[2007–09 Gib LR 165]

SOCIAL SERVICES AGENCY v. HERNANDEZ

COURT OF APPEAL (Stuart-Smith, Ag. P., Aldous and Kennedy, JJ.A.): September 18th, 2007

Employment—dismissal—unfair dismissal—period of employment—no jurisdiction for Industrial Tribunal to hear unfair dismissal claim if under Employment Act 1932, s.60(1), employment for less than 52 weeks—"weeks" are periods of 7 consecutive days, not necessarily beginning on Sunday, since no requirement in Act for employment to end on Saturday

The respondent brought proceedings against the appellant in the Industrial Tribunal for unfair dismissal.

The respondent was employed by the appellant from Monday, November 22nd, 2004, on a one-year probationary contract. Towards the end of the probationary period, she was deemed unsuitable for the position and on October 24th, 2005, she was given both written and verbal notice that her term of employment would come to an end on Tuesday, November 22nd, 2005. She made a claim in the Industrial Tribunal for unfair dismissal. Her entitlement to bring the claim depended the duration of her employment with the appellant since s.60(1)(a) of the Employment Act 1932, as amended, provided that she could not bring the claim if she "was not continuously employed for a period of not less than 52 weeks ending with the effective date of termination." The Tribunal allowed her claim, finding that she had been employed for the required duration to entitle her to bring a claim to the Tribunal. On appeal, the Supreme Court (Schofield, C.J.) dismissed the appeal and affirmed the decision made by the Tribunal.

On further appeal, the appellant submitted that the respondent's claim should be rejected as she had not been employed for 52 weeks and the Tribunal therefore had no jurisdiction since her term of employment ended on a Tuesday and the usual definition of a "week" ran from a Sunday to the following Saturday. In reply, the respondent submitted that she had been employed for 52 weeks, the definition of a "week" for the purposes of the Act being a period of 7 consecutive days, irrespective of the start or end day.

Held, dismissing the appeal:

The Tribunal had jurisdiction to hear the respondent's claim for unfair dismissal since she had been employed by the appellant for 52 weeks as required by s.60(1)(a) of the Employment Act 1932, as amended. The term "week" or "weeks" was undefined by the Act and in the absence of

statutory guidance, its definition depended on the context in which it was used. Since the Act did not require the respondent's term of employment to end on a Saturday, the duration of a "week" in her case was simply a period of 7 consecutive days where the first day need not have been a Sunday. The 52 weeks of employment required to allow her to bring her claim were calculated by counting backwards 52 consecutive periods of 7 days from the date of her termination (para. 10; para. 12).

Cases cited:
(1) *Coulson* v. *City of London Poly.*, [1976] 1 W.L.R. 834; [1976] 3 All E.R. 234; [1976] I.C.R. 433; [1976] I.R.L.R. 212; [1976] 10 I.T.R. 121, distinguished.
(2) *Pearson* v. *Williams Transp. (Scotland) Ltd.*, [1976] I.R.L.R. 43; [1975] I.T.R. 168, distinguished.

Legislation construed:
Employment Act 1932, as amended, s.59: The relevant terms of this section are set out at para. 5.
s.60(1): The relevant terms of this sub-section are set out at para. 6.
s. 64(5): The relevant terms of this sub-section are set out at para. 7.

M. Isola for the appellant;
G. Licudi for the respondent.

1 **KENNEDY, J.A.:** This is an employer's appeal from a decision of Schofield, C.J. who, on May 9th, 2007, dismissed an appeal by the present appellant from a decision of the Industrial Tribunal. The point to be decided in this appeal is whether the employee respondent had been employed by the appellant for long enough to be entitled to mount a statutory claim for unfair dismissal when her employment was brought to an end.

2 We are not concerned with the merits of any such claim, they will be investigated by the Industrial Tribunal if we find that the Tribunal had jurisdiction.

3 The history of the respondent's employment is simple and not in dispute. She was engaged by the appellant as manager of the Dr. Giraldi Home and, before she began, she was informed in writing that her first year would be a probationary year. She began her employment on Monday, November 22nd, 2004. Towards the end of her probationary year, the appellant decided that she was not suitable and, on October 24th, 2005, she was given written and verbal notice that her employment would end on Tuesday, November 22nd, 2005.

4 She then, in due course, claimed that she had been unfairly dismissed. But, when the matter came before the Industrial Tribunal, the appellant employer asserted that she had not been employed for long enough to be

entitled to make such a claim. The Tribunal did not agree, nor did the Chief Justice.

5 In order to decide the point, it is necessary to look at some sections of the Employment Act 1932, as amended, starting with s.59, which reads:

> "(1) In every employment to which this section applies every employee shall have the right not to be unfairly dismissed by his employer.
>
> (2) This section applies to every employment except in so far as its application is excluded by or under any of sections 60 to 63."

6 Section 60(1) reads:

> "Subject to the provisions of subsections (2) to (4) of Section 62, section 59 shall not apply to the dismissal of an employee from any employment if the employee—
>
> (a) was not continuously employed for a period of not less than 52 weeks ending with the effective date of termination . . ."

7 For present purposes, we need not read any more of that particular section. The effective date of termination is defined in s.64(5) which reads:

> "In this Part 'the effective date of termination'—
>
> (a) in relation to an employee whose contract of employment is terminated by notice, whether given by his employer or by the employee, means the date on which that notice expires . . ."

8 Again, it is unnecessary to read more of that section. In this case it has always been accepted that the effective date of termination was the date on which the notice given by the employers expired, namely, November 22nd, 2005. So, was the respondent employed for not less than 52 weeks ending with November 22nd, 2005? Mr. Isola on behalf of the appellant says not because a week is a period of 7 days which begins on a Sunday and ends on the following Saturday and the respondent was not employed for 52 such weeks.

9 The statute does not define the word "week" or "weeks" and to my mind, it is clear that in the absence of a statutory definition, the word "week" can mean either a period of 7 consecutive days beginning on a Sunday or simply a period of 7 consecutive days. Everything depends on the context in which the word is used.

10 Support for that proposition can be found in a number of places, but a convenient starting point is *Stroud's Judicial Dictionary*, 5th ed., where the first definition of "week" reads "though a week usually means any

consecutive seven days, it will sometimes be interpreted to mean the ordinary notion of a week reckoning from Sunday to Sunday."

11 The *Oxford English Dictionary* similarly defines a week as a period of 7 consecutive days especially one beginning with Sunday. Sometimes, the period is confined to the working week of a particular trade. If, on a Tuesday, I ask a plumber to call and he says that he will come one day next week, we both know that he will call sometime during the 5 or 5½ day period beginning on the following Monday morning. On the other hand, if on a Wednesday my neighbour is unloading his car and when I ask him where he has been he replies that he has just had 2 weeks in France, neither of us thinks in terms of weeks beginning on a Sunday; we simply count back 14 days from that Wednesday.

12 So, as the Employment Act 1932 does not require the effective date of termination to be a Saturday, it would seem to follow that in order to decide whether a claimant has been employed for the requisite period, one simply counts back for 52 consecutive periods of 7 days from the established termination date and it is common ground that if one does that, this respondent was employed for the requisite period.

13 Any other approach would lead to the surprising conclusion that for 6 days after the respondent took up her employment and for 2 days before it came to an end, she was not, for the purposes of s.60(1), continuously employed. Now that seems very difficult to accept.

14 In order to support the somewhat surprising proposition now being advanced, counsel for the appellant invites our attention to some English authorities decided under different legislation, and I, for my part, find them of only limited assistance.

15 In *Pearson* v. *Williams Transp. (Scotland) Ltd.* (2), an Industrial Tribunal sitting in Glasgow considered the case of a man summarily dismissed during the 26th week of his employment at a time when the Tribunal only had jurisdiction if the employee had been continuously employed for a period of 26 weeks ending with the effective date of termination.

16 It was decided by a majority that the Tribunal did not have jurisdiction and the dissentient at the hearing only came to a different view because of his belief that a part-week, at the end of a period of employment, should be counted as a full week. As it happened, the claimant in *Pearson* started work on a Monday and his employment was terminated on a Tuesday, just over 25 weeks later. But, I can find nothing in *Pearson* which really assists the appellant in the present case.

17 The only other authority I need mention is *Coulson* v. *City of London Poly.* (1) decided in the Employment Appeal Tribunal, the judgment being given by the late Phillips, J. That case was decided under legislation which

has no equivalent in Gibraltar, including the English Contracts of Employment Act 1972, Schedule 1, para. 11(1) of which stated in terms that "week" means a week ending with a Saturday. In the absence of such a definition, I see no reason to import it into Gibraltar law.

18 For those reasons my conclusion is that the Chief Justice was right, and I would dismiss this appeal.

19 **STUART-SMITH, Ag. P.** and **ALDOUS, J.A.** concurred.

Appeal dismissed.