



EMPLOYMENT TRIBUNALS

Claimant: Mr S Scott

Respondent: Lou Macari

JUDGMENT

The claim is struck out.

REASONS

1. The claim raises a single complaint of unfair dismissal.
2. The claimant was not continuously employed for two years ending with the effective date of termination.
3. Section 108 of the Employment Rights Act 1996 places a limit on the rights of employees to bring a claim of unfair dismissal. As a general rule, employees have no right to bring such a claim unless they were continuously employed for two years ending with the effective date of termination.
4. There are exceptions to the rule in section 108. The exceptions are set out in section 108 itself. None of the exceptions appear to apply in this case.
5. Section 18A(8) of the Employment Tribunals Act 1996 prevents a claimant who is subject to the requirement in subsection (1) from presenting an application to institute relevant proceedings without an ACAS early conciliation certificate.
6. Relevant proceedings include a complaint of unfair dismissal.
7. The claimant did not have an ACAS early conciliation certificate at the time he presented his claim.
8. There are exceptions to the requirement in subsection (1). One of these is that the claimant "is able to show that the respondent has contacted ACAS in relation to a dispute...and the proceedings on the claim form relate to that dispute".
9. The claimant ticked a box to assert that the respondent had already been in touch with ACAS. This on its own is not enough to exempt him from the requirement to have an

early conciliation certificate. He needs to be able to show that his employer contacted ACAS, not merely to assert it by ticking a box. He has not provided any evidence of his employer contacting ACAS, despite being requested to do so.

10. Rule 37 of the Employment Tribunal Rules of Procedure 2013 gives the tribunal the power to strike out a claim on the ground that it has no reasonable prospect of success.
11. By a letter dated 25 March 2022, the claimant was given an opportunity to make representations as to why his claim should not be struck out.
12. The claimant has not replied to that letter.
13. The claim is therefore struck out.

Employment Judge Horne
20 April 2023

JUDGMENT SENT TO THE PARTIES ON
25 April 2023

FOR THE TRIBUNAL OFFICE