

THE INDUSTRIAL TRIBUNALS

CASE REF: 1807/16

CLAIMANT: Thomas Anthony Carlin

RESPONDENT: Police Service of Northern Ireland

DECISION ON A PRE-HEARING REVIEW

The decision of the tribunal is that the claimant's claims of unfair dismissal and breach of contract are struck out as the tribunal has no jurisdiction to hear them.

Constitution of Tribunal:

Employment Judge (sitting alone): Employment Judge Murray

Appearances:

The claimant represented himself.

The respondent was represented by Ms R Best, Barrister-at-Law instructed by the Crown Solicitor's Office.

REASONS

1. The claimant's substantive claim concerns a series of allegations by him against the respondent which followed an incident in civil proceedings in the High Court when the claimant attempted to arrest Lord Justice Gillen in court. The claimant was later committed to prison for contempt of court. The claimant's claims in this tribunal against the respondent are fourfold namely: disability discrimination, unlawful deduction from wages, unfair dismissal and breach of contract. This PHR concerns only the latter two claims.

2. The issues before me at the PHR were set out in the Notice of Hearing as follows:
 - “1. *Whether the tribunal has jurisdiction to hear and determine the claimant’s complaint of unfair dismissal against the respondent in light of Article 243 of The Employment Rights (Northern Ireland) Order 1996 (as amended).*
 2. *Whether the Industrial Tribunal has jurisdiction to hear and determine the claimant’s complaint of breach of contract against the respondent in light of Articles 3 and 7 of the Industrial Tribunals Extension of Jurisdiction Order (Northern Ireland) 1994, which have been set out at paragraph 3 of the record of proceedings in respect of the Case Management Discussion which took place on 11 November 2016”.*
3. At the outset of the hearing Ms Best confirmed that no time-point is raised by the respondent in relation to any breach of contract claim, given that the termination of the claimant’s position with the respondent occurred on 6 May 2016 and the claim form was lodged on 5 August 2016. It was therefore accepted by Ms Best that the claim form was lodged within any three-month time-limit from the date of termination of the claimant’s engagement with the respondent.
4. There was therefore no necessity for me to hear evidence from any party in relation to the issues before me and this was agreed by both sides. The hearing proceeded with Ms Best providing submissions first, Mr Carlin then provided submissions and Ms Best had a brief right of reply.
5. Ms Best provided written submissions to support her argument that the tribunal has no jurisdiction to hear the unfair dismissal claim and the breach of contract claim, as the claimant was not an employee of the respondent. Ms Best’s written submissions and list of authorities are attached to this record of proceedings.
6. Ms Best elaborated on paragraph (7) of her written submissions by reference to the Police Service of Northern Ireland Regulations 2005, at Regulation 23 onwards which set out details in relation to pay, holidays, sick pay and leave for police officers. It was Ms Best’s contention that this is where the terms and conditions for police officers are found as there is no employment contract. Her point was that they are in the Regulations for the very reason that a police officer is an office-holder rather than an employee.
7. It was agreed by both sides that the claimant was a police officer. The claimant’s contentions were as follows:
 - (1) That at no point was it explained to him when he started with the PSNI that he was not an employee;
 - (2) That the PSNI were misleading their officers because police officers of his acquaintance also believed that they were employees;
 - (3) That as the PSNI say that they were not his employer he therefore had no employee rights;
 - (4) That there was quantifiable damage following the alleged breach of contract in that he suffered loss of earnings.

8. The claimant raised a query as to whether or not there was “a conflict”. When asked for clarification he stated that he was alleging corruption in the judicial system and that he therefore arrested Lord Justice Gillen in accordance with his role as a police officer. He stated that the LJ Gillen was an agent of the Crown; the PSNI are Crown agents; their solicitor is from the Crown Solicitor’s Office; and the claimant stated that he was in prison “at her majesty’s pleasure” ie with the Crown, for six weeks. He stated that the Employment Judge and the tribunal were also connected to the Crown. He therefore appeared to query whether or not the PHR hearing could go on in view of possible conflicts relating to everyone involved.
9. I rejected the claimant’s contention that there was any conflict which would mean that the PHR could not proceed. I explained that I had the power to hear the PHR which was listed to determine whether or not the tribunal has jurisdiction to hear a breach of contract claim and/or an unfair dismissal claim given the claimant’s status as a police officer.
10. The claimant stated that he believes that he has a whistleblowing claim because he observed someone, ie Lord Justice Gillen, engaged in a miscarriage of justice and he therefore lawfully arrested him. He stated that that would therefore be a qualifying disclosure and that there was a deliberate attempt to cover this up. The claimant stated that, it was his researches in the few weeks before this PHR that led him to this conclusion.
11. The claimant confirmed that the first time he raised any issue of whistleblowing was at the PHR and that this was not previously referred to by him. He specifically confirmed that he did not mention that this was a feature in his case at the CMD on 11 November 2016 before the President.
12. I made it clear that there was no claim of whistleblowing currently before me. I explained that if the claimant wishes to pursue such a claim, he has two options, namely, firstly, he could present another claim form to the tribunal and would then have to deal with any issue of the claim being lodged late or, secondly, he could apply to amend his current claim form to include such a claim. I explained that if he intended to pursue either course he would need to do so as soon as possible in view of the applicable time limits.
13. I explained to the claimant that it is open to him to seek advice and/or assistance from one or more of the following bodies: a Law Centre; a Citizens Advice Bureau; Advice NI; a solicitor; the Police Federation; and Public Concern at Work. The Law Society of Northern Ireland and the Bar Library of Northern Ireland have pro bono schemes and it is open to the claimant to contact those bodies to see if he can avail of any advice and assistance under those schemes in these proceedings.
14. In answer to the claimant’s query I confirmed that the Labour Relations Agency states that it does not provide advice but provides information to claimants and respondents in relation to claims in the tribunal.
15. I directed the claimant to set out in writing to the respondent and the tribunal **by 22 December 2016** as to whether or not he intends to apply to amend his claim to include a claim of whistleblowing. If he intends to apply to amend, the claimant must at the same time (ie by 22 December 2016) set out the scope of any such claim by setting out briefly on no more than 2 sides of A4 paper (and if typed, in font size 12)

the following:

- (i) The factual allegations relied upon;
 - (ii) Whether or not he alleges that such a claim is already contained within the claim form and simply requires another label; and,
 - (iii) The specific incidents of detrimental treatment which he alleges he suffered.
16. If the claimant intends to apply for his claim to be amended, a further PHR will be arranged for consideration to be given to: whether or not amendment is required; the scope of any such amendment; and any time-limit issues which may be in issue. If time-limits are in issue, it will be for the claimant to provide evidence as to why it was not reasonably practicable for him to bring any whistleblowing claim within three months of the alleged acts of adverse treatment.
17. The claimant produced a bundle of documents comprising 20 pages. He referred me to internet and press reports of cases involving police officers and prison officers, none of which were relevant to the issues before me. The other documents in the bundle which I was referred to appeared to relate to whistleblowing claims and I explained to the claimant that they were not relevant to the claims and issues before me.
18. As regards the issues before me at this PHR, my decision is as follows:
- (1) The tribunal does not have jurisdiction to hear and determine the claim of unfair dismissal as the claimant was not an employee at the relevant time but was a police officer and is therefore specifically excluded from the unfair dismissal provisions of the Employment Rights Order by virtue of Article 243. I accept entirely the legal position, as set out so clearly and succinctly in Ms Best's written submissions, namely that the claimant was an office-holder, he was not an employee and that this has been made clear by the provisions of the relevant legislation and by case law.
 - (2) The tribunal does not have jurisdiction to hear and determine the breach of contract claim as the claimant was not an employee at the relevant time but was an office-holder and was thus outside the scope of the relevant legislation which is the Industrial Tribunals Extension of Jurisdiction Order (Northern Ireland) 1994.
19. The claimant's claims of unfair dismissal and breach of contract are therefore struck out because the tribunal does not have jurisdiction to entertain them for the reasons set out above.

Employment Judge:

Date and place of hearing: 1 December 2016, Belfast.

Date decision recorded in register and issued to parties:

**IN THE OFFICE OF INDUSTRIAL TRIBUNALS & THE FAIR
EMPLOYMENT TRIBUNAL**

Case Ref No:1807/16 IT

Between:

THOMAS ANTHONY CARLIN

Claimant

-and-

**CHIEF CONSTABLE OF THE POLICE SERVICE FOR NORTHERN
IRELAND**

Respondents

Submissions on behalf of the Respondent

Issues for Determination

- (1) Whether the Tribunal has jurisdiction to hear and determine the Claimant's complaint of unfair dismissal against the Respondent in light of Article 243 of the Employment Rights (NI) Order 1996 (as amended)?
- (2) Whether the Industrial Tribunal has jurisdiction to hear and determine the Claimant's complaint of breach of Contract against the Respondent in light of Articles 3 & 7 of the Industrial Tribunals Extension of Jurisdiction Order (Northern Ireland) 1994, which have been set out in paragraph 3 of the record of proceedings in respect of the Case Management Discussion which took place on 11 November 2016?

Police Officers

- (3) It is submitted that the Claimant was a police officer who is in turn an office holder. This is spelt out in the attestation that a police officer is required to make upon joining the service which is as follows:

'I do hereby solemnly and sincerely and truly declare and affirm that I will faithfully discharge the duties of the office of

constable with fairness, integrity, diligence and impartiality, upholding fundamental human rights and according equal respect to all individuals and their traditions and beliefs; and that while I continue to hold the said office I will to the best of my skill and knowledge discharge all the duties thereof according to the law' [emphasis added]

- (4) In effect this means that each officer has the additional legal powers of arrest and control of the public given to him or her directly by a sworn oath and warrant. Each sworn constable is an independent legal official and each police officer has personal liability for his or her actions or inaction.
- (5) The status of a Crown servant as opposed to employee and why that status applies to police officers is further spelt out in the **Official Secrets Act 1989** which categories "Crown servants" as: -

(1) In this Act "Crown servant" means—

(e) any constable and any other person employed or appointed in or for the purposes of any police force [F5(including the Police Service of Northern Ireland and the Police Service of Northern Ireland Reserve)].....

- (6) If there is any further doubt regarding a Police Officer's status then one may look at **s 32 of The Police (NI) Act 2000** which speaks of the police's powers being grounded in **common law and statute**, as opposed to a contract.
- (7) The practical application of the above can be seen in the **Police Service of Northern Ireland 2005 Regulations** and the associated determinations, which set out duties and pay in the manner that would normally be found in a contract of employment.
- (8) Further the issue regarding a constable being an office holder rather than an employee is well settled in case law. For example in **Commissioner for the Metropolis v Lowrey-Nesbitt [1999] ICR 401** the EAT stated as follows:

"It seems to us that a fair reading of these cases leaves no room for doubt as to what the position is. Whether as a matter of public policy or because the nature of his duties as a constable who has taken an oath, or because a police officer is an officeholder, there is no room for any further argument short of the House of lords for the proposition that a police officer is in an employment relationship with anyone"

- (9) The Northern Ireland High Court in ***Re Aitken [1995] NI 49*** considered whether a failure to offer a three-year fixed term contract to a member of the Royal Ulster Constabulary Reserve was a decision, which was open to judicial review by that court. Kerr J concluded:-

"In renewing or refusing to renew a contract for a member of the Royal Ulster Constabulary Reserve the Chief Constable exercises or declines to exercise his statutory power of appointment to the force. Furthermore the applicant has no private law rights which he might pursue by way of civil proceedings nor may he take proceedings for unfair dismissal."
[emphasis added]

- (10) Finally, in ***Re Chambers [2005] NIQB 27*** Girvan J held:-

"In essence a police force is a number of individual constables whose status arises from the common law organised together in the interests of efficiency. Historically the parish constable was a holder of such office was responsible by virtue of that office firstly for the preservation of the peace within his bailiwick and secondly for the execution of orders and warrants of the justices of the peace. A member of the police force of whatever rank in carrying out his duties as a constable acts as an officer of the Crown and a public servant. His powers are exercisable by him by virtue of his office. He is not in law an employee. ***[emphasis added].***

- (11) In short it is clear from the above that a police officer is an

officer holder and not an employee.

Unfair Dismissal

- (12) It is accepted by both parties that the Claimant at the relevant time was a police officer.
- (13) It is submitted by the Respondent that by virtue of **Article 243** of the **Employment Rights (NI) Order 1996** the Tribunal does not have jurisdiction to consider a claim for unfair dismissal from the Claimant.
- (14) Article 243 sets out that Part XI of the 1996 Order (the provisions relating to unfair dismissal) do not apply to police officers.
- (15) The Tribunal is a statutory tribunal with a limited statutory jurisdiction. It is not a court of inherent jurisdiction in the same way as the High Court (*Biggs v Somerset County Council [1996] IRLR 203 & Barber v Staffordshire County Council [1996] IRLR 209*).
- (16) Industrial Tribunals are established under the **Industrial Tribunals (Northern Ireland) Order 1996**. Article 4 of that Order under the heading, "Jurisdiction of the Industrial Tribunals" provides:
- " Industrial tribunals shall exercise the jurisdiction conferred on them by or by virtue of this Order or any other statutory provision".***
- (17) It is quite clear on any reading of the above provisions that a Police Officer does not have the right to bring unfair dismissal proceedings.
- (18) A Police Officer has the benefit of a disciplinary and dismissal procedure governed by regulations, which includes a misconduct panel and a Chief Constable's review, which leads ultimately to the Police Appeals Tribunal (PAT). The Claimant is currently going through this process and is at the PAT stage.

Breach of Contract

- (19) The Claimant in the course of the CMD on 11 November 2016 indicated that his allegation relating to a breach of contract related to the Respondent allegedly breaching his contract of employment on 12 January 2016 by failing to recognise that his attempted arrest of the Judge was lawful.
- (20) For the reasons outline previously there is no contract of employment, the Claimant was not an employee and therefore there can be no cause of action before the industrial tribunal in this regard.
- (21) In any event there is no quantifiable damages to said alleged breach and therefore it is not a properly grounded claim in contract **(Article 5 of Industrial Tribunals (NI) Order 1996)**.
- (22) The Tribunal are invited to find in favour of the Respondent in relation to the issues before and dismiss these aspects of the Claimant's claims.

R Best BL

For & on behalf of the Respondent

**IN THE OFFICE OF INDUSTRIAL TRIBUNALS & THE FAIR
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Between:

THOMAS ANTHONY CARLIN

Claimant

-and-

**CHIEF CONSTABLE OF THE POLICE SERVICE FOR NORTHERN
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Respondents

List of Authorities on behalf of the Respondent

Legislation

- (1) Article 243 Employment Rights (NI) Order 1996
- (2) Article 4 Industrial Tribunals (Northern Ireland) Order 1996
- (3) Article 5 of Industrial Tribunals (NI) Order 1996
- (4) Section 32 of The Police (NI) Act 2000
- (5) Police Service of Northern Ireland 2005 Regulations

Case Law

- (6) Metropolis v Lowrey-Nesbitt [1999] ICR 401
- (7) Re Aitken [1995] NI 49
- (8) Re Chambers [2005] NIQB 27
- (9) Biggs v Somerset County Council [1996] IRLR 203
- (10) Barber v Staffordshire County Council [1996] IRLR 209