



EMPLOYMENT TRIBUNALS

Claimant

Mrs F Sudak

v

Respondent

**(1) Hackney Learning Trust
(2) London Borough of Hackney**

Heard at: Watford

On: 5 July 2018

Before: Employment Judge L Skehan on paper

JUDGMENT

1. Hackney Learning Trust is not a legal entity and all claims against Hackney Learning Trust are struck out.
2. The claimant was not employed by London Borough of Hackney and all claims against London Borough of Hackney are struck out.

REASONS

3. This judgment arises from a case management discussion held on 06/02/2018. During this hearing the claimant was requested to provide written representations as to why the claim against London Borough of Hackney and Hackney Learning trust should not be dismissed. The following is an excerpt from the case management summary:
 4. *I asked Mr Sudak to outline the claimant's claim against the remaining two respondents being the Hackney Learning Trust and London Borough of Hackney. Mr Sudak informed me that:*
 - 4.1.1.1 *There were no allegations relating to any form of discrimination in existence against either of these two respondents.*
 - 4.2 *The claimant claims that her employment with Hackney Learning Trust and/or London Borough of Hackney continues to exist.... Although unclear, the claimant's claim appeared to be for unfair dismissal and/or a declaration in common law that the employment relationship continued to subsist.....*

5. *It is common ground between the parties that this school is a voluntary aided school. Mr Davis submitted that the claimant cannot have a claim for unfair dismissal against the London Borough of Hackney or Hackney Learning Trust as neither were her employer. He noted that The Governors of Lubavitch Ruth Lunzer Girls Primary School had conceded that they were the claimant's employer in accordance with the statutory provision. Further it was submitted that Hackney Learning Trust in itself was not a legal entity but part of the London Borough of Hackney. On considering the evidence available:*

5.1 *I noted that as the Hackney Learning Trust was not a legal entity there appeared to be no prospects of success for any claim against it.*

5.2 *In light of the statutory provisions of s.36 of the Education Act 2002 alongside the stated position of The Governors of Lubavitch Ruth Lunzer Girls Primary School that it was the claimant's employer, I concluded that the claimant's claim that she was unfairly dismissed by the London Borough of Hackney had no reasonable prospect of success as this respondent was not the claimant's employer. Further I noted that the employment tribunal has no jurisdiction to order any common law declaration as to the ongoing status of an employment contract.*

6. S.36 of the Education Act 2002 which provides that:

“36 Staffing of foundation, voluntary aided and foundation special schools

- (1) This section applies to—
 - (a) foundation schools,
 - (b) voluntary aided schools, and
 - (c) foundation special schools.
- (2) Except as provided by regulations under subsection (4), any teacher or other member of staff who is appointed to work under a contract of employment at a school to which this section applies is to be employed by the governing body of the school.”
- (3) The teaching staff of any school to which this section applies shall include—
 - (a) a person appointed as head teacher, or
 - (b) a person appointed to carry out the functions of the head teacher of the school—
 - (i) pending the appointment of a head teacher, or
 - (ii) in the absence of the head teacher.
- (4) Regulations may make further provision with respect to the staffing of schools to which this section applies.
- (5) Regulations under subsection (4) may, in particular—
 - (a) make provision with respect to the appointment, discipline, suspension and dismissal of teachers and other staff,

(b)make provision with respect to the appointment of teachers and other staff to work at a school otherwise than under a contract of employment,

(c)make provision with respect to staff employed, or engaged otherwise than under a contract of employment, wholly or partly for the purposes of—

(i)the provision of facilities and services under section 27, or

(ii)any other activities which are not school activities but are carried on on the school premises under the management or control of the governing body,

(d)enable teachers and other staff to be employed by the local education authority in prescribed cases, and

(e)confer functions on local education authorities, governing bodies and head teachers.

7. The employment tribunal received written submissions from the claimant, no further submissions were received from the respondent. The claimant submissions were carefully considered and are not repeated herein. The employment tribunal apologises to the parties for its delay in reverting to the parties. This was caused by an administration oversight.
8. This is a case where The Governors of Lubavitch Ruth Lunzer Girls Primary School, who were a previous party to this litigation, had conceded that they were the claimant's employer in accordance with the statutory provision. London Borough of Hackney denied that it was the claimant's employer. There has been no agreement that the claimant would be employed by London Borough of Hackney. It is common ground between the parties that this school is a voluntary aided school. S.36 of the Education Act 2002 as set out above provides that the claimant was employed by the governing body of the school.
9. The claimant refers to The school staffing (England) Regulations 2009. Regulation 20 provides:

Dismissal of staff

20.—(1) Subject to regulation 21, where the governing body determines that any person employed or engaged by the authority to work at the school should cease to work there, it must notify the authority in writing of its determination and the reasons for it.

(2) If the person concerned is employed or engaged to work solely at the school (and does not resign), the authority must, before the end of the period of fourteen days beginning with the date of the notification under paragraph (1), either—

(a)terminate the person's contract with the authority, giving such notice as is required under that contract; or

(b)terminate such contract without notice if the circumstances are such that it is entitled to do so by reason of the person's conduct.

(3) If the person concerned is not employed or engaged by the authority to work solely at the school, the authority must require the person to cease to work at the school.

10. When considering this provision I note that in regulation 20 (1) it is stated that 'Subject to regulation 21, where the governing body determines that **any person employed or engaged by the authority** to work.....' (my emphasis). However I note that the claimant, due to S.36 of the Education Act 2002, was not employed by 'the authority' being London Borough of Hackney. The claimant was employed by the Governors of Lubavitch Ruth Lunzer Girls Primary.
11. Hackney Learning Trust is not a legal entity, it cannot be the claimant's employer and no claims can be brought against it within the employment tribunal.
12. It is reiterated that the employment tribunal has no jurisdiction to order any common law declaration confirming the ongoing status of an employment contract.
13. I consider that neither of the respondents were the claimant's employer for the reasons set out above and that the claims for unfair dismissal against these respondents have no reasonable prospect of success.
14. The claimant has also referred to an unparticularised claim for 'injury to feelings arising from suspension'. I am unable to identify any jurisdiction that would allow the employment tribunal to consider a claim for 'injury to feelings arising from suspension'. In the circumstances the entirety of the claimant claims against both respondents are struck out as they have no reasonable prospect of success.

Employment Judge L Skehan

Dated...29 August 2018.....

Sent to the parties on:

Dated.....29 August 2018.....

For the Tribunal:

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