



EMPLOYMENT TRIBUNALS

Claimant: Mr Chris Bridle

Respondent: NHS West Yorkshire Integrated Care Board

RECORD OF A PRELIMINARY HEARING

Heard at: Leeds (in public by video link)

On: 31 January 2025

Before: Employment Judge R S Drake

Appearances

For the Claimant: In person

For the Respondent: Ms S Firth (of Counsel)

JUDGMENT

1. In claim number 6004775/2024 (the “First Claim”), the Claimant’s claims of entitlement to a statutory redundancy payment and of breach of contract in respect of an alleged entitlement to a contractual redundancy payment are dismissed for want of jurisdiction leaving extant only his complaint of unfair dismissal which remains justiciable pursuant and subject to Case Management Orders I have made of even date.
2. Claim number 6015280/2024 (the “Second Claim”) is dismissed as otiose and an abuse of process, being identical in terms to the First Claim.

REASONS

3. I was greatly assisted by Ms Firth for the respondent in presentation of her oral and written arguments. I was also greatly assisted by the claimants succinct and clear submissions.
4. The relevant facts are as follows:-

- 4.1 The Claimant's employment with the Respondent ended 18 July 2024 in respect of which he had already commenced early conciliation and presented his First Claim as of 28 June 2024; The effective date of termination of the Claimant's employment as defined by and for the purposes of section 111(3) of the Employment Rights Act 1996 ("ERA") was when his notice expired on 18 July 2024;
 - 4.2 The Respondents lodged their response to the First Claim 14 October 2024 and, upon them taking the obvious point that the First Claim was premature, the Claimant then issued the Second Claim following early conciliation on the same day on 16 October 2024 in clear response to the Respondents taking the jurisdiction point on the First Claim;
 - 4.3 The pleading and complaints claims in the Second Claim are identical in all material respects to the First Claim;
 - 4.4 The Respondents have not yet filed a response to the Second Claim and, by reason of my findings below, they may not find it necessary to do so, as all that now remains of the two claims is the complaint of unfair dismissal in the First Claim;
 - 4.5 Today's hearing was originally sat down as a private preliminary hearing for case management purposes but the two claims have been combined and today's hearing has been converted to a hearing in public because, pursuant to the Respondent's applications dated 14 October 2024, viability of the redundancy claims and the claims in the Second Claim are at issue.
5. The relevant law is as follows:-
- 5.1 Section 164(10) ERA provides –
"An employee does not have any right to a redundancy payment unless before the end of the period of six months beginning with the relevant date- ... (d) a complaint relating to his dismissal has been presented by the employee under section 111" - relevant date is defined by section 145(2) as being "in relation to an employee whose contract of employment is terminated by notice whether given by his employer or by the employee the date on which the notice expires ..."
 - 5.2 The EAT has twice held that under the predecessor to section 164 ERA the Tribunal has no jurisdiction to hear a complaint reliant on an act prior to the relevant date – **Watts v Rubery [11977] ICR 429** and **Pritchard-Rhodes v Boon & Milton [1979] WLUK 288.**
 - 5.3 Regulation 7 of the Employment Tribunals (Extension of Jurisdiction England and Wales) Order 1994 provides that a tribunal

"Shall not entertain a complaint of an employee's contract claim unless it is presented within the period of three months beginning with the effective date of termination ..."

- 5.4 Regulation of 3(c) requires that “the claim arises or is outstanding on the termination of employment”
- 5.5 There is significant EAT based authority for the proposition that “a claim will only be outstanding at such date if it is in the nature of a claim which as at that date was immediately enforceable but remained unsatisfied” – **Sweeney v Peninsula Business Services [2003] 4 WLUK 28**, followed by a number of ETs in **Pritchard v Bexley Care Trust [ET 1100945/2011]**, **Bewsher v NHS Business Devt Agency [ET 3401036/2016]**, **Lawlor v Ashford NHS FT [ET2301323/2017]** and **Onyenaobiya v SW London MH NHS Trust ET [2303952/2017]**
- 5.6 Of even greater significance is the Court of Appeal decision (Mummery LJ) in **Capek v Lincolnshire CC [2000] 5 WLUK 796**, In which it was held that “ if there is an effective date of termination the jurisdiction of the tribunal is confined to those cases in which the complaint is presented within the period between two fixed points of time that is the start date the effective date of termination and the end date the end of the period of three months beginning with the contract termination date”.
- 5.7 When distinguishing the argument that a claim is an abuse of process from whether it is caught by cause of action or issue estoppel, the House of Lords no less held in **Johnson v Gore-Wood [2002] 2 AC1** that –
- “the crucial question is whether in all the circumstances a party is misusing or abusing the process of the court by seeking to raise before it the issue which he could have raised before”
- When applying the guidance offered in the venerable case of **Henderson (1843)** the **Johnson** decision is authority for the proposition that the court or tribunal must adopt “a broad merits based approach” which has been further elaborated by the Court of Appeal in **Dexter v Vlieland-Boddy [2003]**.

6. My findings are as follows:-

- 6.1 Save for the unfair dismissal claim, all the remaining claims in the first claim i.e. full statutory and contractual redundancy payments are premature under statute law as set out above;
- 6.2 The Claimant had plenty of time from the effective date of termination of his employment to present all his claims within the time limits prescribed for each head of claim, but in effect only presented the Second Claim as a reaction to the jurisdiction point taken by the Respondents in the First Claim. The presentation of the Second Claim with clearly therefore an abuse of process whilst the First Claim was still alive when it could have and should have been withdrawn first;
- 6.3 I do not have before me any compelling argument explaining why the Claimant did not withdraw the First Claim before presenting the Second Claim which I therefore have to conclude amounts to an abuse of

process. The Claimant still has a justiciable unfair dismissal claim to pursue as set out in the First Claim and I have issued case management orders to progress that claim to a full merits hearing

Signed 31 January 2025

Sent to the parties on:

...10 February
2025.....

For the Tribunal Office:

.....

Note

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the Claimant(s) and Respondent(s) in a case.