



EMPLOYMENT TRIBUNALS

Claimant
Mr Z Hyder

Respondent
XPO Supply Chain UK Ltd

PRELIMINARY HEARING BY CVP

Heard at: CVP

On: 16 March 2021

Before: Employment Judge Davies

Appearances

For the Claimant:

In person

For the Respondent:

Ms Saffell (solicitor)

Technology:

This hearing was conducted by CVP (V - video). The parties did not object. A face to face hearing was not held because it was not practicable and all the issues could be dealt with by CVP.

JUDGMENT

1. The Claimant had not been continuously employed by the Respondent for two years at the time of his dismissal.
2. Under s 108 and s 155 Employment Rights Act 1996 the Tribunal does not have jurisdiction to hear his claims of unfair dismissal and for a redundancy payment and those claims are dismissed.

REASONS

Introduction and issues

1. This was a preliminary hearing in public by CVP to decide whether the Claimant's claims of unfair dismissal and for a redundancy payment should be dismissed because he had not been employed by the Respondent for more than two years at the time of his dismissal.
2. The Claimant represented himself and the Respondent was represented by Ms Saffell (solicitor). Ms Saffell had prepared a file of documents and sent it to the Claimant by email on two occasions earlier this month. He had read it before the hearing and he was able to read it on his mobile phone. He did not have any other device, or a printer, but I was satisfied that he was able to access the documents on his phone for the purposes of this short hearing. Ms Saffell had asked the Claimant whether he had any other documents and he had not provided any.

3. I heard evidence from the Claimant. In view of his evidence (see below) I did not need to hear from the Respondent's witness, Ms Finnie.

Findings of fact

4. The Claimant first started working at the Respondent's Barnsley depot as an agency worker employed by PMP Recruitment. After some time he was given a contract, which meant he was taken on as an employee by the Respondent. Initially he said that this happened in May 2018. However, Ms Saffell took him carefully through all the documents, and he then accepted that he was not taken on as an employee by the Respondent until May 2019. That was consistent with all the documents:
 - 3.1 The contract of employment he signed with the Respondent said that his start dated was 1 May 2019. He signed it in April 2019.
 - 3.2 His invoices and wage slips showed that he was being paid by PMP until May 2019 and then by the Respondent.
 - 3.3 He signed a contract with PMP in July 2018.
 - 3.4 When he applied for a contract with the Respondent, his application form said that he had worked for PMP from 29 June 2018 to 16 April 2019.
 - 3.5 He was given the Respondent's employee handbook in April 2019.
 - 3.6 He signed training records for training delivered by the Respondent between May and August 2018, but he agreed that he was working as an agency worker for PMP when he got the training.

The law and how it applies in this case

5. Under s 108 Employment Rights Act 1996, an employee cannot bring a complaint of unfair dismissal unless he has been employed for not less than two years when he is dismissed. That does not apply in the case of some types of automatically unfair dismissal, but the claim form does not suggest that any of those categories might apply. It does not matter how unfairly a person has been treated or how unfair their dismissal might appear to be. If they have not been employed for two years, the law says they cannot bring an unfair dismissal complaint.
6. Under s 155 Employment Rights Act 1996, an employee is not entitled to a redundancy payment unless he has been employed for not less than two years when his employment ends.
7. The Claimant became an employee of the Respondent in May 2019 and was dismissed in September 2020. He had not been continuously employed for two years. He is not complaining of automatically unfair dismissal. He was dismissed for swearing at a colleague. He says that he was frustrated that he had not been paid correctly, and that this is why he swore, but that is not a ground of automatically unfair dismissal. Therefore, the law says that he cannot bring a complaint of unfair dismissal or claim a redundancy payment.

Employment Judge Davies

16 March 2021

Sent to the parties on:

DATE: 19/03/2021