



Case Number: 3306424/2021

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## EMPLOYMENT TRIBUNALS

BETWEEN

**Claimant**

Mr J Barrett

and

**Respondent**

LHR Airports Limited

Held by CVP on 10 February 2022

**Representation**

**Claimant:**

In Person

**Respondent:**

Miss R Thomas,  
Counsel

**Employment Judge Kurrein**

**Statement on behalf of the Senior President of Tribunals**

This has been a remote hearing that has not objected to by the parties. A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that I was referred to are in a bundle of 64 pages, the contents of which I have recorded.

## JUDGMENT

- 1 The claimant's claims alleging unfair dismissal and disability discrimination are dismissed on withdrawal.
- 2 The claimant's claims for a redundancy payment, holiday pay and unauthorised deductions are dismissed because they have no reasonable prospect of success.

## REASONS

- 1 The claimant was employed by the respondent in a number of technical roles from 1984 until his effective date of termination on 30 November 2020. He started conciliation on 5 January 2021, which ended on 5 February 2021. As both those dates fell within the primary limitation period early conciliation did

- not achieve an extension of time so the last date on which his claim should have been presented was 29 March 2021.
- 2 His claim was not in fact presented until 27 April 2021. The respondent then presented a very fully pleaded response contesting the claimant's claim.
  - 3 In the course of the hearing today I discussed the unless order made on 21 October 2021, whereby the claimant was required to show cause as to why his unfair dismissal claim should not be struck out because he did not allege a dismissal in his claim.
  - 4 The claimant did not respond to that order, but has not been informed that that claim has been struck out.
  - 5 I also took the opportunity to discuss the claimant's claim that he had been the subject of disability discrimination. He in fact told me that he had not ticked the box on the form to say that he was disabled because he did not have evidence of that.
  - 6 I explained the law on disability to the claimant, in particular the requirement that the adverse effects on his day-to-day activities of his impairment must have either lasted for 12 months or be expected to last for that length of time. The impairment he relied on was Covid, which he contracted on 30 March 2020. However, he returned to work remotely before 15 April 2020, and was certainly present in the workplace on occasions thereafter until he was furloughed in June 2020.
  - 7 The claimant expressed a wish to withdraw his claims for unfair dismissal and disability discrimination. I confirmed with him that that was his wish.
  - 8 It was not in dispute that one of the consequences of the Covid epidemic was a severe fall in passenger numbers at the respondent's site. It held meetings to discuss what steps it could take to cut costs, one of which was to offer voluntary severance.
  - 9 On 19 November 2020 the claimant signed a document sent to him by the respondent indicating that he wished to accept voluntary severance if it was offered. The respondent accepted that offer on 20 November 2020 and confirmed that the claimant would receive a very substantial voluntary severance payment, and that his employment would terminate by mutual agreement on a later date. That date subsequently became 30 November 2020.
  - 10 On 22 November 2020 the claimant signed a deed of waiver in respect of any contractual claims he might have arising from his severance. The respondent accepts that deed did not comply with the waiver provisions of the Employment Rights Act 1996.
  - 11 It is the claimant's case in these proceedings that his severance payment was miscalculated because it did not take account payments to which he was entitled in addition to his basic pay and/or accrued toil of over 500 hours. He has also been paid in excess of £6,000 in accrued and untaken holiday pay.

- 12 Those claims are in my view clearly out of time. The onus is on the claimant to establish, on the balance of probabilities, that it was not reasonably practicable for him to have presented his claim in time. He had no evidence of that, save to say that he was suffering from stress. I did not accept that that was sufficient. He had taken part in early conciliation and presented a detailed claim.
- 13 I also take the view that the claimant's remaining claims are solely of a contractual nature arising from the agreement to accept voluntary severance.
- 14 The monies he is seeking to recover are not based on payments that he would have been entitled to as part of his normal pay. He will be quite unable to point to a payslip, for instance, that shows an unauthorised deduction. The payments he is seeking only arose as a consequence of the agreement for voluntary severance.
- 15 He signed a deed of waiver in respect of that agreement. Against that background I consider it highly likely that the claimant would be estopped from seeking a variation in that agreement, regardless of whether or not the agreement complied with the provisions of the Employment Rights Act 1996.
- 16 Having regard to all the above circumstances I have come to the conclusion that the claimants claims are outwith the jurisdiction of the employment tribunal and, in any event, have no reasonable prospect of success.

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Employment Judge Kurrein

Date: 14 March 2022

Sent to the parties and  
entered in the Register on:  
17 March 2022  
For the Tribunal

**Notes** Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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