



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs L M Ladron de Guevara Macera

**Respondent:** Zephus Limited (part of the Bureau Van Dijk Group)

**Heard at:** Manchester

**On:** 7 February 2020

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

## REPRESENTATION:

**Claimant:** In person

**Respondent:** Mr K Wilson, Counsel

# JUDGMENT

The following claims are struck out because they have no reasonable prospect of success:

- (a) The complaint of unfair dismissal;
- (b) The complaint of breach of contract in relation to notice pay; and
- (c) The complaint of unlawful deductions from pay in respect of pay for the period between 1-10 June 2019.

# REASONS

1. This was a public preliminary hearing convened to consider an application by the respondent to strike out the claims pursued by the claimant on the basis that they have no reasonable prospect of success. The power to strike out a claim on that basis arises under rule 37(1)(a). I heard oral submissions from both parties and considered a number of documents. The following claims were struck out for the following reasons.

### **Unfair Dismissal**

2. Unfair dismissal complaints are brought under Part X of the Employment Rights Act 1996. Section 108 provides that the right to complain of unfair dismissal does not apply to the dismissal of an employee unless she has been continuously employed for a period of not less than two years ending with the effective date of termination.

3. In this case the claimant was employed between 7 January 2019 and 10 June 2019, a period of just over five months

4. In an effort to identify whether there was any prospect of the claimant relying on one of the specific reasons for dismissal which do not require two years of employment, I asked the claimant what she thought was the real reason for her dismissal. She said she did not know.

5. I concluded that none of the exceptions to the two year qualifying period arose, and therefore that this claim had no prospect of success. I struck it out.

### **Breach of Contract – Notice Pay**

6. The claimant was employed under a written contract of employment dated 14 December 2018 which appeared in the documents provided by the respondent. The claimant had signed it on 18 December 2018. Clause 2 confirmed that employment began on 7 January 2019, and clause 12 provided that the first six months would be a probationary period during which employment could be terminated by two weeks' notice in writing. Clause 16 entitled the company to make a payment in lieu of notice while terminating employment with immediate effect.

7. The claimant accepted that she had been paid in lieu of two weeks' notice. Her complaint is that she should have been given four weeks' notice.

8. That was a complaint with no reasonable prospect of success given the plain terms of the signed contract of employment. I struck it out.

### **Deductions from Pay 1 - 10 June 2019**

9. The claimant wanted to claim that she had not been paid for the last ten days of her employment. Her payslip was not issued until 25 June 2019. She said that she had not received payslips consistently nor any payslip for January 2019. The payment made to her for her first part month of employment had been "outside payroll". I accepted these facts at face value.

10. Nevertheless, it seemed to me her claim had no reasonable prospect of success. She was paid for January, just not given a payslip because it was not a complete month. More importantly, the payslip issued on 25 June 2019 showed basic pay of £403.85. That was a figure derived by dividing her annual salary of £17,500 by 52, and then dividing that figure by five to arrive at a figure for each working day. That figure is £67.3077. The period between 1 – 10 June 2019 accounted for six working days, and six times that daily rate is £403.85.

11. I concluded that there was no reasonable prospect of the claimant establishing that she had not been paid between 1 – 10 June 2019 and I struck out that claim.

**Remaining Claims**

12. The remaining claims were the subject of a Case Management Order which will be issued to the parties separately.

Employment Judge Franey

14 February 2020

JUDGMENT AND REASONS SENT TO THE PARTIES ON

26 February 2020

FOR THE TRIBUNAL OFFICE

**Public access to employment tribunal decisions**

Judgments and reasons for the judgments are published, in full, online at [www.gov.uk/employment-tribunal-decisions](http://www.gov.uk/employment-tribunal-decisions) shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.