



EMPLOYMENT TRIBUNALS

Claimant: Miss S A Pitman

Respondent: PMP Recruitment Ltd

Heard at: Southampton (by telephone) **On:** 4 July 2018

Before: Employment Judge Craft

Representation

Claimant: Herself

Respondent: Mrs S Lovell, Solicitor

CASE MANAGEMENT SUMMARY

The Complaints

1. By a claim form presented on 27 March 2018 the Claimant brought complaints of unfair dismissal and disability discrimination against the Respondent, all of which it has defended. The case was listed for a telephone case management hearing which has enabled the Tribunal to consider the claims with the parties, promulgate a Judgment and make appropriate directions for the future conduct of the proceedings.

The Issues

2. The Respondent operates a recruitment business by which it contracts to provide employees to provide various services to various clients. The Claimant had entered into a Mobile Worker Agreement with the Respondent. This is a contract of employment with the Respondent which enables the Respondent to move its employees between assignments as required by its clients. This means that its employees will be assigned to work for various businesses during which period of time they will be under the supervision and control of the Respondent's clients.
3. The Claimant was employed by the Respondent from 27 October 2016 to 27 March 2018. She was assigned to work for Amazon at its warehouse in Littlehampton where she commenced work as a warehouse operative. The Claimant says that whilst she was working in the warehouse she dropped a weight on her foot at some time during April 2017. She continued working until August 2017 when her difficulties in walking forced her to report sick. The Claimant explained that although it has been confirmed to her by her doctor that she had no pre-existing condition she has been suffering from osteoarthritis in both her feet and also from carpal tunnel syndrome as a result of the injury, and the heavy lifting which the job involved, since the accident.

4. The Claimant asked to be assigned to a different job on her return to work in October 2017. This was agreed by the Respondent. She alleges that, having commenced that new job, as an operational assistant, she was subject to bullying and harassment from Mr Kevin Ball, a Night Supervisor, employed by Amazon, and other work colleagues as a result of her transfer to this job. The Claimant further asserts the new job did not reduce her duties or the amount of walking which she had to undertake. She also asserts that the Respondent refused to allow her to reduce her working week to 30 hours and still required her to work 60 hours per week notwithstanding her physical incapacity which it was aware of. Her complaints about this alleged conduct towards her have not been particularised. The Claimant confirms that Amazon employees, who were working with her, and Supervisors employed by the Respondent, who worked in Amazon's warehouse subjected her to this conduct.
5. The Respondent released the Claimant from the assignment with Amazon. It says that the Claimant then contacted its HR Department and asked to be released from her contract with the Respondent in doing so resigned from her employment with it. The Claimant disputes that she resigned. The Respondent's contractual arrangements mean that the Claimant's release from her assignment to Amazon would not have terminated her employment with the Respondent which would have continued within the terms of the Mobile Worker Agreement between her and the Respondent.
6. The Tribunal was satisfied that it had no jurisdiction to consider the Claimant's claim of unfair dismissal because the dates of her employment with the Respondent were agreed and the Claimant did not have sufficient continuity of service to pursue the claim because she had not been employed for two years or more. The Tribunal dismissed the unfair dismissal claim for this reason.
7. The Claimant applied to join in Amazon to these proceedings in view of the allegations which she makes against Amazon employees in the period after she returned to work from October 2017 onwards. On the basis of those allegations (for which the Claimant will be required to provide further information) the Tribunal concluded that Amazon should be joined in to these proceedings. However, it also concluded that no steps should be taken to serve these proceedings on Amazon until the Claimant had provided Further Information as directed by the Tribunal. The Tribunal also concluded that the Respondent should be given leave to amend its response, if so advised, after receipt of that Further Information.
8. It will only be after receipt of that Further Information that the extent of the Claimant's disability discrimination claim can be fully and properly considered, although it seems probable that a claim will be pursued on the basis that the Respondent / Respondents failed to make reasonable adjustments to her job in respect of requirements to walk and lift or its working hours and that the Claimant was subject to unwanted conduct relating to a disability which created an intimidating, hostile, degrading, humiliating or offensive environment for her. A preliminary issue may also arise if the Respondents do not accept that the Claimant was disabled for the purposes of the Equality Act 2010.

9. The Claimant has now provided substantial documentation in respect of her medical condition and confirms that she has no further documents to disclose in respect of that. It was agreed that it would be helpful for the Claimant to provide a Disability Impact Statement to be filed with the Tribunal and First Respondent. An Order was also made to that effect. The Tribunal will make arrangements for a further case management preliminary hearing following filing of the Second Respondent's Response and any Amended Response filed by the First Respondent.
10. The Claimant informed the Tribunal that she had previously encountered difficulties with her mental health and that the events the subject of these proceedings had resulted in deterioration in her mental health. The Tribunal explained that this is an alleged consequence of the conduct she alleges against the Respondents as a result of the disabilities she has confirmed she relies upon and which are confirmed in this summary.

JUDGMENT

The Claimant's claim for unfair dismissal is dismissed because the Employment Tribunal has no jurisdiction to consider it.

ORDERS

(Made pursuant to the Employment Tribunal Rules 2013)

1. Adding a respondent

Amazon UK Services Limited shall be joined as the Second Respondent to these proceedings and the title to the proceedings shall be amended accordingly. A copy of the Originating Claim, the Response by the First Respondent, a copy of this Case Management Summary, Judgment and Order and the Claimant's Further Information and Disability Impact Statement shall be served on the Second Respondent which shall be entitled to make a response to these proceedings within 28 days of service of these documents by the Tribunal.

2. Amended response

The First Respondent shall have leave to file an amendment of / addition to its Response so as to deal with the matters raised in the Claimant's Further Information and Disability Impact Statement, if so advised, which must be sent to the Tribunal no later than 14 days after receipt of the Claimant's Further Information and Disability Impact Statement.

3. Further information

The Claimant is ordered to provide the following Further Information in relation to her claim to the First Respondent and the Tribunal, on or before, 15 August 2018:

Full details of all matters upon which the Claimant relies in support of the allegations that the Respondents discriminated against the Claimant by reason of her disability which shall include:

- a) All particular incidents relied upon and the dates of those incidents;
- b) the persons involved; and
- c) all matters said or done which give rise to the complaints and any witnesses to those matters.

4. Disability impact statement

The Claimant shall on or before 15 August 2018 provide a Disability Impact Statement which shall be sent to the Tribunal and the Respondents which shall set out factual matters relevant to that issue which shall include what effect on day to day activities her medical conditions of osteoarthritis and carpal tunnel syndrome have had on her over the relevant period that is from April 2017 to the termination of her employment with the First Respondent.

NOTES – Consequences of non-compliance

- (1) Failure to comply with an order for disclosure may result on summary conviction in a fine of up to £1,000 being imposed upon a person in default under s.7(4) of the Employment Tribunals Act 1996.
- (2) Further, if this Order is not complied with, the Tribunal may (a) make an Order for costs or preparation time against the defaulting party, or (b) strike out the whole or part of the claim, or, as the case may be, the response, and, where appropriate, direct that the respondent be debarred from responding to the claim altogether.
- (3) The tribunal may also make a further order (an “unless order) providing that unless it is complied with, the claim or, as the case may be, the response shall be struck out on the date of non-compliance without further consideration of the proceedings or the need to give notice or hold a preliminary hearing or a hearing.
- (4) An order may be varied or revoked upon application by a person affected by the order or by a judge on his/her own initiative.

Employment Judge Craft
Dated 17 July 2018

Order sent to the Parties on
21 July 2018

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FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS

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