



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4122792/2018

Held in Glasgow on 22 May 2019

Employment Judge: M Sutherland

Stacey Derrick

**Claimant
In Person**

NIC Services Group Limited

**First Respondent
Represented by:
S Robinson
- Solicitor**

Wm Morrison Supermarkets plc

**Second Respondent
No appearance**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Tribunal is that –

- The Claim against the First Respondent is dismissed because the Claimant does not have the necessary qualifying service to bring a complaint of unfair dismissal.
- The Claim against the Second Respondent is dismissed following withdrawal of her claim.

REASONS

Introduction

E.T. Z4 (WR)

1. This is a claim of unfair dismissal. An open preliminary hearing was fixed to determine the dates of the claimant's employment with each Respondent and whether the Claimant had requisite qualifying service.
2. The Claimant was unrepresented and appeared in person. The First Respondent was represented by Mr Robinson, Solicitor. The Second Respondent made no appearance (although it subsequently transpired their representative had understood the hearing was starting in the afternoon).
3. The Claimant explained the relevance of the Second Respondent to her claim. She explained that the Second Respondent, as a third party, had put pressure on the First Respondent to dismiss her and she required them to give evidence at a final hearing. Having established with the Claimant the scope for their attendance as a witness rather than as a party to the proceedings the Claimant withdrew her claim against the Second Respondent which claim falls to be dismissed.
4. The Claimant gave evidence on her own behalf. The First Respondent did not call any witnesses.
5. The parties lodged an agreed set of documents. Additional documents were lodged at the start of the hearing.
6. The Respondent made closing submissions. The Claimant did not make submissions.
7. It was agreed by the parties that her effective date of termination was 26 October 2018. It was not disputed that her employment between her start and termination date was a single period of continuous employment. The only fact in dispute was the day on which the Claimant started work.

Findings in fact

8. The Tribunal makes the following findings in fact:
9. The Claimant was employed by the First Respondent as a cleaner. Her line manager was Adam McNeil ('AM, LM'). She worked 18 hours a week - 7pm to 10pm Monday to Saturday with Sunday off.

10. An Engagement Form was ordinarily completed in respect of cleaning staff employed by the First Respondent. It is a pre-typed form which when completed generates two carbon copies as well as the original. It contains details of the terms and conditions of employment. It is completed with the employee's details and training record and is signed by the employee and their line manager. The Engagement Form is undated but includes a box to be completed with the "start date".
11. Two Engagement Forms were completed by the AM, LM and signed by him and the Claimant. Neither form was dated. One Engagement Form contained a start date of 23 October 2016 with training completed on 23 October (the '23 October Form'). The other contained a start date of 29 October 2016 with training completed on 29 and 30 October 2016 (the '29 October Form'). They are otherwise in identical terms.
12. The 29 October Form was completed on that date. The Respondent's internal system records her start date as 29 October 2016.
13. The Claimant was paid 4 weekly in arrears. Her first wages were paid on 2 December 2016 in respect of 44 hours of work. That payment was in respect of work undertaken between 22 October 2016 and 18 November 2016 inclusive.
14. AM, LM ceased employment with the Respondent on 1 May 2017.
15. The Claimant was dismissed by the First Respondent with a payment in lieu of notice on 19 October 2018.

Observations on the evidence

16. The Claimant asserted that she started work on Sunday 23 October 2016 and in evidence in chief sought to rely upon the 23 October Form which she believed was signed on 26 October 2016. According to the Claimant there was an original plus two carbon copies which had not been provided to her and had been lost by the Respondent.

17. In evidence the Claimant stated that she had been interviewed on Thursday 20 October 2016 which was the day after her child's funeral. She said she was phoned a few hours later and asked to start work on Sunday 23 October. She said that week she did not work the agreed pattern of work but instead worked on Sunday 23 October and Wednesday 26 October. Thereafter she worked the agreed pattern starting Saturday 29 October, namely Monday to Saturday with Sunday off.
18. The Claimant's first wages were paid on 2 December 2016 in respect of 44 hours of work. That payment was in respect of work undertaken between 22 October 2016 and Friday 18 November 2016 inclusive. If her pattern of work was as described by her she would have worked 60 hours (23 October - 3 hours, 26 October - 3 hours, 29 October to 4 November - 18 hours, 5 to 11 November - 18 hours, 12 to 18 November - 18 hours). The Claimant was paid for 44 hours of work and not 60 hours of work. The Claimant did not make any complaint about a significant shortfall in her wages.
19. In evidence the Claimant accepted having signed the 29 October Form around 29 October 2016 but said that when she had signed the form it had been completely blank and it had subsequently been completed by AM, LM who inserted a start date of 29 October in error. This would have entailed the Claimant applying her signature seven separate times to a blank form. (The Claimant elsewhere asserted that it was instead the area manager who had subsequently completed the blank form.)
20. The Claimant also gave multiple and contradictory reasons as to the need for another engagement form. By email to the tribunal of 18 December 2018 the Claimant had asserted that she had never signed a form on 23 October because no engagement forms were available and the forms were only provided to her line manager a week later, around 29 October. However the Claimant in evidence referred to the area manager having requested another Engagement Form be signed because the first form had been torn by her son. Later in evidence the Claimant said she had been told by the area manager that the 23 Oct Form had been lost (she had made numerous attempts to get a copy from AM, LM).

21. The Claimant was aware of the requirement to have 2 years' service when she submitted her claim in November 2018. In November 2018 the Claimant said that she had tracked down AM, LM having lost contact with him following his departure from work in 2017, with a view to proving her earlier start date. However at this point there had been no challenge to her start date by the Respondent either through ACAS Early Conciliation or in their ET3 Response. On 18 December 2018 AM, LM emailed the Claimant confirming that her start date was 23 December 2016. On 13 January 2019 AM, LM found the 23 October Form and emailed a copy to the Claimant.
22. The Claimant asserted in evidence that on 2 January 2019 AM, LM apologized to the Claimant for having thrown out his diary. She later asserted that on 13 January 2019 she had met with AM, LM and he had provided her with a page torn from his diary dated 23 October 2016. She said she had never been provided with the diary itself. However it was apparent from the photograph provided to the tribunal that the relevant page was still contained within a diary.
23. Given the inconsistencies in the evidence it was suggested to the Claimant that consideration be given to the hearing being postponed to enable AM, LM to attend as a witness but the Claimant did not want him to attend.
24. The Claimant's evidence about the start date of her employment and the need for and date of signing of the 23 October Form was inconsistent and unreliable. The provenance and the date of signing of the 23 October Form is unknown and it cannot be relied upon. In any event it does not reflect her start date of her employment of 29 October 2016.

Decision

25. The Claimant started work on 29 October 2016 and her effective date of termination was 26 October 2018. Accordingly, the Claimant does not have 2 years continuous service and her claim for unfair dismissal is dismissed.

Employment Judge: M Sutherland

Date of Judgement: 06 June 2019

Entered in Register,

Copied to Parties: 27 June 2019