



EMPLOYMENT TRIBUNALS

Claimant

Ms V Malunjwa

v

Respondent

Metropolitan Housing Trust Ltd

PRELIMINARY HEARING

Heard at: Watford

On: 21 September 2017

Before: Employment Judge Alliott

Appearances:

For the Claimant: no appearances

For the Respondents: Mr P Livingston, Counsel

JUDGMENT

1. The claimant was not continuously employed by the respondent for at least two years. Consequently, she does not have the qualifying service to present a claim for constructive unfair dismissal.
2. The claimant has stated in an email dated 11 July 2017 that her claim in respect of part time worker detriment is not pursued.
3. Consequently, the claimant's claims for unfair dismissal and part time employment detriment are dismissed.

REASONS

1. The claimant is not in attendance today. This preliminary hearing was listed for today's date at the previous preliminary hearing on 21 June 2017. The claimant was in person at that hearing. I am told that the date was discussed at the hearing and so the claimant was aware of it. That case management summary was sent to the parties on 17 July 2017. Mr Livingston on behalf of the respondent has indicated that from the respondent's perspective the claimant has not been actively pursuing this case for some time. The case management

orders required a joint bundle of documents to be agreed by 2 August 2017. A bundle was sent by post to the claimant on 2 August 2017 asking for her comments and this was returned to the respondent on or about 31 August 2017. Further the orders required exchange of witness statements by 16 August 2017. No such witness statement was served on the respondent. I note that within the file that I have, there is a three page document entitled statement of qualifying service from the claimant. It is undated and unsigned and I have no information as to how that came to be within the file. There is no covering letter or email. I have provided a copy of it to the respondent.

2. Given that the claimant was clearly aware of today's date and her disengagement with complying with various orders, I have decided to proceed with today's preliminary hearing.
3. Prior to today's hearing the claimant indicated in an email dated 11 July 2017 that she was longer pursuing her part time employment detriment claim. Consequently that claim will be struck out.
4. The only live issue for determination at this preliminary hearing is that identified by Employment Judge Bedeau at the preliminary hearing on 21 June 2017. The issue is:

“whether the claimant was continuously employed by the respondent for at least two years, entitling her to pursue her constructive unfair dismissal claim.”
5. In her claim form ET1 the claimant alleges that she was first employed on 15 August 2014. She resigned her employment on 16 September 2016.
6. The respondent's case is that she began working for the respondent pursuant to a contract of employment on 1 October 2014.
7. I have been provided with a witness statement of Peter Leach dated 19 September 2017, which he has confirmed as true to the best of his knowledge and belief on oath. In addition, I have been provided with a preliminary hearing which extends to some 71 pages. I have read and considered the statement of qualifying service submitted by the claimant.
8. I make the following findings of fact.
9. The respondent runs its own bank scheme for individuals to provide work. The claimant worked under this bank scheme for the respondent from around October 2012. In short, the locations where she worked varied and it was a matter for her when and for how long she undertook work. I have been provided with a breakdown of her work hours and locations for June, July, August and September 2014. In June she worked at two different locations, in July she worked at two different locations, in August she worked at three different locations and in September she worked at only one location. The number of hours she worked varied considerably in the differing months and at the differing locations.

The rate she was paid at was different to the rate of pay when she became an employee. I have an offer of employment letter dated 16 July 2014 to the claimant from the respondent. This makes clear that the offer of employment was subject to references and other pre-employment checks being undertaken. In the contract of employment, the following is set out;

“4. Date of commencement

Your employment in this post will be commenced on (to be confirmed).”

10. Thereafter the various pre-employment checks were undertaken. I have an email dated 23 September 2014 from the respondent to the claimant indicating that the respondent had successfully completed the pre-employment checks and that the offer of employment to the claimant was now formally confirmed. That email states:-

“First day of employment – Wednesday 1 October 2014. You will be based at Metropolitan, The Grange 100 High Street, Southgate, London N14 6PW. Please report to reception on your arrival at 9.00am and ask for Peter Leach.”

11. Section 211 of the Employment Rights Act 1996 deals with a period of continuous employment.

12. 211(1) states:-

“an employee’s period of continuous employment for the purposes of any provision of this act –

(a) begins with the day on which the employee starts work,

13. I find as a fact that the claimant started work pursuant to a contract of employment on 1 October 2014. I note that the claimant in her own statement, paragraph 13, states:-

“PL (Peter Leach) to (sic) decided to put me on salaried payroll from 1 October 2014 without giving me a good reason.”

I take that to be an acknowledgement by the claimant that she only began on the respondent’s payroll as of that date.

14. I find as a fact that such work as the claimant provided to the respondent prior to 1 October 2014 was as a bank worker and was not pursuant to a contract of employment.

15. Consequently given that the claimant’s employment ceased on 16 September 2016, the claimant does not have the necessary continuous employment of two years in order to qualify to present a claim for unfair dismissal.

16. Consequently the claim for unfair dismissal must be struck out.

Note: Reasons for the decision having been given orally at the hearing, written reasons will not be provided unless a written request is received from either party within 14 days of the sending of this record of the decision.

Employment Judge Alliott

27 September 2017

Sent to the parties on:

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For the Tribunal:

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