

IN THE INDUSTRIAL TRIBUNAL OF GIBRALTAR

IND. TRI No. 13/2009

ALLAN EDWARD ALLITT

Complainant

-and -

PARCEE LIMITED

Respondents

R U L I N G

Friday the 7th day of January 2010

The Claimant represents himself

The Respondents are represented by their director, Mr Simon Vaughan

On 2nd June 2009 the Complainant issued an Originating Application in the Industrial Tribunal against the Respondents claiming that he had been unfairly dismissed by them on 4th May 2009.

The Respondents now make an application that the Claimant's Originating Application be dismissed on the ground that he had not been employed by them for the requisite period of 52 weeks prior to the date of dismissal required by Section 60(1)(a) of the Employment Act.

The Complainant produced to the Tribunal a copy of an Employment and Training Board Terms of Engagement dated 25th March 2008 signed by him and the Respondents on commencement of work with them as a joiner as from that same day. This contract is admitted by the Respondents.

On 18th May 2008 the Complaint voluntarily terminated his employment with the Respondents and produced to the Tribunal a copy of a Notice of Termination of Employment signed by himself and the Respondents that same day. This document is also admitted by the Respondents.

The following day, 19th May 2008, at the request of the Complainant, the parties entered into a new ETB Terms of Engagement whereby the Complainant was engaged by the Respondents as joiner as from that same date. A copy of this document was produced by the Complainant to the Tribunal and this was also admitted by the Respondents.

The Respondents argue that the Complainant had not been employed with them for the requisite period of 52 weeks as from his date of employment on 19th May 2008 before being dismissed by them on 4th May 2009. As such, the Complainant cannot have the right of access to the Industrial Tribunal to complain of unfair dismissal and his Application should therefore be dismissed.

The Complainant argues that his employment with the Respondents has been continuous and unbroken as from 25th March 2008 and therefore has been in employment for over the said requisite period of 52 weeks.

It appears from what both the Complainant and Mr Vaughan for the Respondents explained to the Tribunal that the Complainant was seeking to apply for Community Care payments. The Complainant explained to the Tribunal that he had been misinformed by Community Care Gibraltar Limited that in order for him to qualify for Community Care payments he had to terminate his employment with the Respondents.

The Complainant also explained that there was a new programme whereby an employee could claim Community Care payments and continue working provided his wages did not exceed £15,000 a year. It appears from what he said that he may have been under the misapprehension that the said new programme was already in force but, having terminated his employment, he then discovered that the new programme was to start sometime in January 2009.

I have made enquiries about this and am advised that the said programme started around September 2009 and not in January 2009.

Having terminated his employment on 18th May 2008, the Complainant then decided not to continue with his application for Community Care. He then applied to the Respondents for a job as joiner and the following day, 19th May 2009, signed a new ETB Terms of Engagement with the Respondents on the same terms as his previous contract.

Mr Vaughan explained to the Tribunal that if the Complainant had intended, as he mistakenly appears to have thought was possible, to carry on working for a reduced wage of less than £15,000 a year as required by the new programme, he could have approached him to vary the terms of his existing contract of employment signed on 25th March 2008 to show a wage below £15,000 a year rather than terminate his employment as he did. The fact that he did not do this confirms that the Complainant intended permanently terminating his contract of employment.

Mr Vaughan informed the Tribunal that the Complainant had told him that he thought he could earn more by receiving Community Care payments and from doing odd jobs and for that reason had decided to terminate his employment.

It is not very clear precisely why the Complainant terminated his employment with the Respondents on 18th May 2008. In my judgment, this was either because, as Mr Vaughan told the Tribunal he had informed him, he felt he could earn more by receiving Community Care payments and from doing odd jobs or because he thought he could go back to the Respondents at a later date and enter into new Terms of Engagement at wages below £15,000 a year required under the programme which he appeared mistakenly to have thought was already in being and also begin to receive Community Care payments.

Either way, it would seem that the Complainant acted prematurely in terminating his employment with the Respondents on 18th May 2008 before ascertaining beyond doubt the position regarding Community Care payments and deciding what he was going to do in the future.

Looking at the Originating Application filed by the Complainant in the Tribunal in this case on 2nd June 2009, it is significant that in the section where he is asked to give the date of commencement of employment, he appears to have written first 19.5.08 and then, above this, as if by an afterthought, 20.2.08. If this is the case, it would tend to support the view that the Complainant accepted the date of the commencement of his employment as being on 19th May 2008.

This new employment was terminated by the Respondents on 4th May 2009 before the expiration of the period of 52 weeks from the commencement of the employment on 19th May 2008.

It is clear, in my judgment, that the employment of the Complainant with the Respondents was terminated on 18th May 2008 and that a new

and entirely separate and independent period of employment was commenced on 19th May 2008. This is the period of employment the Tribunal is now concerned with for the purposes of the present application by the Respondents.

Section 60(1)(a) of the Employment Act provides that the right guaranteed by Section 59(1) of the Act to every employee not to be unfairly dismissed "...shall not apply to the dismissal of an employee from any employment if the employee was not continuously employed for a period of not less than 52 weeks ending with the effective date of termination."

The period starting with 19th May 2008 and ending with 4th May 2009 falls short of the 52 weeks required by Section 60(1)(a). In those circumstances the Complainant has no right of claim against the Respondents for unfair dismissal in the Industrial Tribunal. The exceptions contained in Section 60(2), (3) and (4) do not apply in this case.

For the reasons set out above, the Originating Application by the Complainant to the Tribunal for unfair dismissal dated 2nd June 2009 is dismissed on the ground that he had not been at the time of his dismissal on 4th May 2009 continuously employed for a period of not less than 52 weeks from the commencement of his employment on 19th May 2008.



Eric C Ellul
Chairman