EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mrs R Mamman	v	Compass Group UK & Ireland Ltd

Heard at: Watford **On**: 1 March 2019

Before: Employment Judge Smail

Appearances

For the Claimant: In person – representing herself.
For the Respondent: Mr A Joicey, Employment Relations Consultant

JUDGMENT

1. The claimant's claims are dismissed.

REASONS

1. By a claim form represented on 20 March 2017, the claimant claimed sex discrimination in the form of sexual harassment, unauthorised deductions from earnings, notice pay and 2-4 weeks' pay in respect of not being issued with a written statement of particulars of employment. By an unless order dated 21 November 2017, the claimant had until 6 December 2017 to respond to specific questions about her sex discrimination and unauthorised deductions claims. Whilst some information, I understand, was received by the respondent on 6 December 2017, the specific questions were not answered. By letter dated 11 January 2018, it was confirmed that the claims of unauthorised deductions of earnings, discrimination and harassment had all been struck out on 6 December 2017. The claimant then sent in correspondence on 19 January and 16 February 2018. The Tribunal confirmed that it was taking no further action on 25 March 2018. There followed further correspondence from the claimant on 14 April 2018, 24 April 2018 and 15 May 2018. Employment Judge Bedeau concerned on 20 May 2018 that the claimants remaining claims were wrongful dismissal, ie notice pay and failure to provide a written statement of employment particulars. The claimant's correspondence is long and regrettably comes across as confused and rambling. There are many religious reference, the relevance of which is

not obvious. The claimant has not obtained relief from sanction from the strike outs on 6 December 2017 and so we are left with the two remaining claims today.

2. The respondent does not show that the claimant was issued with a written statement of employment particulars. As I read section 38 of the Employment Act 2002, the claimant needs to win her wrongful dismissal claim before that matter can be looked at. The respondent had issued a casual contract on 4 April 2016 which fell short of a written statement of terms and particulars, a copy that would have been a statement is in the bundle, but the respondent does not show that it was issued to the claimant.

3. <u>The Claim for a Notice Payment</u>

   3.1 The respondent accepts it dismissed the claimant on 29 November 2016 without notice. The claimant had worked for the respondent as a night chef manager from 15 April 2016 until 29 November 2016. The respondent says it was entitled to dismiss without notice because in repudiatory breach of the implied term "well and faithfully to serve the respondent", the claimant had committed two serious breaches of health and safety.

   3.2 First on 18 September 2016, she had left unsupervised, a hand held industrial food blender with its blades running in a saucepan of food.

   3.3 Secondly on 10 October 2016, she had baked a Bakewell tart but left them available to staff, without leaving an allergy warning that they contained nuts.

4. The respondent offers catering services to supermarket distribution centres and supermarkets amongst other things. During the week, the claimant worked at Ocado. At weekends it seems she worked at Sainsburys Distribution Centre, Rye Park in Hoddesden.

5. The hand blender incident, amongst other incidents which were not relevant, led Sainsburys on 19 September 2016, to state that the claimant could not return there. I am unclear where the Bakewell tart incident happened, but neither incident is disputed by the claimant so it does not matter where the latter event took place. There is a sadness about the Bakewell tart incident, because I accept from the claimant, she was asked by staff to do them a favour to bake cakes within a 2 hour period for their 3pm tea break. She did that favour, some of the Bakewell were consumed and some were left for the following shift manager, and noticed rightly that they had not been labelled with an allergy warning, but I do accept from the claimant that to some extent she baked these cakes as a favour to those who requested them, but that does not excuse the allergy failure.

6. The claimant was subject to a disciplinary interview on these matters with Mr Dan Smith on 29 November 2016. Mr Smith has given evidence before me today. He told me that he went into the meeting thinking that warnings might

suffice but was disappointed by the claimants' reaction to the extent that he felt that the respondent could no longer trust her in the position. I have read the minutes of the disciplinary hearing. The claimant disputed that leaving the blender on was a risk and it was pointed out to her that there were two other members of kitchen staff who could have come across it, for example in an effort to switch it off. The claimant, thought, did not agree that she created a risk. As to the allergy matter, she stated that no one actually had an allergic reaction, intimating that in the absence of such, too much of a fuss was being made. She ended the interview by saying that the disciplinary amounted to a racist attack. Mr Smith said in the interview that he was flabbergasted about that and I accept that a white employee also would have been challenged about these health and safety matters.

7. As the claimant did not acknowledge the risks she had created, Mr Smith decided to dismiss her.

8. In my judgment the respondent was entitled to reach that decision. Allergy risks are well known and the claimant's attitude to do it was dismissive. She also breached policy by leaving a rotating blade unsupervised. It may well be that her attitude in the disciplinary was the thing that got her dismissed but I am satisfied that the two breaches of health and safety amounted to a repudiatory breach of contract. Someone in her position was subject to health and safety expectations and she had breached the implied term well and faithfully to safely perform her contract by committing those breaches, compounded by a lack of insight at the interview.

9. This decision, I am satisfied, had nothing to do with the claimant's claim that she had been subjected to unwanted sexual harassment from the chef manager at Ocado, Mr Murphy. Mr Murphy had left responsibility for the claimant on 15 September 2016. The claimant only raised the matter of sexual harassment within 24 hours, as I understand it, of the disciplinary hearing. It is true that the Sainsbury's e-mail asking for the claimant to be removed was sent to Mr Murphy but he would have had a duty to escalate that e-mail to HR or to other managers in any event.

10. On the balance of probability the claimant was dismissed solely for the health and safety matters. As the claimant loses her notice claim, I cannot then compensate her for not having been issued with written particulars of employment. Accordingly, these claim fail.

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Employment Judge Smail

Date: ……7 May 2019……..

Sent to the parties on: ..15 May 2019....

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For the Tribunal Office