



EMPLOYMENT TRIBUNALS

Claimant: Mr DK Westhonga

Respondent: Securitas

Heard at: London South Employment Tribunal **On:** 11 September 2019

Before: Employment Judge Ferguson (sitting alone)

Representation

Claimant: In person

Respondent: Ms D Muiyi-Opaleye

JUDGMENT having been sent to the parties on 7 October 2019 and written reasons having been requested by the Claimant in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

1. By a claim form presented on 4 January 2019, following a period of early conciliation from 9 November to 23 December 2018, the Claimant brought a complaint of unfair dismissal. He gave the start date of his employment as July 2018 and attached a letter to his manager in which he had complained about not being paid during his suspension from 10 October 2018.
2. On 7 February 2019 the Tribunal wrote to the Claimant noting that it appeared from his claim form he had been employed for less than two years. The Claimant was informed that an Employment Judge was proposing to strike out the claim and he was given until 21 February 2019 to give reasons in writing why it should not be struck out.
3. The case was also listed for a final hearing on 11 September 2019 and case management orders were made.
4. On 9 February 2019 the Claimant responded to the strike out warning, saying that his claim was in fact “about suspension with pay which is against the terms and conditions of my Zero Hour Contract”. He attached an amended version of page 6 of the ET1 in which he ticked the unfair dismissal box but wrote

“(suspended)” immediately afterwards. He also ticked the box for arrears of pay.

5. The Respondent responded to the claim on 7 March 2019 saying that the Claimant had transferred to the Respondent via TUPE in July 2018. He was engaged on a zero hours contract and had continuous service from 4 April 2018. It denied that the Claimant was owed any payments and argued that the Tribunal has no jurisdiction to consider the unfair dismissal complaint.
6. The Claimant wrote to the Tribunal on 26 March 2019 clarifying that his complaint was not about dismissal but was about pay during his suspension.
7. On 30 May 2019 the Tribunal wrote to the Claimant saying that Judge Andrews had considered the Claimant’s response to the strike out warning and was of the view that there was no valid claim before the Tribunal. The claim would therefore be struck out unless the Claimant stated in writing within 7 days why he disagreed. Case management orders were suspended.
8. The Claimant responded on 31 May 2019 saying again that his case was not about dismissal. He said “It is established my Lord that under Zero Contract Hour suspension must not include pay. My suspension was without pay.”
9. At the hearing on 11 September 2019 the Claimant confirmed that he did not wish to bring a complaint of unfair dismissal. He did not dispute that the Respondent was entitled to suspend him, but complained that “they withheld my salary”. He accepted he had a zero hours contract, and that the contract did not say anything about pay during suspension. He appeared to suggest that, contrary to what was said in the contract, he should have been paid an amount during his suspension equivalent to his average pay in the previous 42 weeks. He was not able to explain the basis on which he was entitled to such payment.
10. Given that the Claimant was unable to explain the basis of his claim and no valid claim could be discerned from the claim form or subsequent correspondence, I considered that there was no valid claim and/or any complaint of unauthorised deduction from wages or breach of contract had no reasonable prospect of success. The claim was therefore struck out.

Employment Judge Ferguson

Date: 7 January 2020