



EMPLOYMENT TRIBUNALS

Claimant: Mr K Misevicius

Respondent: Greenyard Fresh UK Limited

Heard at: Lincoln **On:** Monday 17 June 2019

Before: Employment Judge Blackwell

Members: Mrs D Newton
Mr C Goldson

Representatives

Claimant: In Person

Respondent: Mr M Bloom, Solicitor

JUDGMENT

It is the unanimous decision of the Tribunal that the claim of unfair dismissal is dismissed because the Tribunal does not have jurisdiction to hear it.

REASONS

1. We heard evidence from the Claimant himself and for the Respondents Ms Wood, their HR Manager. The issue we have to determine is whether Mr Misevicius has sufficient service pursuant to Section 86 of the Employment Rights Act so as to enable him to bring a claim of unfair dismissal. He has to have no less than 2 years of continuous service.

Findings of Fact

2. It is not in dispute that Mr Misevicius physically worked at Greenyard's premises from 2 June 2013 until 30 May 2018. In place at all relevant times was an agreement between ME and A Oliver the labour producer and Univeg Katopa Limited, the labour user. Univeg became Greenyard Fresh UK Limited on 31 December 2016. The agreement is at page 262. Although we do not have a written record Mr Misevicius accepts that he was an employee of ME and A Oliver until 8 August 2016. He also accepts that it was the Oliver's that sent him to work at Greenyard.

3. In 2015 Mr Misevicius applied for employment at Greenyard but was unsuccessful. He tried again in 2016 and in his application for employment he describes himself as an employee of Oliver's (see 259). This time he was successful and was offered employment and the commencement date of that employment was 8 August 2018.

4. Mr Misevicius resigned by letter of 20 April 2018, page 120 with an effective date of termination of 20 May 2018. We accept that during his time at Greenyard he performed broadly the same work and was say for disciplinary matters under the day to day control of Greenyard. Up until the commencement of his employment with Greenyard he was paid by the Oliver's who deducted National Insurance and income tax. Where appropriate the Oliver's also paid holiday pay and sick pay. If Mr Misevicius was unable to work for whatever reason the Oliver's sent an alternative worker.

Our Conclusions

5. The only way in which Mr Misevicius can establish that he has sufficient continuity of service is if it is necessary to imply a contract of employment as between him and Greenyard there being no express agreement between them.

6. The relevant case law was summarised and considered in the Court of Appeal case of **James v the London Borough of Greenwich**. In that case Mrs James was supplied to work for the London Borough by a number of different agencies.

7. At no time was she an employee of any of the agencies unlike the circumstances here. At paragraph 40 of that decision which is part of the judgment of Lord Justice Mummery he said that "the correct test was whether if in the absence of an express employment contract an employed contract of employment between the worker (in this case Mr Misevicius) and the end user (in this case Greenyard) may be deduced from the conduct of the parties and from the work done". The Court of Appeal concluded that the Tribunals beneath it had correctly applied the law and found that it was unnecessary to imply a contract of employment.

8. It was also held that there were no grounds for treating the express contracts ie the contract between Mrs James and the agencies or the contract between the agencies and the Council as anything other than genuine.

9. Was the contract of employment between Mr Misevicius and the Oliver's genuine? We have no reason to doubt that it was. Was the contract to which we have already referred between the Oliver's and Greenyard genuine? Again we have no hesitation in saying that it was. We accept not only the Claimant's evidence but also that of Ms Green as to the carrying out of that contract.

10. It therefore follows that there are no grounds upon which it is necessary to imply a contract between Mr Misevicius and Greenyard and it follows from that that he does not have the necessary continuity of employment to bring a claim for unfair dismissal and we dismiss that claim for that reason.

Employment Judge Blackwell

Date 27 June 2019

JUDGMENT SENT TO THE PARTIES ON

.....

.....
FOR THE TRIBUNAL OFFICE