Case No: 2300787/18

EMPLOYMENT TRIBUNALS

Claimant: Ms N Persaud

Respondent: Charter Harley Street Limited

Heard at: **LONDON SOUTH** **On:** **14 August 2018.**

Before: **Employment Judge Siddall**

Representation
Claimant: In person
Respondent: Mr B Hendley, Consultant

JUDGMENT

1. The correct name of the Respondent is Charter Harley Street Limited
2. The tribunal has no jurisdiction to hear the claim for unfair dismissal as the Claimant does not have two year's service, and it is hereby struck out.
3. The application to amend the claim to include claims for race discrimination and for breach of contract is refused.

REASONS

1. By a claim form dated 2 March 2018 the Claimant brought a claim that she had been unfairly dismissed with effect from 30 November 2017. Her particulars of claim made no mention of any allegations of race discrimination, nor did it make any reference to the fact that the Claimant said she had raised concerns with the Respondent about how a colleague had referred to a client in a way that was racially inappropriate.
2. On the 18 April 2018 the tribunal wrote to the Claimant pointing out that she had less than two year's service, and inviting her to show cause why the claim should not be struck out. The Claimant tells me and I accept that she did not receive that letter.
3. The tribunal sent a further copy of the letter to the Claimant on 16 July.
4. The Claimant replied on 23 July, stating that there were exceptions to the two year rule. She said 'I believe my termination of employment from Charter Harley Street Ltd was both a wrongful dismissal (breach of contract) and unfair dismissal should be considered due to discrimination where no length of service applies'. She also stated that she had raised an issue regarding race in early October.

5. At the hearing today, the Claimant agreed that she did not have two years service with the Respondent, and she agreed that she had been paid for her notice period. On that basis the claims for unfair dismissal and for wrongful dismissal could not proceed.
6. During the course of the hearing, the Claimant stated that the Respondent had dismissed her because of her alleged poor performance. She had obtained legal representation at the time of her appeal against her dismissal in November 2017. She had raised with her representative concerns about the reason for her dismissal, and the fact that this followed soon after she had raised concerns about a racial matter. She had not raised these concerns in her letter of appeal, or at her appeal hearing. She said that this was because there was 'not enough evidence'. She was aware of the possibility of bringing a claim for race discrimination and of the applicable tribunal time limits. When she had lodged her claim, she had decided not to include the allegations.
7. From around January onwards the Claimant had made a number of subject access requests to try to understand the reason for her dismissal. When she considered the material disclosed to her, she concluded that the Respondent's reasons for her dismissal could not be substantiated. It was at that point, she said, that she decided to raise the matter of race discrimination with the tribunal. I asked her if there was any particular document that she wished to point to that suggested that her ethnic background (she is of Indian origin) may have been a factor in her dismissal. She said that there were a number of documents that she could point to, but in general she was relying upon the overall picture revealed by the documentation, which she says did not support the Respondent's reasons for dismissing her. To that extent it was an absence of evidence to justify her dismissal rather than positive evidence from which an inference of discrimination could be made, that had caused her concern.
8. I considered the Claimant's application to amend her claim in accordance with the principles set out in ***Selkent Bus Co Ltd v Moore*** **[1996] UK EAT/151/96.** I noted that this was a substantive application to refer to new facts and to add a fresh claim. Such claim was plainly out of time. I have taken into account the fact that the Claimant was fully aware of the possibility of bringing a claim for race discrimination at the time of her appeal, but she chose not to pursue it either within her appeal or when she lodged her application with the tribunal. I accept that her suspicions about the reasons for her treatment may have hardened over time, but she was not able to point to anything in the documentation which amounted to new information about the concerns she had raised back in October, or the reasons for her treatment. I have also taken note of the fact that the Claimant only raised the possibility of a discrimination claim after the tribunal wrote to her and suggested that her unfair dismissal claim would be struck out.
9. The paramount considerations are the relevant injustice and hardship involved in refusing or granting the amendment. I accept that refusal of the amendment means that the Claimant is left without a claim to pursue in the tribunal. That is regrettable, but I have concluded in this case that the application to include a race claim is very much an after thought and has arisen principally because the Claimant realised that her unfair dismissal claim was likely to be struck out. The full merits hearing was due to take place today and the Respondent had prepared its case and its witness statements on the basis that it would be facing an unfair dismissal claim.

If the amendment is granted, the case will have to more or less start all over again and significant extra costs could be incurred. My decision is that in all the circumstances the application to amend should be refused.

Employment Judge Siddall

Date 14 August 2018.