



EMPLOYMENT TRIBUNALS

Claimant Miss L Hinshelwood

Respondent: Pebbles Care Ltd

Held at: Leeds

ON: 11 March 2020

Before: Employment Judge Evans

Representation:

Claimant: Miss N Mohammed, ex manager

Respondent: Mrs S Morgan, HR manager

JUDGMENT

The Claimant's claim for breach of contract fails and is dismissed.

REASONS

1. The Claimant was employed by the Respondent as a residential childcare officer from 14 January 2019 until 6 November 2019.
2. The Claimant was employed under the terms of a contract dated 4 February 2019. This contract provided for a six-month probationary period which could be extended by a further three months (clause 2). The contract did not provide for any further or longer extension of the probationary period.
3. On 7 November 2019 the Respondent wrote to the Claimant stating as follows:

As you have been spoken to many times during your probationary period with little or no improvement in practice or learning from reflection the decision was taken to terminate your contract of employment with immediate effect.

You will be paid your basic salary from 1st to 6th November inclusive, 4 weeks' pay in lieu of notice, any additional hours or sleep shifts worked in October/November and any accrued but, as yet untaken annual leave...

4. Following the dismissal the Claimant brought claims for unfair dismissal and wrongful dismissal (breach of contract). The claim of unfair dismissal was dismissed on 19 December 2019 because the Claimant had not completed the two years' service which is necessary in order to bring a claim of unfair dismissal.
5. At the beginning of the hearing on 11 March 2020 I established the following from the parties:-
 - a. The Respondent accepted that the Claimant had completed the probationary period (the contract did not provide for its extension beyond nine months).
 - b. The Respondent accepted that it had not dismissed the Claimant for gross misconduct: as the letter of 7 November 2019 made clear, the Respondent had exercised its right under the contract of employment to dismiss the Claimant without notice and to make a payment in lieu of notice.
 - c. The Claimant accepted that she had received a payment in lieu of notice.
6. I explained to the Claimant that I could not see how there had been a breach of contract. The Respondent was entitled to dismiss without notice and to make a payment in lieu under the terms of the contract and this was what it had done. If the Respondent had dismissed summarily for alleged gross misconduct and made no payment in lieu of notice, then I would have had to consider if the Respondent had been entitled to do this (that is to say I would have had to decide whether the Claimant had committed an act of gross misconduct) but the Respondent had not done this.
7. I asked the Claimant whether in the circumstances she could identify a breach of contract for me to adjudicate upon and her representative indicated that she could not. I therefore explained to the parties that I intended to dismiss the claim and give reasons as set out above and invited submissions on this. Neither party raised any objection to me giving Judgment in the terms set out above.
8. I therefore dismiss the claim because the Respondent dismissed the Claimant in accordance with the terms of her contract by making a payment in lieu of notice. There was no breach of contract.

Employment Judge Evans

Date: 14 March 2020