



EMPLOYMENT TRIBUNALS

Claimant: Mr R Satkunarasa

Respondent: Tesco Stores Ltd

Heard at: London South, in public, by CVP

On: 29 June 2022

Before: Employment Judge Tsamados (sitting alone)

Representation

Claimant: Did not attend and was not represented

Respondent: Ms M Sharp, Counsel

JUDGMENT

- 1) The complaint of unfair dismissal is dismissed, the claimant having less than two years' continuous employment with the respondent.
- 2) The remaining complaint of damages for breach of contract is dismissed under Rule 47 of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013, the claimant having failed to attend the hearing. As a result the claim is dismissed.

REASONS

1. The claimant did not attend today's hearing and was not represented. My clerk made attempts to contact him on the email address and telephone numbers he had provided but to no avail. The hearing therefore proceeded in his absence.
2. The claimant presented a claim to the Employment Tribunal on 7 April 2021 following a period of early conciliation between 22 February and 9 March 2021. This contained a number of complaints: disability discrimination; race discrimination; unfair dismissal and damages for breach of contract in respect of his entitlement to notice pay.
3. The respondent presented a response on 14 May 2021 in which it indicated that the claimant had insufficient service in which to bring an unfair dismissal

complaint, had not set out sufficient particulars to disclose a prima facie case of race or disability discrimination, made no admission as to disability on the basis of the lack of information and sought a strike out of the claim.

4. The claimant's complaints of disability discrimination and race discrimination were the subject of an unless order issued on 23 March 2022. This required the claimant to comply with a previous order dated 4 October 2021 to provide further information of his discrimination complaints.
5. The claimant did not comply with the unless order and so the complaints of discrimination stood as dismissed. This was notified to the claimant in a letter dated 5 May 2022.
6. Today's hearing was originally intended to be a preliminary hearing on case management. However, it was converted by the Employment Tribunal to an open preliminary hearing at the respondent's request to deal with its strike out application.
7. From the claimant's claim form he has less than 2 years' continuous employment with the respondent as at the effective date of termination. Ms Sharp had made enquiries of her instructing solicitors and had determined that whilst the claimant had previously worked for the respondent between 2014 and 2019, he had resigned in 2019 and had applied for the position which is the subject of these proceedings some four months later in August 2019. His employment ended on 2 December 2020.
8. In the absence of anything further, I therefore find that the claimant does not have sufficient service as required under section 108 of the Employment Rights Act 1996 to bring a complaint of unfair dismissal. I therefore dismiss the complaint.
9. The remaining complaint is one of damages for breach of contract in respect of entitlement to notice pay¹. The only information that the claimant has provided about this is by ticking the notice pay box on page 6 of his claim form. The respondent's position is that it has insufficient particulars of this complaint but in any event the claimant would only have been entitled to one week's statutory notice of dismissal and was summarily dismissed for gross misconduct.
10. I considered rule 47 of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013. This deals with non-attendance at a hearing and states as follows:

"If a party fails to attend or be represented at the hearing, the Tribunal may dismiss the claim or proceed with the hearing in the absence of that party. Before doing so, it shall consider any information which is available to it, after enquiries that may be practicable, about the reasons for the party's absence."
11. The claimant is not here, he has not provided any indication that he was not going to attend and has not responded to enquiries made to ascertain the position. The burden of proving the complaint of damages for breach of contract is on him. There are insufficient details of the complaint beyond the

¹ Whilst the respondent denied a complaint of unauthorised deduction from wages in its response, one was not included in the claim form.

ticking of a box. On the face of it he was dismissed in circumstances in which he was not entitled to notice, the respondent having found that he had committed an act of gross misconduct.

12. In the circumstances, I have decided to dismiss the remaining element of his claim on the basis of his lack of attendance. In any event, in his absence, on the basis of the information before me and given the burden of proof, I would in any event have dismissed the complaint on the basis that it is unfounded.

Employment Judge Tsamados
29 June 2022

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