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EMPLOYMENT TRIBUNALS

Claimant: Miss L Ponde Nikot
Respondent: The Vurger Co Ltd
Heard at: East London Hearing Centre
On: 16 April 2019
Before: Employment Judge Martin (sitting alone)

Representation

Claimant: In Person
Interpreter: Ms Kanaan (French)
Respondent: Mr Potts (CEO and owner of Vurger Co Ltd)

JUDGMENT ON A PRELIMINARY HEARING (OPEN)

The judgment of the Employment Tribunal is that: -

1. The Claimant's complaint of unfair dismissal is dismissed. The Tribunal does not have jurisdiction to hear the Claim as the Claimant does not have the requisite period of two years' service to bring such a Claim.
2. The Claimant's complaint of race discrimination is struck out as the Tribunal does not consider that the Claimant has a reasonable prospect of success and the Claim is hereby dismissed.

REASONS

1. The Claimant was employed by the Respondent for two weeks when she was dismissed by the Respondent for gross misconduct following an incident on 1 September 2018.

2. The Respondent says that they dismissed the Claimant for her behaviour towards the owners, when they arrived at the restaurant to investigate an incident between the Claimant and her Supervisor. The Respondent says the Claimant was uncooperative and aggressive with the owners and they did not consider that to be the sort of behaviour they expected from an employee, employed for only two weeks. The Respondent says they did not dismiss the Claimant for the incident with Selva, the Supervisor, but for her behaviour towards the owners when they tried to investigate the incident between her and the Supervisor.

3. The Claimant's main complaint of race discrimination was that she was treated differently than Selva, the Supervisor for the incident as the Respondent dismissed her. As the Respondent dismissed the Claimant for her behaviour towards the owners, that claim has no merit.

4. However, in any event, the Claimant compares herself to Selva, the Supervisor, in her claim of less favourable treatment relating to dismissal. In order to succeed in such a claim, she has to show that she was treated differently and there were no materially different circumstances between her and the comparator. The circumstances of Selva, the Supervisor, who was white were different. She was a Supervisor, supervising the Claimant and employed for over eighteen months. Accordingly she could not succeed in saying that her circumstances were the same as of those of Selva because their circumstances were materially different. Her Claim would fail even if she could show that she was dismissed for the incident with the Supervisor, not as the Respondent say for her behaviour towards the owners of the business.

5. The Claimant is also claiming race discrimination and less favourable treatment by Selva, the Supervisor. The example that she uses of less favourable treatment in her ET1 is that she says that the other person in the kitchen was allowed to work without gloves.

6. The Claimant is also claiming race discrimination, arguing harassment by Mr Pott, one of the owners of the business when she alleges called her a Negro.

7. The Tribunal have had the benefit of viewing the CCTV footage of the incident on 1 September and noted the Claimant's behaviour.

8. The Tribunal has noted from CCTV footage that the other employee was wearing gloves so, the Tribunal does not consider that part of the Claimant's complaint of race discrimination has any reasonable prospect of success.

9. In relation to the complaint of harassment. The Tribunal note from the CCTV footage that the Claimant herself raised the issue of race and asked if Mr Potts was dismissing her because she was black. The Tribunal have noted Mr Potts' reaction to that comment, being one of incredulity that the matter was raised.

10. Although, the Tribunal heard the Claimant raise the issue of race on the CCTV the Tribunal heard no comment of a racial nature being made by Mr Potts on the CCTV footage.

11. Accordingly, for those reasons this Tribunal does not consider that any of the Claimant's complaints of race discrimination have any reasonable prospect of success.

12. For those reasons both of her Claims for unfair dismissal and race discrimination are hereby dismissed.

Employment Judge Martin

7 May 2019