



EMPLOYMENT TRIBUNALS

Heard at Croydon (by video) **On 7 October 2024**
Claimant Mr David Lane
Respondent Dover Harbour Board
Before Employment Judge Fowell
Representation:
Claimant In Person
Respondent Sara Ibrahim of counsel

JUDGMENT ON A PRELIMINARY ISSUE

1. The claim of unfair dismissal is dismissed on the basis that the claimant was in police service, and so by section 200 Employment Rights Act 1996 has no right to bring such a claim.
2. The claimant's remaining claims will proceed to a hearing on 24 March 2025.

REASONS

Exclusion of Police Officers generally

3. Mr Lane worked for Dover Harbour Police as an Acting Police Sergeant. That followed previous service in the Metropolitan Police, Surrey Police and later the British Transport Police. He has brought claims of unfair dismissal wrongful dismissal together with discrimination on grounds of disability.
4. The difficulty from his point of view is that police officers are not generally allowed to bring claims of unfair dismissal. That is largely because there are separate arrangements in place, with, for example, police disciplinary tribunals to deal with cases of misconduct, and there would otherwise be an overlap in the two jurisdictions. It would not be helpful or desirable for police officers to be able to effectively appeal from a decision of a police disciplinary tribunal to an employment tribunal, when there is a separate Police Disciplinary Appeals Tribunal which has the relevant expertise.

5. However, in some areas, parliament has decided that employment tribunals are better placed to decide matters, particularly in cases involving discrimination or whistleblowing.
6. The restriction on police officers being able to pursue claims of unfair dismissal generally are set out at section 200 Employment Rights Act 1996. This is not an easy section to understand at first glance. It provides:

“Police officers.

(1) Section 8 to 10, Part III, sections 43M, 45, 45A, 47, 47C, 50 to 57B and 61 to 63, Parts VII and VIII, sections 92 and 93 and, **Part X** (except sections 100, 103A and 134A and the other provisions of that Part so far as relating to the right not to be unfairly dismissed in a case where the dismissal is unfair by virtue of section 100 or 103A) **do not apply to employment under a contract of employment in police service** or to persons engaged in such employment.

(2) In subsection (1) “police service” means —

(a) service as a member of a constabulary maintained by virtue of an enactment, or

(b) subject to section 126 of the Criminal Justice and Public Order Act 1994 (prison staff not to be regarded as in police service), service in any other capacity by virtue of which a person has the powers or privileges of a constable.”

[Emphasis added]

7. Mr Lane is unrepresented at this hearing and will not be familiar with the various sections listed at the beginning of the section, but the key words are the ones that follow that list, i.e. it lists various sections that “do not apply to employment under a contract of employment in police service”.
8. The right to claim unfair dismissal is in Part X of the Act. After the reference to Part X there is a bracket with a long list of further provisions. Putting those to one side for a moment, the section states in a nutshell that Part X – the right to claim unfair dismissal - does not apply to police service.
9. The provisions in brackets are to sections 100, 103A and 134A. These are therefore the exclusions from the general position that police officers cannot bring claims of unfair dismissal.
10. Section 100 deals with health and safety cases, i.e. situations where an employee is dismissed for raising health and safety issues. Section 134A is a further clause about health and safety cases. Section 103A relates to whistleblowing cases.
11. The combined effect of all that is that police officers in general are not able to bring claims of unfair dismissal unless it is because they are dismissed for raising health and safety concerns or where they are whistleblowers.
12. The definition of police officers is the critical part of this section and there are two alternative tests:

- a. those who are a member of a constabulary maintained by virtue of an enactment, or
 - b. those with the powers or privileges of a constable.
13. The word 'or' is the critical one here, as Mr Lane accepts that the Dover Harbour Police are maintained under an enactment, the Harbours, Docks, and Piers Clauses Act 1847. It follows that he was in police service and that section 200 applies to his case.
14. It is hardly necessary to go further but in my view it is also clear that Mr Lane had the powers or privileges of a constable. This provision has been considered by the Court of Appeal in **Redbridge London Borough Council v Dhinsa** 2014 ICR 834, which concerned the Local Authority Parks Police officers. The key point is that they take an oath before local magistrates, as did Mr Lane.
15. In that case the Court felt that there was no discernible policy reason why Parks Police were unable to bring claims of unfair dismissal, but the remedy lay with Parliament and not the courts.
16. The Court of Appeal considered this again in **Wandsworth LBC v Vining** [2018] I.C.R. 499 where it was argued that the lack of remedy (since there was no formal alternative route for the claimant in that case to challenge the dismissal) was in breach of article 8 of the European Convention on Human Rights. (Article 8 concerns the right to respect for private and family life, which has been interpreted as applying also to one's professional life.) It was held that the neither the length of employment, nor the inevitable effect of termination on relationships with work colleagues, or the distress and anxiety arising from dismissal, or the need to find new employment were of themselves enough, individually or collectively, to engage article 8.
17. For completeness, and although not raised here, there is also the right under article 6 which provides that:
 - "1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law ..."
18. Article 6 cannot however create the civil right in question, and it has to be remembered that the right not to be unfairly dismissed is one decided by the UK parliament, and has no basis in EU law.
19. Accordingly, the claim of unfair dismissal must be dismissed.

Employment Judge Fowell

Date 7 October 2024

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