



EMPLOYMENT TRIBUNALS

Claimant: Mrs A Nkemnacho

Respondents: (1) BS Project Services limited T/A BS Social Care
(2) L&Q Living Limited

Heard at: East London Hearing Centre **On:** 2 October 2019

Before: Employment Judge C Lewis - sitting alone

Representation

Claimant: In Person

Respondents: (1) Mr S Luximon - HR Business Partner
(2) Ms C Jennings - Counsel

JUDGMENT

The claim is dismissed. The Claimant lacks the required qualifying service under section 108 of the Employment Rights Act 1996 to bring a complaint of unfair dismissal.

REASONS

These are the written reasons for the decision given orally in the presence of the parties

1. BS Social Care is an employment business which supplies temps to L&Q Living amongst other clients in the care sector. The Claimant has brought a complaint of unfair dismissal against BS Social Care and a claim of race discrimination against L&Q Living. The claim against L&Q Living is not affected by this judgment.
2. I had to decide a preliminary issue of whether the Claimant had the requisite qualifying service to bring a complaint of unfair dismissal against the First Respondent BS Social Care.
3. The First Respondent care asserted that the Claimant did not have two years' service. It accepted that she was an employee of theirs from the date of her first engagement in July 2018 in accordance with the terms of the contract. The contract was in the bundle of documents [page 69] and was signed and dated 9 May 2018. The Claimant relied on an earlier period of employment claiming continuity between the two. The First

Respondent denied that the prior period was under an employment contract, maintaining that it was under a contract for services for a temporary worker. In any event they pointed to there having been a gap from the end of the prior period of engagement which finished at the end of 2016 until the Claimant reapplied to work for them in May 2018 and started her first engagement on 2 July 2018.

4. There was a dispute as to the effective date of termination with the First Respondent relying on 12 April 2019 and the Claimant asserting a dismissal on 12 February 2019 but even the later date does not provide sufficient qualifying service if the Claimant's employment only started in July 2018.

Findings of fact

5. The Claimant gave evidence and was cross examined. Although in her claim form and in her closing submissions she asserted that there was a continuous period of employment, in evidence she accepted that she had worked for the First Respondent under a contract of service on assignments as a temporary worker between 2005 and 2016.
6. The Respondent pointed to its pay records [page 83 of the bundle] which showed her last payment in the earlier period was the last week of December 2016, there was then a gap to the 32nd week of 2018 which corresponds to a payment from July 2018 which was the next engagement. The First Respondent accepted that commenced her period of employment with them in July 2018.
7. The Claimant accepted that she had left the agency at the end of 2016. She then applied to re-register with them in May 2018. In her registration form signed and dated on 9 May 2018 [bundle page 67-68], she stated the reason for leaving as "permanent job" and named as her first referee Outward Housing giving her dates of employment with them as from June 2016 to 2018, and the reason for leaving as "contract ending". The Claimant told me that she was placed by BS Social Care with Outward Housing as an agency worker in 2016 and then after some negotiation between Outward Housing and BS Social Care she was taken on as an employee by Outward Housing. She remained employed by them until Outward Housing lost a contract from Redbridge Council to provide supported housing. The Claimant then approached BS Social Care looking for further work and filled out the registration form and accepted the terms of the contract [page 69]. The Claimant accepted that she didn't do any work for BS Social Care during period when she was employed by Outward Housing.
8. I am satisfied on the evidence before me and on the Claimant's own admission that she does not have two years' continuous service.
9. It is not necessary for me to decide whether her prior engagement with the First Respondent was under a contract of employment or not, as the gap between the two contracts would break any period of continuous employment in any event. The earliest date the Claimant can point to as employment by the First Respondent was 2 July 2018. The contract signed in May 2018 provides that continuous service would commence on

the first day of any assignment.

10. The claim therefore falls to be dismissed for want of jurisdiction by the tribunal
11. The claim for race discrimination against L&Q Living is not affected by this judgment and those proceedings continue before the employment tribunal and are the subject of separate case management orders.

Employment Judge C Lewis

Date 4 November 2019