

## **APPLICATIONS**

11. The Claimant applied, under Rule 71 of the Employment Tribunals Rules of Procedure 2013 (the **ET Rules**), for reconsideration of my decision on 11 July 2024 to strike out his complaint of unfair dismissal.
12. The Claimant's reasons for applying for reconsideration of that decision are that:
  - a) He considers that the Tribunal has jurisdiction to consider a complaint of constructive unfair dismissal where the dismissal is causally linked to disability discrimination; and
  - b) His 21 July 2024 submissions were not considered and should have been.

## RULES AND LEGISLATION

13. The Rules on reconsideration are set out in Rules 70 to 73 of the ET Rules. The pertinent one for these purposes is Rule 70:

### ***“Principles***

*A Tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) or on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration, the decision (“the original decision”) may be confirmed, varied or revoked. If it is revoked it may be taken again.”*

14. Section 108 of the Employment Rights Act 1996 states:

*“(1) Section 94 does not apply to the dismissal of an employee unless he has been continuously employed for a period of not less than two years ending with the effective date of termination.*

*(2) If an employee is dismissed by reason of any such requirement or recommendation as is referred to in section 64(2), subsection (1) has effect in relation to that dismissal as if for the words “two years” there were substituted the words “one month”.*

*(3) Subsection (1) does not apply if—*

*[list of exceptions follows].*

*(4) Subsection (1) does not apply if the reason (or, if more than one, the principal reason) for the dismissal is, or relates to, the employee's political opinions or affiliation.*

*(5) Subsection (1) does not apply if the reason (or, if more than one, the principal reason) for the dismissal is, or is connected with, the employee's membership of a reserve force (as defined in section 374 of the Armed Forces Act 2006).”*

## REASONS

15. The Claimant was given until 16 April 2024 to make representations on why his unfair dismissal complaint should not be struck out, and he did so on 2 April 2024. Those representations did not alter my judgment, reached on 11 July 2024, that the Tribunal does not have jurisdiction to consider the Claimant’s unfair dismissal complaint. The fact that his complaint is of *constructive* unfair dismissal (as opposed to the non-constructive kind) does not alter the requirement in section 108 of the Employment Rights Act 1996 – unless an exception applies – for the Claimant to have accrued two years’ service in order to bring his complaint. The Claimant did not have two years’ service at the date his employment terminated, and – based on his Claim Form and his representations – I did not understand any of the exceptions to apply to him.

16. This does not prevent the Claimant from identifying what he avers was his constructive dismissal as an act of disability discrimination, and there is no minimum service requirement for complaints of unlawful discrimination based on protected characteristics (including disability).
17. The representations sent by the Claimant on 1 July 2024 were out of time. The Tribunal's letter of 10 July 2024 was absolutely clear in its terms that the 14 day deadline set out in that letter was for further detail of the Claimant's disability discrimination complaint. The deadline for the Claimant to make representations on the issue of whether his unfair dismissal complaint was to be struck out was, as written plainly in its letter of 2 April 2024, 16 April 2024.
18. The Claimant's 21 July 2024 representations were not considered before I took my decision to strike-out his unfair dismissal complaint, but in any event, nothing in them alters my judgment that the Tribunal does not have jurisdiction to consider the Claimant's unfair dismissal complaint.

## **DECISION**

19. For the reasons set out above, the Claimant's application for reconsideration fails; the decision I took on 11 July 2024 to strike out the Claimant's unfair dismissal complaint for lack of jurisdiction is confirmed.

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Employment Judge Ramsden  
Date: 24 July 2024

Sent to the parties on  
Date: 25 July 2024