EMPLOYMENT TRIBUNALS

Claimant: Vasilica Maria Chis

Respondent: Securitas Security Services (UK) Ltd

Heard at: London South (by CVP) **On:** 03 November 2020

Before: Employment Judge Housego

Representation

Claimant: In person
Respondent: Julie Bann, solicitor, of Jurit LLP

JUDGMENT

1. The claim for unfair dismissal is dismissed as the Claimant did not have the required two years' service, and because the claim is out of time.

2. The claim for sex discrimination is dismissed as out of time.

REASONS

Background and issues

1. This hearing is to decide on preliminary issues of jurisdiction.

2. Ms Chis was employed by Securitas as a casual worker on 13 October 2017. She says that on 06 April 2018 she accepted permanent employment. On 01 July 2019 she says that she terminated that employment and reverted to being a casual employee on a zero hours basis. She was offered but did not work shifts between 01 and 11 July 2019, and did not work for Securitas after 21 June 2019. Ms Chis gave the date her employment ended as 29 October 2019, when she started another job, and said that she resigned. On 25 October 2019 Ms Chis submitted an early conciliation request, and on 21 December 2019 this claim was lodged with the Tribunal.

3. Ms Chis brings claims of unfair dismissal and of sex discrimination.

4. The Respondent says that the sex discrimination is out of time, because

the matters about which she complains are all before she ceased her permanent contract on 01 July 2019, and that it would not be just and equitable to extend time. They say that Ms Chis does not have 2 years' service and so the Tribunal does not have jurisdiction to hear the unfair dismissal claim. The reason they say this is that they count only the period of permanent employment (06 April 2018 – 01 July 2019) and not the casual employment either side of that period. They say that the time line is not as Ms Chis says, but as Ms Chis did not work for them after 01 July 2019 they say that in any event the unfair dismissal claim is out of time. They say that the causal workers agreement makes it absolutely clear that a casual worker is a "limb b worker" and not an employee.

5. Ms Chis says that she was an employee throughout the period from 13 October 2017 – 29 October 2019, so that the unfair dismissal claim was filed within 3 months and is in time.

6. Ms Chis says that in June 2019 the client discriminated against her by reason of her sex, falsely stated that she was asleep on duty to justify asking for her to be removed because they did not value her as they would a man. She says that Securitas did not support her properly, and that she should have been moved to another permanent place of work, instead of which she was obliged to become a casual worker. They then sent her an email on 23 September 2019 ending her complaint about her removal from site in June 2019, giving no reasons. She says that this was ongoing discrimination, so that time runs from the date of that email which was less than 3 months before she filed her claim.

Evidence and hearing

7. I heard oral evidence from Ms Chis, and from Ben Austin of Securitas. He works in the human resources department of Securitas. I was given a 139 page bundle of documents.

Facts

8. The timeline is more complex than appears from the claim form:

   8.1. 13 October 2017: Ms Chis started as a casual worker.

   8.2. 15 March 2018: Ms Chis was offered and accepted a permanent contract.

   8.3. 03 October 2018: Ms Chis resigned, intending to move to Oxford.

   8.4. 19 October 2019: Ms Chis retracted her resignation, but her permanent post had been filled and so she became a casual worker.

   8.5. Between 14 December 2018 and 16 January 2019 she declined all shifts.

   8.6. 01 February 2019: she was offered and accepted a permanent post, at one location.

8.7. 20 June 2019: the client asked for her to be replaced.

8.8. 26 June 2019: meeting at which Ms Chis asked to cease being a permanent employee and become a causal worker.

8.9. Ms Chis did not work for Securitas after 17 June 2019 (121).

8.10. 16 July 2019: a further casual workers agreement was signed.

8.11. 26 August 2019: Ms Chis emailed complaining that her complaint of sex discrimination against the client was not being investigated.

8.12. 28 October 2019: Ms Chis emailed to say that she resigned.

Unfair dismissal claim

9. The first question is whether Ms Chis can claim unfair dismissal. To do that Ms Chis will have to have the legal status of employee, and to have had that status for a period of two continuous years[1]. It is not enough simply to have worked for someone for two years: you have to be an employee. Sometimes zero hours workers can be employees, but the essence of an employment contract is this: the employer has to offer you work and you have to do it.

10. If the company might or might not offer you work, and if it does you can chose to take it or not take it as you wish then you are worker. You will have some rights, such as an entitlement to holiday pay for example, but you are not an employee.

11. Sometimes even though the contract says you are a worker you are an employee because I look at what actually happens. The starting point is the casual workers contact.

12. The casual workers agreements (41 & 107) are crystal clear that they give you no right to work, and do not place any obligation on you to do so. They are expressly stated not to be contracts of employment. They are drafted so that the worker is just that, a *"limb b worker"*[2] in technical terms. That is a prerequisite for a respondent to show that someone is not an employee, but it is not enough for it is the reality of the situation that has to be assessed[3].

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[1] S108(1) of the Employment Rights Act 1996.

[2] S230(3)(b) Employment Rights Act 1996: (3) In this Act "worker" (except in the phrases "shop worker" and "betting worker") means an individual who has entered into or works under (or, where the employment has ceased, worked under)—
(a) …
(b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual;
and any reference to a worker's contract shall be construed accordingly.

[3] Autoclenz Ltd v Belcher & Ors [2011] UKSC 41, para 35 "the relative bargaining power of the parties must be taken into account in deciding whether the terms of any written agreement in truth represent what was agreed and the true agreement will often have to be gleaned from all the circumstances of the case, of

13. I find that these were genuinely casual workers agreements, not conferring employee status, for the following reasons:

    13.1. The terms are clear and express.

    13.2. When work became full time, permanent employment was offered.

    13.3. Ms Chis was able to (and did) refuse shifts when working under the agreements.

    13.4. When Ms Chis was employed and the client required Securitas to remove her from site she was paid her full pay and required to work where asked, and would be paid even if they could find her no work, but would not be paid if she declined shifts: and if they could find no permanent new role she would have to revert to being a casual worker. There was a clear difference between the two types of contract.

    13.5. After Ms Chis went to the later casual workers contract she refused to accept work. There was no suggestion from Securitas that she was obliged to work.

14. It follows from this that Ms Chis' employment ended at the end of June 2019, because she then became a casual worker.

15. That means that time for bringing her claim for unfair dismissal was 6 months before it was actually brought (late December 2019).

16. Ms Chis feels that she was forced into making that change, but it was made because Ms Chis requested it at the meeting on 01 July 2019. Whether that was fair or unfair, Ms Chis stopped being an employee in June 2019. That means that there was three months (plus the early conciliation period) to bring the claim.

17. It was not bought until December, which is six months. It is possible to bring a claim outside of the time limit but only if was not reasonably practicable to bring it in time. That is a really high test because Ms Chis has to show that she simply could not bring it in that time. Ms Chis says that she was waiting for the outcome of her process surrounding removal from the client's site. That was by an email of 23 September 2019, and Ms Chis then resigned by email of 28 October 2019. It could have been brought in time.

18. There is a further problem because even if it was not reasonably practicable to lodge the claim in time, the claim has to be filed in such further period as I consider reasonable[4]. It was not until 21 December 2019, which

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which the written agreement is only a part. This may be described as a purposive approach to the problem. If so, I am content with that description."

[4] S111(2) Employment Rights Act 1996: Subject to the following provisions of this section, an employment tribunal shall not consider a complaint under this section unless it is presented to the tribunal—
(a) before the end of the period of three months beginning with the effective date of termination, or
(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

was two months after the email, and almost a month after the resignation. That is too long a period to be a reasonable further period.

19. This means that I must strike out the unfair dismissal claim as out of time. That does not mean that it was a good or a bad claim, just that it was brought too late. It is a matter of jurisdiction.

20. It follows also that even if I had accepted that everything from 13 October 2017 until 01 July 2019 was employment (instead of periods of being a worker and employment without breaks) that is a period of less than two years, and so I would have to strike out the unfair dismissal claim for that reason. In fact there was a break when Ms Chis resigned in October 2018 and then retracted it, as she went on to a casual workers contract until February 2019 when she again became permanent, so again it was less than two years continuous employment.

21. (For the avoidance of doubt, had I found the casual worker's contract to be employment I would not have found the month between mid December 2017 and mid January 2018 to break continuity, as it seems clear to me that both Ms Chis and Securitas were expecting Ms Chis to return.[5])

Sex Discrimination

22. This claim is slightly different. Ms Chis can bring a claim as a worker, and she needs no minimum period of service. For discrimination claims which are filed outside the three month time limit time can be extended if it is just and equitable – fair - to do so[6]. I have to look at fairness both to Ms Chis and to the Securitas.

23. The first question when does time start to run? Looking at papers and interview of 01 July 2019 with Andy Molina, it is clear at that date Ms Chis considered it to be sex discrimination. Early in that interview she said:

> *"I think he doesn't want me there because I am a woman."*

In the note for that meeting that she took to it and left with Mr Molina she wrote:

> *"Securitas state that that they endeavour to protect the employee from unlawful discrimination and to ensure that natural justice is applied. Furthermore, I would like to inform you that I feel discriminated by the client, Adam, on the basis of sex."*

[5] S212(3)(c) Employment Rights Act 1996: any week … during the whole or part of which an employee is absent from work in circumstances such that, by arrangement or custom, he is regarded as continuing in the employment of his employer for any purpose, counts in computing the employee's period of employment.

[6] S123(1) of the Equality Act 2010: Time limits
(1) Subject to sections 140A and 140B proceedings on a complaint within section 120 *[this is such a complaint]* may not be brought after the end of—
(a) the period of 3 months starting with the date of the act to which the complaint relates, or
(b) such other period as the employment tribunal thinks just and equitable.

Later in the same document:

> *"I was expecting Securitas to investigate the client's claim and to defend my rights both as an employee and as a woman…".*

24. In a letter dated 24 June 2018 Securitas wrote:

> *"We wrote to the clients and have now received their response. I am sorry to have to inform you that they have refused our request [to reinstate Ms Chis].."*

The letter went on to say she needed to attend a meeting to discuss the way forward.

25. There is no matter said to be sex discrimination other than the actions of the client in requiring the removal of Ms Chis from site. Even if there was a claim of sex discrimination against Securitas about their own actions, that crystallised on 24 June 2019 with that letter, or at the latest when Ms Chis was placed on a casual workers agreement in mid July 2019 following her request on 01 July 2019.

26. I have noted and taken full account of the fact that on 01 July 2019 Maria Molina wrote to Ms Chis with the offer of the casual workers agreement and stated:

> *"…we would like to offer you a Casual workers agreement with Securitas Security Services (UK) Ltd Contract of Employment as a Casual worker based on an average if Zero Hours per week."*

This is infelicitously phrased, but it is clearly written to change the basis of work, as it starts by saying:

> *"…your current Site Based Contract does not match your current working circumstances, therefore we would like to offer you…"*

27. Likewise, I have noted and taken full account of the date and wording of a letter to Ms Chis also from Maria Molina of 23 September 2019 which stated:

> *"Following our meeting on 01/07/2019 regarding our clients request for your removal from (site), I am now writing to confirm you have requested to change your contract to a casual workers agreement. As we have accepted this position you will retain your continuous service with Securitas Security Services (UK) Ltd. This now ends your Loss of Customer Approval (LOCA) process and we will seek to offer you work within the terms of your new contract."*

The offer was made and accepted (and signed for by Ms Chis) on 01 July 2019, and the document was sent out on 16 July 2019. Why the letter was written at all is unclear, other than Ms Chis had emailed pointing out that there was no formal resolution to her grievance about her removal from the site where she was based, following customer requirement on 18 June 2018.

Plainly the author of the letters was using words with no idea of their meaning, as there is no coherence of meaning in the letter.

28. I have noted that Ms Chis is unhappy, feeling that Securitas did not investigate properly afterwards and eventually said (in the letter of 23 September 2019) that the LOCA process was over but did not tell say why. That could be relevant to a claim of unfair dismissal but for a variety of reasons Ms Chis cannot bring such a claim (and even if I were to start time from that date, so that Ms Chis would be in time, there remains the other insoluable issue that there is not two years' service).

29. The sex discrimination claim is about six months after the event and so is about three months out of time. The Courts above me say time limits need to be enforced unless there is a good reason to extend the time. When someone knows all the facts at the relevant time it is difficult to do, and it is plain that Ms Chis did know by 01 July 2019 and did not file the claim until 21 December 2019, with no good reason for not doing so before, and not swiftly after the letter of 23 September 2019: it was 3 months after that that the claim was lodged.

30. For these jurisdictional issues (which have nothing to do with the merits of the claims, about which I make no findings of fact,) I have to strike out both claims.

Employment Judge Housego

Date 03 November 2020