EMPLOYMENT TRIBUNALS

Claimant		Respondent
Miss M Kowalska	**v**	**Opusclean Limited**

RECORD OF A CLOSED TELEPHONE PRELIMINARY HEARING

Heard at: **Nottingham** **On: Tuesday 5 June 2018**

Before: **Employment Judge P Britton (sitting alone)**

Appearances
For the Claimant: **Mr Michal Kieres, Partner of Claimant**
For the Respondent: **Mr Mark Huckle, Co-Director of Respondent**

JUDGMENT

1. Pursuant to the Tribunal's letter of 23 May 2018, no explanation bringing it otherwise within the jurisdiction having been received from the Claimant, the claim of unfair dismissal is struck out for want of jurisdiction, the Claimant not having 2 years' qualifying service.

2. The claim for a redundancy payment is dismissed as the Claimant again has not got 2 years' qualifying service.

3. The claims that proceed are as follows:-

   3.1 Harassment on 9 October 2017 pursuant to Section 26 of the Equality Act 2010.

   3.2 A claim for breach of contract (wages in lieu of notice) pursuant to common law.

CASE MANAGEMENT SUMMARY

Introduction

1. The claim (ET1) was presented to the Tribunal in this matter on 9 February having been prepared by Mr Kieres. It set out how the Claimant was employed between 4 July 2016 and 16 October 2017 as a peripatetic cleaner by the Respondent.

She undertook cleaning duties at various of the Respondent's clients, travelling to and from in a motorcar supplied by the Respondent. She claims that on 9 October in a conversation with the two Directors, which on her evidence was about her working hours, that she was told that she should shave her hair as Afro-Caribbean women have hair of that style ie not someone such as the Claimant who is white Polish. Otherwise what the claim is about is that she having been suspended on that day, and for reasons which I cover in the next paragraph, she then went off sick covered by a Doctor's sick note on 11 October whereby it was stated that she was suffering from "severe depression and anxiety caused by work related stress". Nevertheless the Respondent went ahead with the dismissal process and summarily dismissed her on 16 October 2017: hence her claims for unfair dismissal and wrongful dismissal (notice pay).

2. The Respondent counters in the ET3 that it received a complaint from a client on 4 October to the effect that the Claimant had been rude and aggressive at the relevant premises. Thus it saw her on 9 October to inform her that she was dismissed. There was no discussion as such about working hours. If I stop there I detect that what might possibly have happened here is that Mr Kieres says his partner has difficulty with spoken English, thus it might be that she was trying to explain the hours that she was being asked to work meant that she was spread too thin which is why she was not willing to undertake the additional work requested she says by the client on 4 October. Be that as it may: there is an issue in that if the Claimant was covered by a sick note from at latest 11 October, then the disciplinary hearing should not have gone ahead if the sicknote covered the relevant period particularly given the reason stated for her being unwell. Where this would seat in a case where the Claimant has not got 2 years' qualifying service to bring a claim for unfair dismissal is that therefore prima facie it might well be that a Tribunal would find the Claimant was therefore wrongfully dismissed which means she would be entitled to one week's statutory wages in lieu of notice. I understand her contract of employment did not provide for a longer period of notice. Her wages as a cleaner will obviously not be great, I understand they might have averaged somewhere around £300 a week. But that can if necessary be clarified in due course because the entitlement would be based upon the Claimant's average wages over the 12 weeks preceding the dismissal.

3. Going back to the claim based upon the hair remark, Mr Kieres was specifically asked by me today as to whether he linked it to the dismissal: because it is very difficult to see that it is so linked. He wasn't able to provide an explanation that there was a link. What this means is that the claim related to the remark is confined to 9 October. Prima facie that remark could be harassment in terms of the definition of Section 26 of the EQA. Mr Huckle says that a remark was made about her hair style at the meeting on 9 October to the effect that she was not complying with the company's dress code, but he denies that any remark linking the hair of the Claimant, which was dyed a vivid pink and platted was made to the effect that it should be shaved off or also as alleged by the Claimant that it was said:" you are not an African-American woman to have this hairstyle". Well that of course is going to require the hearing of evidence as there is a straightforward conflict for the Tribunal to resolve between the Claimant who was not accompanied at the suspension meeting and the 2 Directors. I observe, and it is no more than that, that taking the Vento guidelines as updated by the recent Presidential Guidance of the Presidents for the Employment Tribunals of England and Wales and Scotland that even if it was found to have been said limited as it is to a one off remark, that any award for injury feelings its likely to be towards the bottom of the lowest band of Vento as updated. And as I have already made plain the breach of contract claim is limited as a matter of law to her notice

entitlement which in this case is the statutory entitlement of one week's net wages. Thus the quantum is not great and of course there is a risk to any litigation.

4. It means having therefore condensed down the issues in this case, that I suggested to the parties that , and it is no more than that, this matter might very well be capable of settlement. The parties indicated in what had therefore become a quasi-mediation process that they were interested in seeing if they could find a solution and I have advised them how to thence make contact again with ACAS.

5. Otherwise this case is currently listed for a 3 day hearing between Monday 11 and Wednesday 13 February next year at Leicester and standard directions have been issued. If the case has to go the distance, albeit there are only 3 witnesses, bearing in mind that the Claimant **will need a Polish interpreter** and that the case will be adjudicated upon by a panel and remedy would need to be obviously determined if the Claimant succeeds, I am of the view that the case is likely to stretch into 2 days.

6. Otherwise directions have already been made and I don't need to vary any of those.

ORDERS

Made pursuant to the Employment Tribunal Rules 2013

1. Current directions remain.

2. The hearing is to be reduced to 2 days and so the third day 13 February 2019 will not be required.

3. If it proceeds, the Tribunal must provide a Polish interpreter.

NOTES

(i) The above Order has been fully explained to the parties and all compliance dates stand even if this written record of the Order is not received until after compliance dates have passed.

(ii) 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.

(iii) 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.

(iv) 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. Any further applications should be made on receipt of this Order or as soon as possible. The attention of the parties is drawn to the Presidential Guidance on 'General Case Management':

https://www.judiciary.gov.uk/wp-content/uploads/2013/08/presidential-guidance-general-case-management-20170406-3.2.pdf

(v) The parties are reminded of rule 92: "*Where a party sends a communication to the Tribunal (except an application under rule 32) it shall send a copy to all other parties, and state that it has done so (by use of "cc" or otherwise). The Tribunal may order a departure from this rule where it considers it in the interests of justice to do so.*" If, when writing to the tribunal, the parties do not comply with this rule, the tribunal may decide not to consider what they have written.

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Employment Judge P Britton

Date:6 June 2018

Sent to the parties on:

11 June 2018

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For the Tribunal:

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