



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant
MS D TOOMBS

AND

Respondent
CELTIC MANOR RESORT (R1)
OFFICE ANGELS LTD (R2)

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT: CARDIFF ON: 30TH OCTOBER 2018

EMPLOYMENT JUDGE MR P CADNEY

MEMBERS:

APPEARANCES:-

FOR THE CLAIMANT:- IN PERSON

FOR THE RESPONDENT:- MS E JONES (R1)
 MS G ROCKALL (R2)

JUDGMENT

The judgment of the tribunal is that:-

1. The claimant's claims of unfair dismissal, unlawful deduction from wages, and unpaid notice pay against Celtic Manor Resort are dismissed.
2. The claimant's claims of unfair dismissal and unlawful deduction from wages against Office Angels Ltd are dismissed.

Reasons

1. The case comes before the tribunal today to determine both respondents' applications for the claims to be struck out and/or a deposit ordered.
2. There is no dispute that the claimant was employed by Office Angels Ltd. According to Office Angels she commenced employment on 4 January 2018. The claimant's case is that she commenced employment in July 2017. It is not in dispute that in the course of her employment she was assigned to work at Celtic Manor Resort for a period beginning 15th February 2018. This was pursuant to an agreement between Office Angels Ltd and Celtic Manor Resort for the provision of agency staff.
3. On 7 March 2018 Office Angels contacted the claimant to notify her that Celtic Manor Resort had terminated the agency agreement in respect of her. The basis for this was an allegation that she used a computer password on or about 6 March 2018 to access files to which she should not have accessed in the course of her employment. Accordingly Celtic Manor Resort decided that it no longer wished to use her services as provided by Office Angels. At that point Office Angels were unable to offer her any alternative work. The claimant alleges that the complaints about her are false, unfair and unreasonable, and that it was therefore equally unfair and unreasonable for Celtic Manor Resort no longer to allow her to attend its premises, and equally unreasonable of Office Angels to accept that request.
4. By a claim form submitted on 6 May 2018 the claimant brought claims of unfair dismissal, unpaid notice pay, arrears of pay and other payments against both respondents. In a subsequent email dated 15 June 2018 claimant clarified that she was pursuing a claim against both respondents in respect of three days loss of pay amounting to £180. In addition she brings claims against both for loss of earnings in the minimum amount of £5000.
5. Both respondents contend that the claims against them should be struck out as having no reasonable prospect of success and/or a deposit ordered as a condition of the claimant being permitted to pursue the claims on the basis they have little reasonable prospect of success.
6. Celtic Manor Resort contends that it had a contractual relationship with Office Angels for the provision of agency staff. They never had any contractual arrangement with the claimant, and unquestionably no contractual employment relationship. It follows automatically that it could not be legally responsible for any unfair dismissal, or liable to pay notice pay as the claimant had never been in their employment. Similarly if there is any shortfall in pay that must be the responsibility of her actual employer Office Angels. Accordingly they submit that as there is no legal mechanism by which any liability could attach to them for any of the claimants claims, they all, of necessity, have no reasonable prospect of success and the tribunal is bound to dismiss them.
7. Office Angels submit that the claim for unfair dismissal is doomed to failure as the claimant has on any analysis less than two years continuous service. The dispute

outlined above is that the claimant asserts that she commenced employment in July 2017, but that there was a two month break in the autumn of 2017. Given that the contract is a zero hours contract and there is no obligation to provide any employment for any particular period it appears to me that it may be arguable that there was a subsisting umbrella contract over that period, but on any analysis that does not give the claimant sufficient length of service. Secondly Office Angels assert that she took up alternative employment in March 2018 and was not in fact dismissed in any event, and that even if not dismissed on jurisdictional grounds her claim is bound to be dismissed for this reason as well. That would equally doom her claim to notice pay to failure. Her claim that she is entitled to three days loss of pay is governed by clause 3 of the contract of employment which provides for the termination of the assignment in these circumstances and it follows that there is no contractual basis for the amounts claimed nor any claim for unlawful deduction from wages and that claim is also doomed to failure.

8. The claimant submits in broad terms that she has been the victim of a significant injustice. Her case is that the allegation which led to the termination of the assignment is false and it was therefore unfair of Celtic Manor Resort to terminate the engagement. Office Angels should not simply have accepted the decision of Celtic Manor Resort but should have challenged it on her behalf and it was therefore unfair of Office Angels not to provide her with work. It is essentially a generalised complaint of unfair treatment in the workplace.
9. The difficulty for the claimant is that the tribunal has no overarching jurisdiction to determine whether an employee has been treated fairly or unfairly. To give one example if an employee still in employment receives a disciplinary sanction short of dismissal which that employee believes to be unfair, the tribunal has no jurisdiction in respect of it.
10. In my judgment the submissions of Celtic Manor Resort must be correct. Given that there is no contractual relationship between them and the claimant there can be no claims for unfair dismissal, notice pay or loss of earnings, It follows the claims against Celtic Manor Resort have no reasonable prospect of success and must be dismissed.
11. As against Office Angels Ltd, on any analysis the claimant has less than two years continuous service and the claim of unfair dismissal is bound to fail. In respect of the claim for three days' pay it appears to me unarguable that there has been no contractual breach and by definition no unlawful deduction from wages given the terms of the contract.
12. In respect of notice pay it seems to me that the position is slightly different. Whether she was entitled to notice pay and if so for what period would depend on the resolution of the factual questions of whether she had in fact been dismissed, and for how long she had been employed. In my judgment the contention that she was dismissed is relatively weak, but in the absence of making specific findings of fact, I cannot go so far as to say that it has no reasonable prospect of success. However it seems to me to have little reasonable prospect of success. In relation to the notice pay claim as

against Office Angels the claimant will be ordered to pay a deposit of £100 as a condition of being permitted to pursue that claim.

**Judgment entered into Register
And copies sent to the parties on**

.....24 November 2018.....

.....
for Secretary of the Tribunals

EMPLOYMENT JUDGE Cadney

Dated: 14 November 18