



EMPLOYMENT TRIBUNALS

Claimant: Mr T Duncan
Respondent: Unity Property Services Limited
Heard at: Leeds **On:** 13 February 2020
Before: Employment Judge Cox
Representation:
Claimant: In person
Respondent: Mr Menham, solicitor

JUDGMENT AT PRELIMINARY HEARING

1. The Respondent's name is amended to Unity Property Services Limited.
2. The claim is struck out because it has no reasonable prospect of success.

REASONS

1. The Claimant presented a claim against the Respondent ("the Company"), his former employer. The claim was listed for a Preliminary Hearing to decide whether it had little or no reasonable prospect of success and should therefore be the subject of a deposit order or be struck out under the Tribunal's powers in Rules 39 and 37 of its Rules of Procedure.
2. At the Preliminary Hearing, the Claimant clarified his claim in discussion with the Employment Judge. In summary, he wished to claim compensation because the Company had breached his employment contract in two respects:
 - a. The Respondent had acted unreasonably and unfairly in the way it conducted his probationary reviews and had dismissed him at the end of his probationary period without having any grounds for concluding that his performance was unsatisfactory.

- b. During his employment the Respondent had required him to work at a different office, a mile or so away from the usual place of work specified in his contract.
3. On 30 November 2018 the Claimant signed a written contract of employment containing the following relevant provisions:

...

1.1 Your employment with Unity Enterprise commenced on 26 November 2018 and will continue until terminated in accordance with clause 8 below.

...

1.3 Your employment is subject to the successful completion of a 6 months probationary period. In this time your performance will be monitored by Unity Enterprise and if you fail to meet the required standards your employment will be terminated by Unity Enterprise.

...

3 Your usual place of work will be at Unity Enterprise's offices at 113-117 Chapeltown Road, Leeds, LS7 3HY but you may be required to be mobile in your work and travel to Unity's other offices, which are located within a 15 mile radius of your usual place of work, as necessary to meet the reasonable needs of Unity Enterprise's business.

...

8.2 Your employment may be terminated by Unity Enterprise on giving to you; 1 weeks' notice if you have been employed for more than 1 month, but less than two years.

4. The Claimant was dismissed by a letter dated 20 May 2019. That letter included the following:

... We have carefully monitored your performance and conduct during your probationary period and we are now writing to advise you that, unfortunately, the Association has taken the decision to terminate your contract of employment for the following reason:

That the standard of your performance has not reached that required by the Association.

You are entitled to receive 1 weeks' notice of termination of your employment. You are not required to work out your notice period and so the date of termination of your employment will be 27 May 2019. ...

5. Under section 3(2) of the Employment Tribunals Act 1996 and article 3 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994, the Tribunal has jurisdiction to deal with a claim of an employee for the recovery of damages for breach of contract that arises or is outstanding on the termination of the employee's employment (other than a claim for damages for personal injuries or breaches of contractual terms set out in article 5 of the Order, none of which terms is relevant to this claim).
6. In relation to the aspect of the claim set out in paragraph 2(a) above, the Tribunal noted that clause 1.3 of the Claimant's contract provided that his continued employment was subject to the successful completion of a six-month probationary period and that if the Claimant did not meet the required standards his employment would be terminated. The Tribunal did not accept, however, that the Claimant had any reasonable prospect of establishing that clause 1.3 in any way limited the Respondent's clear and unequivocal right under clause 8.2 to terminate his contract at any time provided it gave a week's notice, regardless of whether his probationary period had been conducted fairly or whether his performance was in fact satisfactory. As the Respondent terminated the Claimant's contract in accordance with clause 8.2, the Claimant had no reasonable prospect of establishing that he had suffered any loss capable of being compensated in damages as a result of the Respondent's handling of his probationary period or its decision to dismiss him.
7. In relation to the aspect of the claim set out in paragraph 2(b) above, the Tribunal noted that, even if the relocation of the Claimant to a different office was in breach of his contract, he had not suffered any loss capable of being compensated in damages as a result. The office where he was required to work was relatively close to that provided for in his contract as his usual place of work.
8. Having concluded for these reasons that the claim had no reasonable prospect of success, the Tribunal decided to strike it out.

Employment Judge Cox
Date: 13 February 2020

Judgment and Reasons sent to the parties on:

For the Tribunal