



# THE EMPLOYMENT TRIBUNALS

BETWEEN

*Claimant*

*Respondent*

Mr M Leslie

AND TUI UK Retail Limited

## JUDGMENT OF THE EMPLOYMENT TRIBUNAL

Held at: North Shields

On: 25 October 2017

Before: Employment Judge Shepherd

### *Appearances*

For the Claimant: In person

For the Respondent: Mr Bayne

## JUDGMENT ON PRELIMINARY HEARING

The Tribunal has no jurisdiction to hear this claim and it is struck out pursuant to rule 37(1)(a) of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 as having no reasonable prospect of success.

## REASONS

1 This preliminary hearing was listed to consider the following issues:

1.1 To determine whether the claim of unfair dismissal should be struck out on the basis that it is scandalous or vexatious or has no reasonable prospect of success pursuant to rule 37(1)(a) of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 (The 2013 Rules).

1.2 To determine whether a deposit order should be made as a condition of allowing the claimant to continue to advance the allegation

that rights granted by the Rehabilitation of Offenders Act 1974 protected statutory rights within section 104 of the Employment Rights Act 1996 on the basis that such argument has only little reasonable prospect of success pursuant to Rule 39 of the 2013 Rules.

It was not necessary for me to determine issue 1.2 in the circumstances.

**2** I heard submissions from Mark Leslie, the claimant and Mr Bayne, on behalf of the respondent. It was agreed that there was no necessity for me to hear evidence as there was no factual matter to decide as the issues to be determined were matters of law.

**3** I had sight of a bundle of documents numbered up to page 51.

**4** The claimant accepts that he does not have two years' continuous service required to bring a claim of 'ordinary' unfair dismissal pursuant to section 108 of the Employment Rights Act 1996 (ERA).

**5** The claimant submitted that this is a claim of automatic unfair dismissal pursuant to section 104 in relation to the Rehabilitation of Offenders Act 1974.

**6** Section 108 of ERA provides that the right not to be unfairly dismissed (section 94) does not apply to the dismissal of an employee unless he has been continuously employed for a period of not less than two years ending with the effective date of termination.

Section 104 provides: –

“(1) An employee who was dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee –

(a) brought proceedings against the employer to enforce a right of his which is a relevant statutory right, or

(b) alleged that the employer had infringed a right of his which is a relevant statutory right.

.....

(4) The following are relevant statutory rights for the purposes of this section –“

There follows a list of statutory rights which does not include the Rehabilitation of Offenders Act 1974.

The Rehabilitation of Offenders Act 1974 provides: –

“a conviction which has become spent or any circumstances ancillary thereto, or any failure to disclose a spent conviction or any such circumstances, shall not be a proper ground for dismissing or excluding a person from any office, profession,

occupation or employment, or for prejudicing him in any way in any occupation or employment.”

**7** The claimant was employed by the respondent from 19 June 2017. Prior to his employment he completed an application form in which there was a question which asked whether he had been convicted of criminal offences which were not spent within the meaning of the Rehabilitation of Offenders Act 1974. The claimant had responded “no” to that question.

**8** After the claimant had commenced employment the respondent became aware of newspaper articles in which there were reports of the claimant having been convicted of offences.

**9** Following a meeting with the claimant it was concluded by the respondent that the claimant had failed to disclose an unspent conviction and he was dismissed on 21 June 2017. The dismissal was confirmed in writing on 22 June 2017.

**10** On appeal it was found that the conviction had been spent at the time the claimant applied for the role with the respondent but the decision to dismiss was upheld on the basis of detrimental impact on the respondent’s reputation, the claimant’s ability to represent the brand to the highest standards together with the claimant’s reputation’s adverse effect on his relationship with colleagues.

**11** The claimant submitted that his claim for automatic unfair dismissal is on the basis that the respondent had breached the statutory right afforded to him by the Rehabilitation of Offenders Act 1974. He said that section 104 of the ERA lists some relevant statutory rights but that the list is not exhaustive. He stated that, if an Employment Tribunal were to refuse a claim for unfair dismissal on the basis of the rights afforded to a person under the Rehabilitation of Offenders Act 1974, then the rights afforded by that Act would have no purpose and therefore would render the Act unenforceable.

**12** I have considered the submissions of the parties and the legislation carefully. The reason for the claimant’s dismissal was not the assertion of a statutory right. It was because of the fact of the respondent’s discovery of the conviction and considerations of reputational damage. In the circumstances, section 104 is not engaged.

**13** Also, section 104(4) defines the relevant statutory rights. I am satisfied that this is a definitive or exhaustive list. The statutory rights that are defined serve to provide a limitation on the relevant statutory rights. A number of rights have been added over the years when further statutes have been enacted.

**14** The Rehabilitation of Offenders Act 1974 is not included within the definition of relevant statutory rights. It cannot be right that is relied upon in order to claim automatic unfair dismissal. The claimant would have to bring a claim for ordinary unfair dismissal and he does not have the requisite continuity of service.

**15** I have considerable sympathy with the claimant and, perhaps, the Rehabilitation of Offenders Act should be included. However, it is not. This is not a question of my

discretion. The Employment Tribunal is created and governed by statute and I am bound by section 104.

**16**The Tribunal has no jurisdiction to hear this claim and it is struck out as having no reasonable prospect of success.

**EMPLOYMENT JUDGE Shepherd**

**26 October 2017**

**JUDGMENT SENT TO THE PARTIES ON**

**30 October 2017**

**AND ENTERED IN THE REGISTER**

**M Charters**

**FOR THE TRIBUNAL**