



EMPLOYMENT TRIBUNALS

Claimant: Mr S Ludin

Respondent: Department for Education

Heard via Cloud Video Platform (London Central) On: 1 November 2024

Before: Employment Judge Davidson

Representation

Claimant: in person

Respondent: Mr P Smith, Counsel

JUDGMENT FOLLOWING A PRELIMINARY HEARING

The claimant's claim for 'withdrawal of offer' is dismissed because the tribunal does not have jurisdiction to hear such a claim.

REASONS

At the end of the hearing, the claimant requested written reasons of the Judgment which had been delivered orally.

Issues

1. This hearing was listed to consider what type of claim the claimant was intending to bring and whether the tribunal had jurisdiction to consider the claim. If the tribunal did have jurisdiction the issue would be whether the claim should nevertheless be struck out as having no reasonable prospect of success, alternatively whether a deposit order should be made on the basis that the claim has little reasonable prospect of success.
2. The claim relates to discussions between the claimant and the respondent in connection with the role of PA Apprentice. It is accepted that discussions were at an advanced stage with a conditional offer being made. The respondent withdrew that offer in circumstances which the claimant considered to be unfair.

3. His ET1 form indicated that the type of claim he was bringing was 'Withdrawal of the Offer'. No other claims were identified on the claim form.
4. The respondent made an application for a strike out of the claimant's claims, asserting that no formal contract of employment was entered into.
5. The case had come before the tribunal on 19 August 2024. That hearing dealt with another application first and the claimant requested an adjournment of the respondent's strike out application so that he could take legal advice.
6. At the start of the hearing, the claimant confirmed that he had taken legal advice from a volunteer trainee lawyer, not having funds to pay legal fees. He clarified that his claim was for 'breaching a verbal contract'. He relied on the fact that he had attended at the respondent's workplace for two separate days for unpaid training days and that a start date had been agreed. He also stated that ACAS would not have dealt with early conciliation if there was no legal basis for his claim.
7. I explained that I was only dealing with the issue of whether or not there was an employment contract as the tribunal would not have jurisdiction (under the Employment Tribunals Extension of Jurisdiction Order 1994) if there was no contract of employment. I informed the parties that I was not reaching any decision on the merits or otherwise of the decision to withdraw the offer, only whether a contract of employment had been entered into between the parties.

Facts

8. I was taken through the various communications, by email and through the respondent's job portal. These can be summarised as follows:
 - a. In March 2023, the claimant successfully applied for the role of PA Apprentice. As there were no vacancies at the time, he was placed on a reserve list.
 - b. On 20 November 2023, he was asked if he was still interested in the role although the respondent was not making a firm job offer. The claimant confirmed that he was still interested.
 - c. On 29 November 2023, Amanda Robinson (Head of Office) emailed the claimant to tell him that HR had informed her that he had been issued with a provisional offer. This required him to complete ID and Right to Work checks, following which pre-employment checks would be carried out.
 - d. On the same day, the claimant was informed that the role was permanent, subject to a 6-month probationary period and that the offer of employment would be subject to the standard HR checks.
 - e. The claimant attended the workplace on 21 December 2023 to be shown round the office. He was not paid for this day.

- f. The claimant's ID and Right to Work checks were completed by 27 December 2023 and the respondent was cleared to make a conditional offer. The respondent told the claimant that the offer was conditional because he still needed to pass his pre-employment checks successfully.
- g. The parties discussed a start date of 8 January 2024, but the claimant was unwell and did not start on that date.
- h. On 19 January 2024, Charmaine Lennon (Finance Manager) emailed the claimant, referencing an earlier telephone call. The email records that the claimant wanted all pre-employment checks to be completed before he resigned from his current role. It appears that the only outstanding issue was a response from the claimant's referees. In this email, the claimant was told that the references needed to be submitted by 26 January 2024 failing which the offer may be withdrawn.
- i. The claimant denies receiving this email. The copy of the email in the bundle is redacted so I cannot see what email address it was sent to. However, Mr Smith for the respondent confirmed that it was sent to a different email address from the other correspondence with the claimant. The respondent says it was sent by 'reply' to an email address from which an email from the claimant had been sent.
- j. On 23 January 2024, the respondent confirmed to the claimant that all checks had been completed other than receiving two references. He was asked to follow up with these referees. On receiving this information, the claimant resigned from his existing role.
- k. On 31 January 2024, the offer was withdrawn. After the claimant was informed of this, he contacted his referees and two of the referees sent in references that evening.

Legal test

- 9. The employment tribunal can only hear claims which arise or are outstanding on the termination of employment. If there is no employment contract, there is no jurisdiction.
- 10. In order to form a valid legal contract, there must be an unconditional offer which has been accepted. A conditional offer cannot be accepted to form a valid contract if the conditions have not been met. An offer can be withdrawn at any time before it has been validly accepted.
- 11. Once the offer has been withdrawn, compliance with the conditions does not resurrect it.

Determination of the issues

- 12. I acknowledge that this case is based on an unfortunate series of events and I understand why the claimant feels aggrieved and let down by the respondent. However, I need to determine, using the legal tests, whether the communications between the parties resulted in the formation of an

employment contract. If I find that there is no contract, it is not for me in this hearing to apportion blame for why this happened.

13. In this situation, the communications from the respondent make it clear that the offer is conditional upon a number of pre-employment checks. By mid-January 2024, the only outstanding matter was the receipt of references, satisfactory references being one of the conditions of the offer.
14. As long as the offer remained a conditional offer (because the conditions had not been met) it was capable of being withdrawn by the respondent. There is no legal requirement for the respondent to remind the claimant to provide the references (although the respondent's case is that they did so) and therefore the fact that the claimant did not receive the 19 January 2024 email does not prevent the respondent from withdrawing the offer.
15. In relation to the email of 19 January 2024, I accept that there is sufficient information to support the claimant's contention that he did not receive this because it was apparently sent to a different email address. However, there is insufficient evidence for me to uphold the claimant's allegation that this email was faked.
16. Therefore, although the claimant's referees provided references on 31 January 2024, it was too late because the offer had been withdrawn.
17. In conclusion, I find that there was no concluded contract of employment and that the tribunal does not have jurisdiction to hear the claimant's complaint, which is hereby dismissed.

Employment Judge Davidson
Date 7 November 2024

JUDGMENT SENT TO THE PARTIES ON

14 November 2024

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FOR EMPLOYMENT TRIBUNALS