



EMPLOYMENT TRIBUNALS

Claimant Mr A Zamir

Respondent: Mr R Ahmed

HELD AT: Leeds

ON: 7 November 2018

BEFORE: Employment Judge Shulman

REPRESENTATION:

Claimant: Mr A Taj, friend

Respondent: Mr M Sayed, friend

PRELIMINARY HEARING

1. The case was set down as a preliminary hearing but it became clear after discussion that judgments and clarifications could be made.

JUDGMENT

1. For the record the Claimant's claim for unfair dismissal was struck out by Employment Judge Maidment and notified to the parties on 3 August 2018.
2. The claim of disability discrimination is hereby dismissed, on withdrawal by the Claimant.
3. The claim for "other payment" is hereby dismissed, the Claimant informing the Tribunal that this claim was made in error.

The Respondent having provided on the day before the preliminary hearing a Response, but having failed to comply with the rules in so far as making an application for an extension of time for presenting the Response was concerned, the Response being out of time, no application having been made in writing for such an extension, any argument as to whether or not the

Response might be admitted was adjourned generally, all the claims of the Claimant having previously been disposed of.

REASONS

Unfair dismissal.

1. The Claimant indicated to the Tribunal that the dates that he put into paragraph 5.1 of his claim that his employment started on 31 January 2018 and ended on 27 April 2018 were incorrect, in that the Claimant had been previously employed by the Respondent business, which had previously been owned by someone different. He therefore claimed that the Tribunal did have jurisdiction to hear his unfair dismissal claim.
2. On 28 June 2018 the Claimant received at his correct address a strike out warning, because it appeared from his claim that he had been employed for less than two years. He was given until 12 July 2018 to give reasons in writing why his complaint of unfair dismissal should not be struck out.
3. On 6 July 2018 the Claimant replied to the email and made no mention whatsoever of the question of unfair dismissal. He certainly did not say that he had been employed longer than was mentioned in his claim form.
4. When it came to the end of the 14 day period the matter came before Employment Judge Maidment who, in the absence of hearing from the Claimant about the unfair dismissal claim, struck out the unfair dismissal claim. The Judgment was sent to the Claimant at his correct address on 3 August 2018 and the Claimant was still given the opportunity, if he believed that the Judge's decision to dismiss the application the original application to reject part of the claim was wrong in law, to appeal to the Employment Appeal Tribunal. The Claimant took absolutely no action whatsoever until he came to this Tribunal to ask for restoration of his unfair dismissal claim.
5. The Tribunal explained to the Claimant that he had the right of appeal referred to in the Judgement dated 3 August 2018 and that technically, although out of time both in relation to the appeal and in relation to a reconsideration, he might ask for a reconsideration of Employment Judge Maidment, but the Tribunal gave no indication as to outcome, other than the fact that it was clearly a long time between 3 August 2018 when Judgment was entered and the date of the hearing, being 7 November 2018.
6. In the circumstances the Tribunal was unable to take action in respect of the unfair dismissal claim, the same having been struck out previously.

Disability

7. So far as the disability claim is concerned this arises from the Claimant falling down and hurting his back on 24 April 2018.
8. The Tribunal read to the Claimant what disability means in respect of a claim before an Employment Tribunal, which is contained in section 6(1) of the Equality Act 2010. Putting it in simple terms the Claimant must have a physical

or mental impairment, in this case physical, and the impairment must have a substantial and long-term adverse effect on the Claimant's ability to carry out normal day to day activities.

9. The Tribunal also pointed out that there is an element of knowledge required in respect of the employer of such a disability.
10. The hearing commenced at 10.15am and at 10.32am the Tribunal gave the Claimant the opportunity to consider whether or not he should pursue his disability claim and if he did then the Tribunal stated that it would be minded to set the matter down for a strike out claim, or alternatively it was open to the Claimant to withdraw his claim.
11. The Claimant left the room at 10.32am with his friend Mr Taj and came back at 10.42am and stated that he withdrew his disability claim.
12. Incidentally at that stage he expressed the wish to reinstate (again) the unfair dismissal claim which is dealt with fully above, but which the Tribunal re-explained to the Claimant.

Other payment

13. The Claimant put in his claim form a claim for "other payment" but conceded before the Tribunal that this was done in error.

The Respondent

14. The Respondent has not been able to take any part in these proceedings because in filing a Response the day before the hearing he did not comply with the Employment Tribunals Rules of Procedure in order to make the necessary application in writing to extend the time for presenting the Response. It became unnecessary for the Tribunal to consider this issue in view of the fact that each of the claims originally made by the Claimant had been disposed of and the issue was adjourned generally.

Employment Judge Shulman

Date: 16th November 2018