



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms Njie

**Respondent:** Universal Care Ltd

**Heard at:** Watford Employment Tribunal (in private)

**On:** 7 February 2019

**Before:** Employment Judge Daniels (sitting alone)

**Appearances:**

For the claimant: Mr J Abura

For the respondent: Mr P Cullimore

## PRELIMINARY HEARING JUDGMENT

1 The Employment Tribunal has no jurisdiction to hear a claim for unfair dismissal. The Claimant does not have two years' continuous service and has no right to claim unfair dismissal. Further, the claimant was not an employee within the meaning of s230 ERA 1996 and her claim was submitted out of time. The unfair dismissal claim is dismissed.

2 The Claimant was not employed under a contract of employment within s230 EWRA 1996, but was a worker within the meaning of s230 ERA 1996.

3 The Employment Tribunal has no jurisdiction to hear a claim for breach of contract. The claimant was not an employee within the meaning of s230 ERA 1996 and/or such claim was submitted out of time.

# ORDERS

## Further case management hearing

1. A further case management hearing will be held before an Employment Judge sitting alone at the Employment Tribunals, Watford on 1 May 2019 for 3 hours starting at 10 am or as soon as possible afterwards.

## The issues

2. The issues between the parties which potentially fall to be determined by the Tribunal are as follows:

## Time limits / limitation issues

3. Were all of the claimant's complaints of discrimination presented within the time limits set out in sections 123(1)(a) & (b) of the Equality Act 2010 ("EQA")/sections 23(2) to (4), 48(3)(a) & (b) of the Employment Rights Act 1996 ("ERA")? Dealing with this issue may involve consideration of subsidiary issues including: whether there was an act and/or conduct extending over a period, and/or a series of similar acts or failures; whether it was not reasonably practicable for a complaint to be presented within the primary time limit; whether time should be extended on a "just and equitable" basis; when the treatment complained about occurred etc.

## 4 Disability

Was the claimant a disabled person in accordance with the Equality Act 2010 ("EQA") at all relevant times because of the following condition(s): namely a visual impairment and/or sickle cell? If so, from/over what date/s?

## 5 EQA, section 13: direct discrimination because of race/religion/age/disability

5.1 Has the respondent subjected the claimant to the following treatment:

- a. Alleged comments by an unspecified line manager in around October 2017 that it was not right for people of muslim faith to work in the community.
- b. Alleged refusal/s of the Home care Manager to answer or respond to the claimant's enquiries about her case on the phone;

- c. The requirement that she take those she was caring for (Ms Enever and/or Ms Smith) to church on a Sunday;
- d. The process by which the engagement was ended; and/or
- e. The termination of the engagement on 31 January 2018.

5.2 Was that treatment “less favourable treatment”, i.e. did the respondent treat the claimant as alleged less favourably than it treated or would have treated others (“comparators”) in not materially different circumstances? The claimant relies on hypothetical comparators.

5.3 If so, was this because of the claimant’s race and/or religion and/or age and/or disability?

## **6 EQA, section 26: harassment related to race and/or religion**

6.1 Did the respondent engage in conduct as follows:

- (a) Alleged comments by an unspecified line manager in around October 2017 that it was not right for people of muslim faith to work in the community and/or
- b. The requirement that she take those she was caring for (Ms Enever and/or Ms Smith) to church on a Sunday;

6.2 If so, was that conduct unwanted?

6.3 If so, was it of a racial or religious nature?

6.3.1 Did the conduct have the purpose or (taking into account the claimant’s perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect) the effect of violating the claimant’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

## **7 Unauthorised deductions**

Did the respondent make unauthorised deductions from the claimant’s wages in accordance with ERA section 13 by and if so how much was deducted?

## **8 Deposit Order**

In view of the issue of a separate and detailed deposit order upon the claimant, case management directions and listing will be dealt with after the time limit for payments pursuant to the Order.

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Employment Judge 14

March 2019

Sent to the parties on:

22 March 2019

For the Tribunal:

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7.4R Preliminary hearing - deposit order and payment guidance note – respondent - rule 39. 01/01/14