



EMPLOYMENT TRIBUNALS

Claimant: Mr B McArthur

Respondent: Tysers Insurance Brokers Limited

Heard at: London Central (by CVP)

On: 16 August 2024

Before: Employment Judge Forde

REPRESENTATION:

Before: Employment Judge Forde

REPRESENTATION:

Claimant: In person

Respondent: Ms I Baylis, Counsel

JUDGMENT

The judgment of the Tribunal is as follows:

1. The complaint that the respondent failed to provide the claimant with a change to the terms and conditions of his employment namely that it made a promise to reengage the claimant after he had resigned and his contract not updated after that point is not well founded and dismissed.
2. The claimant's claim that he was not reengaged by the respondent after having resigned is not a claim that falls within the jurisdiction of the tribunal as it is not a claim that arises on the termination of the claimant's employment and therefore it must be dismissed.

REASONS

3. The claimant worked for the respondent from the 10th of October 2022 to 22 January 2024 as a senior broker in marine claims.
4. The tribunal has been asked to determine the number of issues that arise around the termination of the claimant's employment and his notice. In writing and orally, the claimant clarified that his claim is one which is pursued under section 11 Employment Rights Act 1996 namely that he was not provided with the change the terms and conditions of his employment namely that the respondent had made a promise to re-engage him after he had resigned his contract but his contract was not updated to reflect that. In due course, the respondent did not re engage the claimant.
5. As a matter of background, it is not in dispute that between 10 October 2022 and 24 of October 2023, the claimant had had an intermittent work attendance record such that there had been discussions between his managers about his attendance. On the 22 of October 2023 the claimant resigned by e-mail. However, on the 24th of October 2023 but the claimant's line manager had spoken to the claimant's wife on the telephone in follow up to an e-mail from her in which an in which she said that the claimant was unwell and incapable of making decisions and accordingly she retracted the resignation on the claimant's behalf.
6. The respondent did not decided to retract the resignation but instead took the decision to offer the claimant the opportunity to reapply for his job at the end of his contractual notice period that he was serving as a consequence of his resignation provided that he was able to demonstrate that he could perform in the role.
7. What I have said in the paragraph above is a matter of contention between the parties because it is the claimant case that he had been told orally as had his wife that it would be a formality for him to be re engaged provided that he had a made a successful return to work following a period of sickness absence.
8. Matters came to a head on 16 January 2024 when the claimant attended a meeting with his line manager. It is the claimant's position that his line manager informed him that he had misunderstood that he was going to be rehired and referred him to a letter that had been sent to the claimant from HR. In consequence, the claimant raised a grievance in which he set out his position that he had been told that he would be re engaged at the end of his notice a formality notwithstanding the fact that the claim the respondent had told him that they would have to advertise the position.
9. The grievance investigation did not achieve the outcome that the claimant wanted and as a consequence, on the 22 of January 2023 the claimant's employment ended.
10. In terms of the procedure before the tribunal, the claimant's claim in which he had indicated amongst other things that he was he was seeking remedy for unfair dismissal was passed to the respondent's legal advisers who in turn made an application for strike out on 9 of August 2024 on the basis that the

claimant does not have the necessary qualifying service to bring an unfair dismissal claim. In response this application for strike out the claimant clarified that his claim was one to be pursued under section 11 ERA 1996.

11. In submissions before me, the claimant told me that his claim was about the offer or promise or re-engage him and the fact that that offer should have been incorporated into his contract of employment. He went on to say a number of things the most pertinent of which was that he recognised that the tribunal has a narrow jurisdiction in relation to the claims it can hear. In the claimants case, this was one which he felt fell within the parameters of the tribunals jurisdiction.
12. The respondent's position is clear. It says that there is nothing which the claimant can pursue against the respondent before the tribunal. Ms Bayliss, counsel for the respondent out that if I found that the claimant had been offered a new ancillary contract to the purposes of his re engagement it would not be a matter that fell within the jurisdiction of the tribunal to adjudicate upon.
13. The claimant is obviously aggrieved by the fact that he was not re engaged at the end of his notice period. However, I am unable to identify a legal cause of action that he can pursue before the employment tribunal. When he clarified his case to me as one in which he says that he was made a promise to be re engaged and thereafter that his contract of employment should have been amended to reflect that promise, it was clear to me that this was a hopeful rather than a real submission based upon what had actually had happened. Miss Bayliss properly focused on the elements required to form a contract including the intention of the parties and an exchange of consideration.
14. Put simply, I do not find that it was the intention of the parties to amend the contract of employment in the way that the ant alleges so as to fall within the parameters of section 11 ERA 1996. I find that it was the intention of the respondent to explore the possibility of reengaging the claimant at the end of his notice period and nothing more. It does not follow that this would amount to a reason to vary the contract of employment that had been terminated by the claimant by his resignation.
15. For these reasons, I must dismiss the claim. New paragraph for the avoidance of doubt, I shall dismiss the claim both in respect of a claim made under section 11 ER a 1996 but also on the basis that any other contractual promise or indication is not one which falls within the jurisdiction of the employment tribunals and of England and Wales.

**Employment Judge Forde
16 August 2024**

Judgment sent to the parties on:
20 August 2024