EMPLOYMENT TRIBUNALS

Claimant: Miss L Doyle

Respondents: 1. The Home Office
2. Capita Business Services Limited

HELD AT: Liverpool **ON:** 28 September 2017

BEFORE: Employment Judge Barker

REPRESENTATION:

Claimant: Not in attendance
1st Respondent: Mr P Gorasia, Counsel
2nd Respondent: Mrs R Denvers, Solicitor

JUDGMENT ON PRELIMINARY HEARING

The judgment of the Tribunal is that the claims against the First and Second Respondents are struck out on the grounds that they have no reasonable prospect of success.

REASONS

Issues for the Tribunal to Decide

1. The issue for the Tribunal to decide was the joint application, brought by the First and Second Respondents, that the Claimant's claims against them be struck out under rule 37 of the Employment Tribunals Rules of Procedure 2013 on the grounds that they have no reasonable prospect of success. In the alternative, both Respondents request that the Tribunal order that the Claimant be required to pay a deposit as a condition of continuing with these proceedings under rule 39 of the Rules of Procedure 2013.

2. The Claimant was not in attendance at this hearing. The Tribunal was due to commence sitting at 11.00am. An email was received by the Manchester administration at 10.58am from Miss Doyle reporting that she would not be attending

the hearing. She did not request a postponement or make any further submissions. Instead she gave instructions by email, as follows

> "*Unfortunately I am having car trouble and have short notice to organise transport to attend today's hearing. Please note I am resident in another city so this has been challenging. My instructions are to proceed in my absence and I trust the judge will make recommendations in going forward that is suitable."*

3. The First and Second Respondents made submissions to the Tribunal and a bundle of documents provided by Mrs Denvers was also taken into consideration.

4. The Respondents' submissions were, in summary, that there was never a direct contractual relationship between the Claimant and either the First Respondent or the Second Respondent. If such submissions were accepted by the Tribunal, this would prove fatal to the Claimant's claims, as both claims are for breach of contract. The Claimant's claims are for wrongful dismissal and a failure to pay wages for the remainder of an alleged fixed term contract.

Findings of Fact

5. Miss Doyle was recruited by Eden Brown, which is an employment agency, via a personal service "umbrella" company, as a paralegal to a statutory Inquiry, whose functions were delegated to it by the First Respondent. She was managed on a day to day basis by the Inquiry team members. Eden Brown is one of a number of employment agency suppliers who supply temporary staff to Capita (the Second Respondent) who are engaged by the First Respondent, the Home Office, to assist with recruitment.

6. Capita also assist in the management and administration of a web platform called "Fieldglass", through which, amongst other things, agency workers are able to submit timesheets and through which payment for that work can be authorised.

7. Miss Doyle's claims are for wrongful dismissal and breach of contract because her assignment to the Inquiry team was terminated by a member of that team after a period of nine weeks. Miss Doyle asserts that she was employed on a fixed-term contract which she says was due to extend beyond that nine-week period and that she should be paid wages to the conclusion of that fixed term.

8. Mrs Denvers provided a bundle of documents that the representative for the First Respondent, Mr Gorasia, was content to be before the Tribunal. On page 98 of the bundle is a flowchart entitled "The Fieldglass Solution Workflow" which showed a chain of roles and responsibilities for recruitment. Mrs Denvers confirmed that this framework applied to the Claimant's recruitment and engagement. It showed that the First Respondent, the Home Office, was the "hiring manager", whose role was to create the job posting and to interview candidates. The Second Respondent, Capita, was engaged as "fieldwork management" to review the job posting and shortlist candidates on behalf of the Home Office. Once approved, the vacancy was passed to the so-called "suppliers", one of which was Eden Brown, who in this case engaged the services of Miss Doyle via her personal service company. Both Respondents' submissions were that this document accurately reflected the roles and

responsibilities that were in existence in relation to the Claimant's recruitment process.

9. Having reviewed a number of contractual documents in the bundle, I find on the balance of probabilities that the contractual relationships that existed in this case are, firstly, between the First Respondent as hiring manager and the Second Respondent as manager of the hiring fieldwork, and secondly between the Second Respondent and each of the personnel suppliers, in this case, Eden Brown. Thirdly, although not directly on the point of the Respondents' application, there in all likelihood appears to have existed a contractual relationship between Eden Brown and Miss Doyle's personal service company. Fourthly, in all likelihood there is a contractual relationship between Miss Doyle's personal service company and Miss Doyle herself.

10. However, there is no reasonable prospect of it being established by the Claimant that in her capacity as an individual, she had any kind of direct contractual relationship with either the Home Office or Capita. She was not directly engaged by either Respondent and had no contractual relationship with either Respondent. They did not manage her on a day to day basis during her work on the Inquiry. She worked for the Inquiry team for only nine weeks before her assignment was terminated by a member of the Inquiry team.

11. I have considered whether there were any alternative relationships that could be applicable in these circumstances. The only possible contractual relationships that could be implied, other than between Miss Doyle and her personal service company, are those between Miss Doyle as an individual and Eden Brown as her agency, or alternatively between Miss Doyle as an individual and the end user, that being the Inquiry team.

12. Taking the last possibility first, the First Respondent told the Tribunal that Miss Doyle would be unable to pursue a claim against the Inquiry team because of the statutory immunity from suit found in section 37 of the Inquiries Act 2005. Turning to whether Eden Brown as the employment agency could possibly have a direct contractual relationship with Miss Doyle as an individual, the agency are not joined as a party to these proceedings, nor does Miss Doyle request that they be joined as a party to these proceedings. Mrs Denvers' bundle of documents includes a sample of an "umbrella" contract between an individual's personal service company and Eden Brown, which if such a contract were entered into in this case, suggests that that there is no direct contractual relationship even between Miss Doyle and Eden Brown.

13. I have considered the most recent case law in this area, in particular the test in ***James v Greenwich London Borough Council [2008] CA*** which was applied and approved by the Court of Appeal in ***Smith v Carillion [2015]***, which states that a contract is only implied between parties in situations such as this if it is necessary to do so. From the information before me, there is nothing about the chain of contractual relationships shown or the facts of Miss Doyle's claim for breach of contract that demonstrate that there is any need for such a relationship to be implied and therefore no reasonable prospect of such a direct contractual relationship either being in existence or being implied between the Claimant and either the First

Respondent or the Second Respondent, such as to sustain a claim for breach of contract or wrongful dismissal.

14. I have considered whether it would be more appropriate to order that the Claimant pay a deposit as a condition of her claim proceeding, as per rule 39 of the Employment Tribunal Rules of Procedure 2013, if it were found that the claim had "*little reasonable prospect of success*". However, on the basis of the information before me I am satisfied that the test in rule 37 is satisfied, in that the claims against the First Respondent and Second Respondent have "*no reasonable prospect of success*", for the reasons set out above. Therefore, strike-out is appropriate.

15. The Claimant is able, should she wish to do so, to apply for a reconsideration of this judgment, under rules 70-72 of the Rules of Procedure 2013, within 14 days of the written record of the judgment being sent out to the parties.

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Employment Judge Barker

Date 5th October 2017

JUDGMENT AND REASONS SENT TO THE PARTIES ON

19 October 2017

FOR THE TRIBUNAL OFFICE