



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Miss M Brayer

Stevenage Borough Council

Heard at: Cambridge Employment Tribunal

on: 4th May 2018

Before: Employment Judge Bloom

Appearances

For the Claimant: In person

For the Respondent: Mr J Braier, Counsel

RESERVED JUDGMENT

The Claimant's claims for Breach of Contract and/or Unlawful Deduction of Wages all fail and are all dismissed.

RESERVED REASONS

1. The Claimant appeared before me in person and also gave evidence on oath in support of her claims. The Respondents were represented by Mr Braier of Counsel. In addition to hearing the Claimant's evidence I have also taken in to account the content of a bundle of documents which consisted of some 269 pages. I make reference below to significant documents and the page numbers are taken from this bundle.

2 On 23rd November 2017 the Claimant presented her claims to the Employment Tribunal.

These claims can be summarised under three headings —

- (1) A claim alleging that she was entitled to Contractual Sick Pay covering a period of her absence from work between November 2016 and August 2017.
 - (2) A payment for a 'Single Status payment'.
 - (3) Damages for Stress which she alleges was caused by the Respondent's conduct in dealing with either or both of the failure to make the payments set out above or in the way that her absence from work was subsequently managed.
3. The Claims are denied by the Respondent.
 4. Having heard evidence from the Claimant and having considered all of the relevant documents and on the balance of probabilities I come to the following findings of fact and subsequent conclusions.
 5. The Claimant was employed by Stevenage Homes with effect from 1st June 2009 as a General Assistant.
 6. In addition to that role with effect from 18th July 2011 the Claimant was offered work as a Relief Supported Housing Officer on a fixed term contract until 31 March 2012. A letter of appointment to that role (page 31) made it clear that there was no mutuality of obligation. In other words Stevenage Homes were not obliged to offer her any work and even if they did she was not obliged to accept any such offer.
 7. On 1st November 2011 the Claimant resigned from her employment as a General Assistant. She continued to work as a Relief Supported Housing Officer.
 8. On 22nd November 2011 the Claimant's fixed term role as a Relief Supported Housing Officer was extended until 31st March 2013.
 9. With effect from 1st December 2011 the Claimant's role was transferred to the Respondent.

10. On the August 2013 the Claimant was offered and subsequently accepted a Worker's Agreement with the Respondent to continue as a Relief Mobile Supported Housing

Officer with effect from 1st August 2013. A number of significant clauses in the contract were that her hours were 'casual' in other words there were no set hours; she was described as a 'Casual Worker' ; and of particular significance to her employment status it stated — 'if suitable work is available it may be offered to you, although Stevenage Borough Council is under no obligation to do so and you are under no obligation to accept any offer of work'. (pages 48 and 49).

11. I conclude that the Claimant continued in that role working under the terms of the Worker's Agreement until she subsequently resigned on 10th August 2017.

12. From August 2013 and for the next four years the Claimant attended work following offers of various shifts being given by the Respondent. She was not obliged to do so and neither were the Respondents obliged to offer her any hours. I also note that the job description for the role of a Relief Mobile Supported Housing Officer (page 25) stated that the 'role has no guaranteed hours of work'. Indeed I have been shown a number of examples when offers of work were made to the Claimant and she declined to accept such offers. Examples can be seen in March 2016 (page 74) and in April 2016 (page 75). In March 2017 the Claimant was offered a new contract giving her a minimum number of hours of eight each week — an offer which she declined.

13. The Worker's Agreement which governed the Claimant's work from August 2013 made no reference to any entitlement to receive Sick Pay — either contractual or statutory.

14. The previous two fixed term contracts did incorporate the conditions of service contained in the Stevenage Homes Employee Handbook. Such terms entitled the Claimant to receive up to six month's full pay and thereafter a further six month's at half pay in the event that she was unable to work as a result of either illness or injury (pages 31 and 35). However those terms were not incorporated in to the Worker's Agreement entered in to between the parties in August 2013. That Agreement replaced the terms of the two fixed term contracts.

It is clear that with effect from August 2013 the Claimant was no longer entitled to receive any Sick Pay in the event that she was unable to work either through illness or injury. The Worker's Agreement, in other words, gave her no contractual right to Sick Pay.

15. Save for three days of work in March 2017 with effect from November 2016 until her resignation in August 2017 the Claimant was not able to work. She claims that she is entitled to sick pay during that period.
16. The Claimant is not able, in my judgement, to bring a claim of Breach of Contract under the Employment jurisdiction to hear such a claim pursuant to the provisions of the Employment Tribunal's Extension of Jurisdiction (England and Wales) Order 1994. In order to do so a Claimant must refer to a breach of a contract of employment. In other words any Claimant must have been an employee of the Respondent against whom the claim is brought.
17. By virtue of Section 230(1) Employment Rights Act 1996 an employee is defined as an individual who has entered into or works under (or where the employment is ceased, worked under) a contract of employment.
18. By virtue of Section 230(2) Employment Rights Act 1996 a contract of employment means a contract of service or apprenticeship whether express or implied and (if it is expressed) whether oral or in writing.
19. The same provisions defining employment status are set out in Section 42(1) of the Employment Tribunals Act 1996.
20. The Claimant was not with effect from August 2013 an employee of the Respondent working under a Contract of Employment. As I have found there was no obligation on the part of the Respondent to offer the Claimant any work and equally no obligation on her to accept any offer of work. Mutuality of obligation is often the central issue in determining whether an individual is an employee or not. The House of Lords in Carmichael —v- National Power plc (1999) ICR1226 confirmed that there is an

'irreducible minimum of mutual obligation necessary to create a contract of service'. It follows that unless there was mutuality of obligation and sufficient degree of control there cannot be a contract of employment. That proposition was confirmed in *Montgomery v- Johnson Underwood Limited* (2001) ICR819. The fact that there is no obligation on the putative employer to provide work and no obligation on the putative employee to accept work even if offered is normally fatal to a claimant's proposition that there was a Contract of Employment.

21. As a result of my finding that the Claimant was not an employee working under a Contract of Employment for the Respondent she is unable to bring any claim of Breach of Contract alleging non-payment of Sick Pay.

22. However that is not an end to the matter because such a claim may also be brought under the Employment Tribunal's jurisdiction to hear a claim of Unlawful Deduction of Wages pursuant to the provisions of Section 13 Employment Rights Act 1996. Such a claim may be made by 'a worker'. A 'worker' is defined by the provisions of Section 230(3) Employment Rights Act 1996 as an individual who has entered in to or works under (or where the employment has ceased worked under) a contract of employment or any other contract whether expressed or implied and (if it is expressed) whether oral or in writing whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer or any profession or business undertaking carried on by the individual. In my judgement the Claimant's work as a Relief Mobile Supported Housing Officer falls within that definition. Consequently she is able to bring a claim of Unlawful Deduction of Wages alleging non-payment of Sick Pay between November 2016 and August 2017.

23. However for the reasons that I have set out in paragraph 14 above her claim still fails as a result of my finding that there was no contractual right with effect from August 2013 which entitled the Claimant to receive Sick Pay in the event of her being unable to work either through injury or illness.

24. The Claimant's claims of Breach of Contract and/or Unlawful Deduction of Wages applicable to the non-payment of Sick Pay between November 2016 and August 2017 therefore must fail and are as a consequence dismissed.

25. I now turn to the Claimant's claim relating to an allegation that she was entitled to receive a 'Single Status Payment'. This claim can be summarised quite simply. In November 2013 many local authorities, including this Respondent, offered its employees a lump sum payment in consideration of them entering in to a Settlement Agreement signing away any rights they may have to pursue before Employment Tribunals equal pay claims. Not all employees were made such offers. The Claimant was one of those who was not the recipient of such an offer. Consequently she never entered in to a Settlement Agreement and consequently has no contractual right or otherwise to allege non-payment of such a sum. As I have stated above in order to bring a claim for Breach of Contract in any event the Claimant would have to satisfy the test that she was an employee working under a Contract of Employment. For the reasons I have set out above she was not. The claim in any event goes back to 2013 a period of some four years prior to the termination of the Claimant's employment in August 2017. The allegation that she was entitled to the payment does not arise on the termination of her employment. Further, any claim that non-payment of the payment might constitute a lawful deduction of wages is substantially out of time. Any such claim must be brought within three months beginning with the date of non-payment. It is quite clear that the Claimant is substantially out of time in that regard. During the course of the Hearing the Claimant considered her position in any event in relation to this part of her case. During the course of being given an opportunity to provide closing submissions to me the Claimant accepted that her claim was doomed to fail and confirmed that she wished to withdraw that part of her claim. It is dismissed upon withdrawal by the Claimant but in so determining I make it clear that the Claimant's claim in that regard was doomed to fail in any event as a result of the fact that there was no entitlement in her case to receive such a payment and in any event that part of her claim was substantially out of time.

26. The last part of the Claimant's claims relate to a claim for damages arising from the stress she allegedly suffered as a result of the Respondent's failure to make these payments to her and as a result of the way, she alleges, her absence from work was managed. This part of

her claim is not quantified in any way. In any event the Employment Tribunal has no jurisdiction to entertain such a claim either within the Tribunal 's Breach of Contract jurisdiction or it's jurisdiction under a claim of Unlawful Deduction of Wages. For that reason this part of her claim must also fail.

27. In conclusion all of the Claimant's claims fail and they are all, as a result, dismissed.

Employment Judge Bloom

Date 16 / 5 / 2018

Sent to the parties on:.....

For the Tribunal Office

