Case Number: 2303685/17

EMPLOYMENT TRIBUNALS

Claimant **Respondent**

v

Ms P Laker **The Headmaster Partnership**

PRELIMINARY HEARING

Heard at: **London South** **On: 4 October 2018**

Before: **Employment Judge Martin**

Appearances
For the Claimant: **Did not attend – provided written submissions**
For the Respondent: **Mr Meth – Employment Consultant**

RESERVED JUDGMENT

1. The Claimant was not employed by the Respondent
2. The Claimant's application to amend the Respondent to The Headmaster Salon Ltd is successful
3. The Claimant was not employed by The Headmaster Salon Ltd and her claim is therefore dismissed.
4. In the alternative, the Claimant does not have the requisite period of continuous service (two years) required to bring a claim for unfair dismissal and her claim of unfair dismissal is dismissed.
5. The Claimant's claims of sex discrimination were presented outside the primary limitation period and it is not just and equitable to extend time.

RESERVED REASONS

1. This was a preliminary hearing to consider the Respondent's application to strike the claimants claim not set out in its grounds of resistance. Neither the Claimant or her representative came to the Tribunal however, detailed submissions were provided. There was no application for a postponement of the hearing. The Respondent had prepared a bundle of documents comprising 57 pages which was acknowledged by the Claimant in the submissions.

2. The Respondent's application is that the Claimant's claims had been brought out of time; the proceedings had been brought against a Respondent who was not the Claimant's employer; the Claimant did not have two years continuous service to bring a claim of unfair dismissal; the Claimant's claims of sex

discrimination were brought out of time and it was not just and equitable to extend time. The Respondent withdrew its application to strike out on the basis that the Claimant's claim for unfair dismissal was out of time accepting that the effective date of termination was 28 July 2018.

3. I had before me the bundle documents that the Respondent had prepared, and the submissions provided by the Claimant. I heard evidence from Ms Laura Geary, Head of Human Resources.

4. I first considered identity of the Respondent. The proceedings were brought against Headmaster Partnership Limited ("HPL") which is the operations company of Headmasters hairdressers which does not deal with the salons themselves, but only deals with the operations side of the business (HR, accounts, IT, payroll etc). A separate company, Headmasters Salons Limited ("HSL") deals with the salons which the Respondent owns. Ms Geary told the Tribunal that there were about 60 salons of which approximately half were owned by HSL with the other half being franchised. She told the Tribunal that the franchised salons were owned by the franchisee who had their own limited company. The franchisee pays a franchise fee to the Respondent (i.e. not a share of profits) and HPL does human resources, accounts, payroll etc on behalf of the franchisee.

5. In the bundle of documents was the Claimant's original contract of employment. This document clearly states that the legal identity of the Claimant's original employer was Headmaster Salons Limited. The date that employment commenced is shown as 29 October 2013 and the Claimant's place of work was Headmasters Richmond. This contract was signed by the Claimant on 28 October 2013. The Claimant was employed as a receptionist. She is not a qualified hairdresser. The Claimant did not address in submissions who she was originally employed by and my finding is that she was originally employed by HSL not HPL.

6. Within her submissions is an application by the Claimant (who still maintains HPL is the correct Respondent) to amend the Respondent's name to HSL. That application is granted. There was no other application to amend the Respondent or add in another party as a Respondent.

7. The Claimant's case is that in August 2016 she transferred to the East Sheen branch and that her continuity of employment was preserved. In submissions she said that she transferred as a Salon Coordinator with a pay rise and was not advised that because of this transfer that her period of continuous employment would cease. This is at variance with the documents in the bundle. There are various documents that are relevant. First is the letter offering the Claimant the position in East Sheen. This letter is dated 11 August 2016 and "serves as confirmation of your new position". It gives details of the start date, the job title, the branch, the rate of pay and hours of work. This letter concludes:

"Please note, this transfer is not deemed as continuous employment from your original start date – 29/10/13. Therefore you will need to sign a new contract that will be sent to you via email."

8. A contract was sent to the Claimant. The front sheet uses the Headmaster branding and says:

EMPLOYMENT AGREEMENT
(FRANCHISE SALON)
(INCORPORATING WRITTEN STATEMENT OF PARTICULARS)

9. The parties to the agreement are the Claimant and Louise Taylor and Alanna Taylor T/A Headmasters East Sheen. The Claimant signed this document on 6 August 2016. This contract states that the Claimant's period of continuous employment began on 14 August 2016. Pay slips produced in the bundle show the employer to be L&A Taylor Ltd t/a East Sheen. The Claimant accepts that she was issued with a new contract of employment as in the bundle and that it states the period of continuous employment commenced on 14 August 2016. The Claimant's argument is that it was never explained to her by the Respondent what this meant for her in terms of access to employment rights and that if it had been explained to her she would not have signed it.

10. In response to this submission the Respondent says that transfers of this type from owned salons to franchised salons are frequent and that in all transfers of this type, the franchised company (which will always be a limited company in its own right) assumes its position as the employee's employer and that the period of employment with HSL is never continuous with employment in the franchise.

11. The Claimant relies on s231 Employment Rights Act 1996:

> **"for the purposes of this Act any two employers shall be treated as associated if:**
> **(a) One is a company of which the other (directly or indirectly) has control or**
> **(b) (b) both are companies of which a third person (directly or indirectly) has control; and 'associated employer' shall be construed accordingly.**

The Claimant also relies on s297 Trade Union and Labour Relations (Consolidation) Act 1992 which uses the same definition.

12. The Claimant submits that the Respondent has not shown the relationship between it and the franchised companies and submits this is a fact sensitive matter best left to a final hearing. I had the benefit of hearing from Ms. Geary who confirmed that neither HSL or HPL owned any shares in the franchised company, and as noted above did not take a profit share from the franchised company only a franchise fee. I consider this is a matter that can be dealt with in a preliminary hearing of this type. The Claimant could not pay for legal representation, however this did not stop her from attending the hearing in person to give evidence. In the absence of any evidence from the Claimant I accept the evidence given by Ms. Geary.

13. Taking all the evidence into account, I find that the Claimant's employment with HSL ceased when she moved to the East Sheen Branch in August 2016. She was then employed by a separate legal entity over which the Respondent had no control and her continuity of service ceased at this time with continuity with L&A Taylor Ltd commencing on 14 August 2016 as set out in the written contract.

14. This decision has two consequences. First HSL was not the Claimant's employer at the time this claim relates to (and L&A Taylor Ltd are not parties to this claim) and second, even if it was (or L&A Taylor Ltd was a party to the claim), the

Claimant did not have the requisite two years' service required to bring a claim of unfair dismissal as required by s108 Employment Rights Act 1996. The Claimant's claim of unfair dismissal is therefore dismissed.

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Employment Judge Anne Martin
8 October 2018