



EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case No: 4110262/2019

Preliminary Hearing Held in Dundee on 10 October 2019

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Employment Judge I McFatridge

Mr R Allan

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**Claimant
In person**

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Wickes Building Supplies Ltd

**Respondent
Represented by
Ms Wyatt
Solicitor**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

30 The judgment of the Tribunal is that the claimant does not have sufficient qualifying service to bring a claim of unfair dismissal. The claims are dismissed.

REASONS

35 1. The claimant submitted a claim to the Tribunal in which he claimed he had been unfairly dismissed by the respondent. In his ET1 claim form he also made reference to changing his terms and conditions without consultation which could be taken as a claim that he had not been provided with notice

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of change of particulars of employment. In his ET1 he indicated that he commenced employment on 11 December 2017 and that his employment had ended on the expiry of his notice period on 11 April 2019. The respondent submitted a response in which they denied the claims. They made the point that the claimant did not appear to have sufficient qualifying service to make a claim of unfair dismissal. An Employment Judge decided it would be appropriate to hold a preliminary hearing to deal with this issue. In advance of this the claimant provided an e-mail to the respondent dated 30 August setting out his reason for stating that the Tribunal had jurisdiction.

2. At the hearing I asked the claimant to confirm his length of service. He confirmed that the dates were as stated in his ET1. I asked him to advise why it was that he considered the Tribunal had jurisdiction. He indicated that his belief was that unfairness was unfairness. If an employer treated an employee unfairly then it should not matter what their length of service was. He believed the Tribunal should still be in a position to address unfairness. I advised the claimant that the Tribunal is a statutory Tribunal. We only have the jurisdiction which parliament has given us. Parliament has decided that employees with less than two years' service shall not be permitted to bring a claim of unfair dismissal before the Tribunal. Accordingly, the Tribunal had no jurisdiction to hear the claim.

Legislation

3. The right not to be unfairly dismissed is contained in Part X of the Employment Rights Act 1996 and in particular section 94(1) which states

“An employee has the right not to be unfairly dismissed by his employer.”

Section 108 however 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.”

There are a list of specific exceptions to section 108(1) provided in section 108(3) however the claimant did not assert that any of these exceptions applied to him. On checking the detailed claim form which he submitted it

was clear to me that he was not making any claims which could have been subject to any of these exceptions.

4. It should be noted that the issue of length of qualifying service is a politically sensitive one, which governments of different complexion have altered over the years. Initially when unfair dismissal legislation was first enacted the qualifying period was one year. It was then increased to two years under the Conservative government in the 1980s and 90s before reverting to one year following the election of Labour government. It was then changed back to two years following the election of the coalition. It is clear that this is a political matter and not one which the Tribunal judiciary have any discretion whatsoever to interfere with. It therefore follows that claim must be dismissed. If any claim were being made in relation to the failure to provide a note of change of particulars of employment such a claim cannot exist as a freestanding claim and must therefore also be dismissed.

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25	Employment Judge:	Ian McFatridge
	Date of Judgment:	15 October 2019
	Date sent to parties:	15 October 2019