



EMPLOYMENT TRIBUNALS

Claimant: Mrs Charlotte Walker

Respondent: Marine Management Organisation

Record of an Attended Preliminary Hearing at the Employment Tribunal

Heard at: Nottingham

Heard on: 28 May 2024

Before: Employment Judge Hutchinson (sitting alone)

Appearances:

Claimant: In person

Respondents: Simon Goldberg, KC

JUDGMENT having been sent to the parties on the 6 June 2024 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunal Rules of Procedure 2013 the following reasons are provided.

REASONS

Background to this Claim

1. The Claimant presented her claim to the Tribunal on the 15 September 2023. She had been employed by the Respondent from the 8 February 2023 until her resignation on 13 September 2023 as a Commercial Business Partner.

2. She claimed:
 - Constructive unfair dismissal.
 - Breach of contract in respect of notice.
3. The claim of breach of contract has been resolved and is withdrawn and therefore dismissed.
4. The only claim that remains is one of constructive unfair dismissal under Section 94 Employment Rights Act 1996.
5. In their response dated 9 February 2024 the Respondents pointed out that the Claimant had only commenced employment with the Respondent on 8 February 2023. She had previously been employed as a Civil Servant (Crown Employee) with Department of Work and Pensions and The Department for Education.
6. The Claimant had accrued 4.5 years of continuous service whilst working as a Civil Servant for these Ministerial Departments and had contended that her employment as a Civil Servant counted towards her statutory continuous employment with the Respondent.
7. It was the Respondent's contention that the Employment Tribunal did not have jurisdiction to hear the claim of constructive unfair dismissal as the Claimant had insufficient continuous employment for such a claim.
8. As a result of these contentions the matter was listed for a hearing for me to consider whether the Tribunal did have jurisdiction.

The Hearing Today

9. I did not hear any evidence because the relevant facts are not in dispute, but I heard the contentions made by the Claimant and by Mr Goldberg for the Respondents and I also had the benefit of written submissions from him and an agreed bundle of documents together with supplementary documents provided by the Claimant.

Relevant Facts

10. The Respondent is an executive non-departmental public body sponsored by the Department of Environment, Food and Rural Affairs. It licences and regulates marine activities in England and Wales.
11. On 8 February 2023 the Claimant commenced employment as a Senior Commercial Business Partner.
12. She had previously worked with The Department of Work and Pensions and Department of Education and had accrued 4.5 years of service with the Civil Service.
13. The Claimant resigned on 13 September 2023 giving notice and the effective date of

termination of her employment was 17 October 2023.

14. The Respondent is a Statutory Authority which was set up by Parliament under the Marine Coastal Access Act 2009. Schedule 1 of the Act provides:

“(1) The MMO is a body corporate.

(2) The MMO is not to be regarded—

(a) as a servant or agent of the Crown,

(b) as enjoying any status, privilege or immunity of the Crown, or

(c) as exempt, by virtue of any connection with the Crown, from any tax, duty, rate, levy or other charge whatsoever, whether general or local, and the property of the MMO is not to be regarded as property of, or held on behalf of, the Crown.

(3) Accordingly, employees of the MMO are not to be regarded as—

(a) servants or agents of the Crown, or

(b) enjoying any status, immunity or privilege of the Crown.”

15. It is the contention of the Claimant that when she had been successful in obtaining the role at the MMO she had asked if she retained her continuous service and that it had been confirmed to her that her transfer was on the basis that her previous service would count towards her service with the MMO.

16. She explained that when she received her “Welcome to the Civil Service Pension” pack she discovered that her previous service of 4.5 years as a civil servant would not count towards her continuous service.

17. Her contract of employment stated at that no employment with a previous employer other than another Government Department would count towards her continuous employment.

18. She raised a grievance in respect of this issue of continuous service on 26 June 2023, the letter is at page 141 – 150 of the bundle. The grievance meeting was held on 12 July 2023 (pages 185 – 190). The outcome of that grievance was sent to her on 1 August 2023 (page 218) and contained the investigation report prepared by Patrick Schneiders and dated 31 July 2023 at pages 219 – 225. He decided that her continuous service with previous Government Departments would not count towards her service with the Respondent.

19. This resulted in Mrs Walker’s notice of resignation on 13th of September 2023 (page 238). In that letter she said that she was resigning in response to a repudiatory breach of contract by the MMO. She said that she had joined the MMO following written confirmation that it was accepted that she was transferring with continuous service from her previous role and that she would not have accepted the role had she been informed that her continuous service would not be recognised. Her

employment terminated on 17 October 2023.

20. She then presented her claims to the Tribunal on 15 September 2023.

The Law

21. Section 94 of the Employment Rights Act 1996 (ERA) gives a statutory right not to be unfairly dismissed.

22. Section 108 ERA provides:

“(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 2 years ending with the effective date of termination.”

23. Continuous employment for the purposes of the ERA is calculated by reference to the provisions of chapter 1 of Part XIV of the ERA.

24. Section 218 deals with continuous employment. It provides:

“(1) Subject to the provisions of this section, this chapter relates only to employment by the one employer.”

25. Section 218 (2)-(10) provides exceptions to the rule contained in section 218 (1). None of those exceptions apply in this case.

26. I was referred to the cases of:

- ***Secretary of State for Employment v Globe Elastic Thread Limited [1979] ICR 706 HL***
- ***Collinson v BBC [1998] ICR 669***
- ***Laverack v Woods of Colchester 1967 1 QB 278***

27. This case law settles that the acquisition of these statutory right not to be unfairly dismissed depends upon an employee having the requisite statutory continuity of employment.

28. An employee and an employer can agree between themselves to treat a period of employment with a previous employer as continuous with their current role but that will have no impact upon the issue of whether the employer has the requisite period of continuous employment for the purposes of acquiring the statutory right not to be unfairly dismissed.

29. Parties cannot contract out of or into continuity of service for the purposes of claims such as unfair dismissal brought under the ERA. It is a purely statutory concept.

Conclusion

- 30. In this case Mrs Walker claims unfair dismissal under Section 94 ERA. Unless her previous employment with the Civil Service counts, she does not have sufficient service and the Tribunal does not have jurisdiction to hear her claim.
- 31. I am satisfied that Section 218(2)-(10) have no application to a change of employer from DWP to MMO.
- 32. Mrs Walker relies on an alleged contractual agreement between her and MMO whereby MMO agreed to treat her period of employment with DWP as continuous employment. No contractual agreement as alleged by her can assist her in whether she has continuous service.
- 33. Section 191(3) ERA does not assist her because MMO is not a Government Department. In this respect I refer myself to the statutory words of the act that brought it into existence. Its employees are not employees of the Crown.
- 34. Section 231 ERA does not assist her. MMO is an independent body. It is controlled by its members. It is not a Government Department, and it is therefore not an associated employer within the meaning of Section 231 ERA.
- 35. I am satisfied that it does not matter what was said to the Claimant at the time prior to her subsequent offer of employment by the Respondent. It does not assist her in giving her the right to claim unfair dismissal. At the time of the termination of her employment she did not have two years' service. The Tribunal therefore does not have jurisdiction to hear the claim and it is therefore dismissed.

Employment Judge Hutchinson

Date: 18 July 2024

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE

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