EMPLOYMENT TRIBUNALS

Claimant: Mr Harvey Appleton

Respondent: Parkwood Community Leisure Limited

Heard at: Nottingham

On: Monday, 26 March 2018

Before: Employment Judge Macmillan (sitting alone)

Representatives
Claimant: In person
Respondent: Mr S Middleton, Solicitor

JUDGMENT

1. The Claimant's claim is dismissed. The Employment Tribunal does not have jurisdiction to entertain it.

REASONS

The issues

1. This is a preliminary hearing on the application of the Respondent for the dismissal of the Claimant's complaint of unfair dismissal on the grounds that the Claimant does not have the requisite qualifying service to bring such a complaint. It is a complaint of ordinary unfair dismissal for which a claimant must have two years of continuous employment before the Employment Tribunal has jurisdiction to hear their claim.

2. I have heard evidence today from Mr Harvey Appleton, the Claimant, who has represented himself, and I have been shown, and have taken into consideration, a witness statement signed by his brother Bryn, who has not attended to give evidence. I note that the statement of Bryn Appleton is almost word-for-word identical with an email from the Claimant to the Tribunal in which he explained in detail the basis of his claim.

3. For the Respondent, which has been represented by their Solicitor Mr Middleton, I have heard evidence from Mr Copley, the centre manager.

The claimant's contentions

4. The Claimant conceded at the start of the hearing that the effective date of termination of his employment as a Recreational Assistant and Lifeguard or Swimming Instructor at the Respondent Community Leisure Centre was the 30th July 2017. Therefore, in order to have the necessary qualifying service to bring this claim he has to satisfy me, on the balance of

probabilities, that his employment commenced no later than the 31st July 2015. This is a purely factual dispute involving little or no legal complexity.

5. The Claimant's account is as follows. He passed a lifeguard's course at his school on 17th July 2015. On the same day, he visited the Respondent together with his brother Bryn, to apply for a job as a lifeguard. He was invited to 'shadow' an established lifeguard for the remainder of that week for which he was told he would be paid. The shadowing work commenced on the following Monday, the 20th of July. He did not have Disclosure and Barring Service (DBS) clearance to work with children which he accepts was an essential pre-requisite for working as a lifeguard, but nonetheless, he contends, because the Respondent was so short staffed and extremely anxious to employ him and his brother, Mr Copley 'short-circuited' the regulations. He claims that in the brief period between the 20th July and the 25th July when he went on holiday, he worked for 11 hours, for which he was paid in his first pay slip after he became, by the Respondent's concession, an employee of the leisure centre.

6. He was away on holiday in Spain between the 25th July and the 8th August. The arrangement, according to Mr Appleton, was that he was to contact the leisure centre on his return to arrange a convenient date for him to come in and sign the contractual documents. He had completed his DBS paperwork before he went on holiday, which, he contends is evidence that the Respondent required him to enter their employment on his return from holiday. He further contends that all of those facts are enough to bridge the gap between the date on which he signed his contractual documents, Wednesday the 12th August, and the date on which he started his shadowing work so as to bring the latter into reckoning for the purposes of computing the length of his employment.

Discussion and conclusions

7. Even on the Claimant's account of the matter, which is contested in one material respect by the Respondent, I am entirely satisfied that his employment did not commence until 12th August 2015. If the Claimant had had an employment relationship with the Respondent prior to that date, it lasted only from the 20th to 25th of July. There were then two whole weeks and a few days during which he had no kind of contractual relationship with the Respondent, did no work for them and was entitled to no remuneration.

8. In my judgment it is quite impossible for the Claimant to successfully contend that there was any kind of implied contract of employment which bridges the gap created by his two weeks of holiday plus a small number of days between the end of his 'shadowing work' and signing the contractual documents. There was no expectation on the part of either party that he would come to work for the Respondent on any particular day, indeed at all, after he got back from holiday. All of the necessary paperwork had yet to be completed and, as even the Claimant accepts, being employed by the Respondent was entirely dependent on obtaining DBS clearance. Therefore no binding promise of employment could have been made before he went on holiday.

9. However, I did not find the Claimant an entirely satisfactory witness and do not accept his account of the matter. In an email to the Tribunal of 9th March 2018, he asserts that he commenced work for the Respondent

immediately on his return from holiday on Monday the 10th August, but that is not his claim today. In fact, he now claims that he did not actually start work until the 18th and that the Respondent must therefore have forged a time sheet which shows him as working from the 13th to the 15th. He claims that he was not able to work on the 13th to the 15th because - and he only has his recollection to go on - he was committed to work for Asda on those days. His contention is that Mr Copley made a fraudulent entry on the time sheets for the 13th, 14th and 15th to enable the Claimant to be paid for shadowing the lifeguard in the week immediately after he left school whilst disguising the fact that he had been working without DBS clearance.

10. The Claimant is very free with his allegations of fraudulent behaviour by the Respondent. He claims that his signature on his contract of employment is itself a forgery. Whilst it must be admitted that the signature doesn't look like his other signatures, the Claimant accepts that all of the other signatures, on all of the other documents that were signed that day, are genuinely his, and there is no doubt that the 12th August is the date on which he signed his contract. It therefore seems highly improbable that the Respondent would have forged one signature.

11. In my judgment it is singularly unlikely that Mr Copley would have been foolish enough to allow the Claimant to undertake paid work for the Respondent, in a capacity which undoubtedly required DBS clearance, without that clearance having been obtained. Even if there had been extreme pressure on Mr Copley to engage new lifeguards, the consequences for Mr Copley personally, if he had been found out, would have been very serious in a disciplinary sense. I accept Mr Copley's evidence that the Claimant was not even at the leisure centre prior to going on holiday other than to complete (or to take home, complete and return) his DBS forms.

12. The Claimant's claim therefore fails. Even on the Claimant's account of the matter, which I reject, he did not have, and could not as a matter of law have had, two year's continuous employment. His employment commenced on 12th August, and, even if he had worked for the respondent briefly some two weeks earlier, there would have been no continuity between that work and the 12th of August. His employment with the Respondent therefore falls two weeks, or thereabouts, short of the necessary qualifying period, and his claim is dismissed at this preliminary stage.

Employment Judge Macmillan
Date: 10th April 2018

JUDGMENT SENT TO THE PARTIES ON

17 April 2018

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FOR THE TRIBUNAL OFFICE