



# EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

**Mr Hassan Sunbul**

**v**

**DRS Care Homes Limited**

**Heard at:** Watford

**On:** 20 September 2018

**Before:** Employment Judge Bedeau

## **Appearances**

**For the Claimant:** Mr T Ilozue, FRU Representative

**For the Respondent:** Did not attend

## **RECONSIDERATION JUDGMENT**

The rejection of the claimant's unfair dismissal claim on 18 May 2018 is set aside as the claimant is pursuing an automatic unfair dismissal claim for a health and safety reason under s.100(1)(c) Employment Rights Act 1996 for which there is no two years qualifying period of service.

## **REASONS**

1. By a claim form presented to the tribunal on 20 April 2018, the claimant who worked for the respondent as a Care Worker from 29 October 2017 to 4 April 2018, claims against the respondent that he had been unfairly dismissed; wrongfully dismissed; and was not paid for his accrued holiday.
2. He stated that on 18 January 2018, he had a hernia surgery and returned to work on 5 February 2018 when management did not take into account his condition after surgery. He asserted that there was no back to work interview to assess the tasks he was able to do. Instead he was instructed to undertake strenuous manual work which left him in some discomfort much of the time. He complained about his treatment on 28 February 2018 and a meeting took place one week later when he was assured that he would be given lighter duties, but this did not happen.
3. On 29 March 2018, he was told that other members of staff had complained that he had been abusing clients which he denied. On 4 April 2018, he received a warning letter dated 2 April 2018. By letter dated 3 April 2018,

he was informed that he had failed his probation and that his employment had been terminated with immediate effect.

4. In his claim form he clearly stated that he complained about the strenuous nature of his duties following his return to work after surgery, however, the tribunal took the view that he was pursuing a section 98(4) Employment Rights Act 1996 unfair dismissal claim for which there is a requirement that a claimant must have been in continuous employment for at least two years.
5. Mr Ilozue, his representative, submitted that the claimant was not bringing a section 98(4) claim but a claim under section 100(1)(c).
6. I was satisfied having regard to rule 13(1)(a) Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, Schedule 1, that the decision to reject the claimant's unfair dismissal claim was wrong. Consequently, I allow the reconsideration and set aside the rejection.
7. The claimant's case is that he was dismissed under s.100(1)(c) ERA after having made a complaint about being required to carry out strenuous manual work injurious to his health and safety.

## ORDERS

1. The respondent is ordered to respond by way of an amendment to its response, to those matters set out to Mr Ilozue's application for reconsideration dated 26 June 2018, by not later than, **28 days after receipt of this judgment.**
2. The claimant shall serve a schedule of loss by not later than **4pm 4 October 2018** with a copy sent to the tribunal.
3. Standard case management orders will be sent to the parties.

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Employment Judge Bedeau

Date: 19 October 2018

Sent to the parties on: 19 October 2018

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For the Tribunal Office