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EMPLOYMENT TRIBUNALS

Claimant: Miss G Florian

Respondent: Adecco UK Ltd

Heard at: East London Hearing Centre

On: 30 April 2018

Before: Employment Judge Jones (sitting alone)

Representation

Claimant: In person

Respondent: Mr J Green (Counsel)

JUDGMENT

The judgment of the Employment Tribunal is that:-

- (1) The Claimant withdrew her discrimination complaints.
- (2) The Tribunal has no jurisdiction to consider the Claimant's complaint of unfair dismissal. The complaint is dismissed.
- (3) The Tribunal has no jurisdiction to hear the claim for redundancy pay. The complaint is dismissed.
- (4) The complaint of a failure to pay notice pay has no reasonable prospect of success as the Claimant was not dismissed. The complaint is dismissed.
- (5) The complaint that the Respondent has failed to comply with the duty to provide itemised wage statements has no reasonable prospect of success and is dismissed.

REASONS

1 The Claimant was employed by the Adecco agency on 6 November 2017. The Claimant was assigned to work as a warehouse operative for Amazon on 15 November 2017. The Claimant's assignment ended on 28 December 2017. It was the Claimant's case that she had been led to believe that she would be engaged on that contract for at least 3 months and she did not accept that she had not met the required standards.

2 The Claimant presented two claim forms. By a claim form presented on 16 January 2018, the Claimant brought complaints of unfair dismissal, redundancy payment, discrimination on grounds of marital status and discrimination on the ground of age. In her claim form issued on 30 December 2017, she also ticked the notice pay and holiday pay boxes.

3 The Respondent defended the claims. Its case was that the Claimant's assignment was terminated because she failed to meet the targets set by the Respondent and that this had nothing to do with her age or marital status.

4 Today's open preliminary hearing was listed by Regional Employment Judge Taylor at a closed preliminary hearing on the 9 April. The purpose of today's hearing was to consider the Respondent's application for her claim to be struck out or in the alternative, for her to pay a deposit before she could continue with her claim as her complaints appeared to have either little or no prospects of success. The Claimant also asked for some time to seek legal advice.

5 In today's hearing, both parties made submissions on the Respondent's application; the Respondent also having previously produced written submissions to the Tribunal.

6 The Claimant submitted that she had not received pay slips from the Respondent. She also complained that she had not been paid any notice pay.

7 The Claimant confirmed that after she was asked to leave Amazon, she did not contact the Respondent for any further assignments. The Respondent's case is that it wrote to her after the termination of the Amazon assignment, informing her that the assignment had concluded and that she should get in touch if she wanted other assignments. The Claimant did not respond to the letter. After further discussion today, it is likely that this was a pro forma that the Respondent sends out automatically to assignees when an assignment comes to an end. The Claimant may not have recognised it as a letter.

8 The Claimant's allegation of discrimination on the grounds of marital status related to a comment that someone called James made to her during her induction. He asked her whether she was married. At the time she was not. She stated that he behaved very *ugly* towards her afterwards but she did not provide the Tribunal with any details and did not say today that his behaviour was related to her marital status.

9 The Claimant refused to sign a sheet given to her that set out that she had not achieved the targets at Amazon. It was the Claimant's case that she sometimes did achieve it.

10 The parties confirmed that there were 2 documents issued in relation to the Claimant's employment with the Respondent. The first document was the employment contract between the Claimant and Adecco, which the Claimant signed on 6 November 2017. In that document it stated that at any time Adecco may require the employee not to start working on an assignment or to cease working on a particular assignment or any part or aspect of any assignment, or transfer the employee to another assignment or carry out such other work duties as Adecco may require from time to time. The contract also stated that there was no entitlement to notice pay if you are not on an assignment to a client when your contract terminates.

11 The second document was the Claimant's assignment to Amazon. That document stated:

“your assignment is anticipated to last for up to 39 weeks. There may be opportunities for permanent employment with Amazon during the course of your assignment, but this is not guaranteed OR [for agency workers engaged after 1st October] - your assignment is anticipated to last until early January, although this may be extended up to a maximum of 39 weeks and is dependent on customer demand.”

12 The Claimant was unable to explain to the Tribunal today, how she says the Tribunal has jurisdiction to hear her complaint of unfair dismissal or for redundancy pay. The Claimant submitted that she had obtained legal advice; that she had been advised that the Respondent should have given her notice of termination and that she should also have been given itemised payslips.

13 The Respondent submitted that the Claimant's notice pay was not indicated on her ET1 form and that therefore it would need an amendment before the Tribunal could consider it. The Tribunal notes that in the Claimant's claim number 3201836/2017 issued on 16 February, she did tick the box for notice pay. The ET1 on claim number 3200082/2018 does not have that box ticked. The Respondent also submitted that the Claimant had not been dismissed by the Respondent but what had happened was that her assignment at Amazon had been terminated. The Claimant needed to contact the Respondent to ask for another assignment. She never did so. The Claimant confirmed today that she is employed elsewhere although she was reluctant to say where she works.

14 In relation to the payslips, the Respondent submitted that the Claimant did raise the issue of payslips with them and that she was informed that they had been sent to the email address that she provided to them at the start of her employment. The Claimant did not raise the matter with them again and so they assumed that she has received the payslips.

15 The Claimant submitted that she had worked as quickly as she could at Amazon and that the statement that she had not met the quota was discriminatory towards her on the basis of her age. However, as she had been advised by her solicitor that

discrimination claims are harder to prove, she indicated at the end of her submissions that she intended to withdraw her complaint of age discrimination and of discrimination on the grounds of her marital status.

16 The Claimant had already withdrawn her claim of holiday pay at the preliminary hearing on 9 April.

Law

17 Rule 37 of the Employment Tribunal Rules of Procedure stated that at any stage of the proceedings, either on its own initiative or on the application of a party, the Tribunal may strike out all or part of the claim or response because it is scandalous or vexatious or has no reasonable prospect of success.

18 Rule 39 says that where at a preliminary hearing the Tribunal considers that any specific allegation or argument in the claim or response has little reasonable prospect of success, it may make an order requiring a party to pay a deposit not exceeding £1,000 as a condition of continuing to advance that allegation or argument. In so doing, the Tribunal shall make reasonable enquiries into the paying party's ability to pay the deposit and have regard to any such information when deciding the amount of the deposit.

19 Section 108 of the Employment Rights Act 1996 states that a that the Tribunal does not have jurisdiction to hear the complaint of unfair dismissal unless an employee has been continuously employed for a period of not less than 2 years ending with the effective date of termination.

20 Section 155 of the Employment Rights Act 1996 states that an employee does not have a right to a redundancy payment unless they have been employed for a period of not less than 2 years ending with the relevant date.

21 Section 8 of the same Act gives an employee a right to an itemised pay statement and sets out the particulars that should be in it.

Decision

22 In considering the Respondent's application today, I considered the case that the Claimant put forward in her documents and in her submissions, at its highest. I considered whether there was any reasonable prospect of success of her being able to prove her claims in order to succeed and I also considered whether the Tribunal had jurisdiction to here some of her claims.

The complaint of unfair dismissal

23 The Claimant was employed by Adecco between 15 November 2017 and 28 December 2017. She has not submitted that there were any exceptions to the qualification of the right to bring a complaint of unfair dismissal set out in section 108 of the Employment Rights Act 1996 quoted above.

24 The Claimant was employed in total for a period of approximately 6 weeks. There are no exceptions in this case that would give the Employment Tribunal jurisdiction to consider her complaint of unfair dismissal.

25 The complaint of unfair dismissal is dismissed.

The complaint of redundancy

26 The Claimant has not stated that she was redundant. Her case is that she was unfairly removed from her job at Amazon.

27 As the Claimant was only employed for approximately 6 weeks and has not submitted to the Tribunal that there are any exceptions to the two-year requirement, it is this Tribunal's judgment that we do not have any jurisdiction to hear her claim for redundancy pay.

28 The claim is dismissed.

29 As it was not clear whether the complaint of a failure to pay notice pay was already part of her claim, I considered the Claimant's application to amend her claim to add a complaint of a failure to pay notice pay. I considered that had opportunities when she wrote to the Tribunal on 20 March giving further details of her claim to refer to a claim for notice pay, which she failed to do. It is not something that she referred to at the hearing on 9 April. She stated today that the person who gave her legal advice told her to make a claim for notice pay. The Claimant did not tell the Tribunal today when she got that advice. In deciding whether it was appropriate to grant her leave to amend her claim I also considered whether there was any prospect of such a claim succeeding. I considered the terms of her contract with the Respondent and of her assignment to Amazon as confirmed to me today. The contract stated that the assignment with Amazon was *anticipated* to last 39 weeks. The Claimant was not given a contract with 39 weeks. It also stated that there may be an opportunity to get permanent employment with Amazon. In my judgment, it is unlikely that the Claimant will be able to persuade a Tribunal that there was a promise of a 39 week contract. It was not a contract for permanent employment. There was no guarantee period of time over which the assignment would last. The Claimant had no other documents to rely on to support her claim that this was a contract for 39 weeks. The Claimant's contract with Adecco stated that any time it might require the employee not to start working on an assignment or to cease working on a particular assignment or any part of it. That means that the Respondent reserved the right to require the Claimant to stop working at Amazon at any time. It would then ask her to work in the different assignment. That was an express term of the contract between the parties.

30 I also considered the way in which the Claimant's contract with the Respondent came to an end. That is separate from the assignment to Amazon. The Claimant confirmed today in her submissions to the Tribunal that after she was asked to leave the Amazon assignment, she decided that she no longer wanted to work for the Respondent as she did not like the way she had been treated. She did not contact them for work and found employment elsewhere.

31 The Claimant's contract with the Respondent appeared to have been terminated by her actions rather than by the Respondent.

32 Having considered these issues, it is my judgment that the Claimant has no reasonable prospect of succeeding in a complaint that the Respondent has failed to pay her notice pay. If her claim has to be amended then I refuse leave to amend the claim to add a claim for notice pay because it was reasonably practicable for her to have raised it in her claim form, or when she wrote to the Tribunal on 20 March, at the hearing on 9 April or when she wrote to the Tribunal thereafter.

33 The Tribunal notes that in her first ET1 the Claimant had ticked the box to make a claim for notice pay. That form was rejected by the Tribunal because the Claimant had failed to comply with the ACAS Conciliation process. The Claim was resubmitted and served on the Respondent on 16 February. If the reissued claim also had the notice pay box ticked then the claim for notice pay is already part of her claim and no amendment is required.

34 In those circumstances, I considered whether there were little or no prospects of such a claim succeeding before a Tribunal. What were the prospects of the Claimant being able to persuade the Tribunal that she was entitled to be paid notice pay? I considered the way in which the Claimant's employment with the Respondent came to an end. It is important to clarify that the end of the assignment to Amazon was not the end of the Claimant's employment with the Respondent. She chose not to seek another assignment from them as she was not happy with their way of operating. She was therefore not dismissed. An entitlement to notice pay would only arise on termination of employment whether by constructive or ordinary dismissal. From what I was told by both parties today, that is not what occurred in this case. The Claimant did not contact the Respondent for work and found other employment elsewhere.

35 Lastly, one of the express written terms of the contract between the parties was that if you are not on assignment when your employment ends then there is no entitlement to notice pay. The Claimant's assignment to Amazon had ended before she decided to end her association with the Respondent.

36 For all of those reasons, it is my judgment that the Claimant has no reasonable prospects of succeeding in a complaint of a failure to pay notice pay.

37 That complaint is dismissed.

38 I then consider the complaint of a failure to provide itemised wage statements. This was part of the original ET1 claim. However, no further details are provided.

39 Although the Claimant stated today that wage slips were not provided to her, when she raised it with the Respondent while she was employed, she was told to check her email and get back to the Respondent. It is the Respondent's case that it sent the Claimant her payslips to the email address she provided to them at the start of her employment. The Claimant did not go back to the Respondent to indicate that she had searched the email and that there were no payslips. Today she was unable to say whether she had searched that particular email address. During her employment, the

Claimant made no further query on this matter. Today, the Claimant did not challenge the Respondent's position on wage slips.

40 It is my judgment, that there are no reasonable prospects of the Claimant proving to the Tribunal that she was not provided with itemised wage slips by the Respondent during her employment.

41 That complaint is dismissed.

42 The Claimant's complaints of unfair dismissal and her claim for redundancy pay are dismissed as a Tribunal has no jurisdiction to hear them. The Claimant withdrew her discrimination complaints and her claim for holiday pay. There are no reasonable prospects of her claims for holiday pay, notice pay and her complaint that she did not get any wage slips succeeding. Those complaints are dismissed.

43 The Claimant's claim is dismissed.

Employment Judge Jones

1 June 2018