



EMPLOYMENT TRIBUNALS

Claimant: Ms M Goodsell

Respondent: Mrs D Barclay-Bernard and Mrs N Hiller t/a Ellenwhorne Equestrian Centre

Heard at: London South (by written submissions) On 4th March 2022 (in Chambers) .

Before: Employment Judge R F Powell (sitting alone)

Representation:
Claimant: Mr Foster, solicitor
Respondent: Mr Hoyle, legal consultant

Judgment

The Judgment of the Employment Tribunal is:

The breach of contract claim is within the Employment Tribunal's jurisdiction

Reasons

Introduction

1. In February 2021 I commenced hearing this case which relates to the relatively short service of the Claimant as an apprentice of the respondent. The essence of her claim was that she had been dismissed and, because she lacked sufficient service to bring a claim of unfair dismissal, she made a number of monetary claims, one of which was a claim under article 3 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994.
2. At the outset of that hearing Mr Hoyle indicated that there was an issue of jurisdiction which he considered novel, and which he could not fully articulate.

3. As it was an issue of jurisdiction, which if it had merit would mean any final decision I reached would be ultra vires, I agreed with the parties that I would hear the evidence and make the relevant findings of fact and allow Mr Hoyle time to set out his fully formed argument in writing.
4. Directions were given for the service of arguments and authorities with which the parties duly complied. Unfortunately, those submissions did not reach me for a considerable time and, following a short preliminary hearing on 17th January 2022, I agreed to determine this issue on the parties' written submissions and provide a written judgment.
5. Before turning to the parties' submissions, I will set out my consideration of the statutory framework and a little of the factual matrix; which is relevant to the issue before me.
6. The Employment Tribunal is a "creature of statute". Its jurisdiction is defined by statute and statutory instrument.
7. Within the scope of the many acts of parliament which prescribe the types of claim that fall within the employment tribunal's jurisdiction are further limitations of its jurisdiction often referable to a characteristic of the Claimant; as a worker or an employee, their length of continuous service, the territorial scope of the employment tribunal or the state immunity of the respondent.
8. The Claimant, on my findings of fact, entered in to a contract of employment with the Respondents which was recorded in an agreement titled Apprenticeship Agreement and was signed and dated 22nd May 2017.
9. The agreement stated that its terms, along with the content of the staff handbook, formed the contract of employment between the parties and the agreement was the statement of the Claimant's principal terms. An extract from the respondent's handbook was contained in the bundle of documents presented at the original hearing (see page 74c onwards). The Respondents accepted that the Claimant was an employee (paragraph 17 of the grounds of resistance).
10. The Claimant, on my findings of fact, was dismissed by the Respondents without notice.
11. The Claimant presented a claim for wrongful dismissal; that, in breach of her contract, the respondent failed to pay her contractual notice.
12. Such a claim falls within the scope of section 3(2) of the Employment Tribunals Act and Article 3 of the Extension of Jurisdiction order cited above.

13. On the face of the Claimant's pleading, it is a claim which arose, or was outstanding, on the employee's termination and she has sought damages for a breach of her contract of employment, or any other contract connected her employment.
14. The Claimant seeks compensation for the duration of her apprenticeship. I have not yet seen the complete terms of her contract of employment but I note the following:
 - a. On the Apprenticeship Agreement no termination date is recorded.
 - b. On a document entitled Learner initial Interview the employers have stated that the apprenticeship would terminate on 19th June 2019.
15. Based on the above she seeks a sum equivalent to her apprentice pay for the seventy one weeks between the date of her dismissal the date one which, as she asserts, her contract was to end, and other associated losses.

The Jurisdiction Issue

The Respondents' argument on jurisdiction

16. Mr Hoyle's argument, after two introductory paragraphs, set out a history of the transition of the established characteristics of a traditional deed of apprenticeship to the "modern apprenticeship" agreement, in its various iterations.
17. The respondents argue that the statutes and regulations provide for terms of apprenticeship which do not entail a fixed term contract and allow for a lawful termination in accordance with Part X of the Employment Rights Act 1996, in particular section 86.
18. Having read the respondents' references to the statues and regulations, I accept that the respondent's summary of the relevant statutory materials is correct.
19. The material purpose of the respondents is set out in paragraph 14 of its argument;

"The Respondent's position is that the Claimant was engaged under an apprenticeship agreement under ASCLA 2009 and does not benefit to damages on early termination of apprenticeship."
20. Paragraph 18 asserts that the Claimant's application for her loss of income up to the expected date on which her apprenticeship was to conclude is

misguided; because the character of her contract was not equivalent to that of a deed of apprenticeship. This, I note, is an issue which I have yet to address.

21. The Respondents' written argument concludes with an assertion that the employment tribunal does not have jurisdiction to hear a claim for "future loss". The basis for that argument is that, on the respondents' construction of the terms of the contract between the parties, the Claimant was only entitled to one week's notice.
22. The entire force of the respondent's argument is that Claimant has no realistic hope of an award of compensation for her loss of her pay up to June 2019.
23. The Claimant's argument's I will note with brevity; the application is misconceived, without merit and advanced unreasonably.

Discussion & Conclusion

24. I note that the Respondents do not argue that the breach of contract claim was out with the Employment Tribunal's jurisdiction.
25. It is also notable that the Respondents' argument makes no reference to the Extension of Jurisdiction order.
26. There is no point put forward in the Respondents' argument which asserts that a claim for breach of contract is not within the Employment Tribunal's jurisdiction. There is no argument that the claim before me falls out with Article 3 of the Extension of Jurisdiction order.
27. On the face of the Respondents' argument (which does not address notice periods set out in the Claimant's Apprenticeship Agreement) there is no suggestion that the Claimant could not maintain a claim damages for the period of one week.
28. I have taken sometime to consider Article (3)(3) and find no evidence that the claim before me falls within any of the exemptions.

Conclusion

29. The whole of the Respondent's submission is an assertion that the claim for seventy one week's loss of income has no reasonable prospect of success.
30. In my judgment the respondent's submission is not an argument on jurisdiction, it is an argument on quantum.

31. The Respondents could have made an application to strike out this aspect of the claim, they did not. In any event, as I have not yet been provided with all the documentation which forms the Claimant's contract of employment, had such an application been made, I would not have upheld it at this juncture.
32. Whilst the Respondents can deploy all of their arguments on the issue of quantum during the resumed hearing in June 2022, their application on jurisdiction fails.
33. For the above reasons the application is dismissed.

Employment Judge R F Powell
Dated: 2nd March 2022