



EMPLOYMENT TRIBUNAL
England and Wales
London Central Region

Claimant: Mr Z Simeonov
Respondent: Mayfair Catering Services Ltd
Before: Mr J S Burns
Representation
Claimant: in person
Respondent: Mr T Mayers (Director)
Bulgarian interpreter: Ms Desislava Brincat

JUDGMENT

The claims are dismissed

REASONS

1. The Claims for unfair dismissal and redundancy are dismissed because the Claimant did not have the necessary two years' service with the Respondent.
2. In addition the Claimant claimed arrears of pay.
3. I heard evidence from the Claimant through an interpreter and then from Ms Lyuda Kyshakivska, a manager from the Respondent, and then from Mr Mayers, a director. The documentary evidence consisted of a copy letter from the Respondent to the Claimant dated 21/7/20, an undated email various Whatsapp text messages, and a P45 dated 25/8/20 and an undated email from Ms Kyshakivska entitled "*end of furlough some clarification*"
4. The Claimant started work for the Respondent at the beginning of February 2020. He was not issued with a written contract because it is the practice of the Respondent to issue written contracts after two months' service and the lockdown intervened on 17/3/2020.
5. It is clear from the oral evidence that the contract was a zero hours contract, - ie the Claimant was not guaranteed any hours and was not obliged to work such hours as were be offered by the Respondent. His work was on a variable basis according to a roster and he only worked when the Respondent had work for him to do, and at other times he was not entitled to work or pay. During the period 1/2/2020 to 17/3/2020 there were two weeks when the Claimant did not work at all.
6. The Claimant agreed to be furloughed on 17/3/2020 and received furlough payments until 6/8/2020 based on 80% of his previous average weekly pay.
7. On 21/7/21 the Respondent emailed the Claimant to his correct email address a standard letter of the same date informing him that the furlough payments would be stopped on 6/8/2020. This was followed up soon afterwards by a further email entitled "*end of furlough some clarification*". This further email confirmed that the Claimant's contract had not been

terminated but that the Respondent simply did not have any work for the Claimant at present.

8. The Claimant denies having received these emails but I find that he did receive them as they were sent to his correct email address which was used successfully to send him emails with his original furlough letter in March 2020 and his wage slips.
9. The emails were followed up by Whatsapp messages in early August 2020 informing the Claimant of the same thing as the emails, which the messages the Claimant admits receiving.
10. The Claimant became disgruntled by the stoppage of the furlough payments and sought advice from a lawyer following which he sent a Whatsapp text message to Ms Kyshakivska on 19/10/20 asking why he had not been sent a p45 and given notice of termination.
11. Ms Kyshakivska agreed to send a P45 to the Claimant by email but in fact posted this to the Claimant's address a few days later. The Claimant denies receiving it but I have seen evidence of the contents of the P45 showing a termination date on 25/8/2020 and I find it was received by the Claimant. Mr Mayers however has agreed to send another p45 to the Claimant at his address Flat 18 Glyndale Grange Sutton London SM2 6LP within 7 days.
12. The Respondent was not obliged to continue making furlough payments to the Claimant after it lawfully decided to terminate the said payments in early August 2020.
13. As the Claimant had a zero hours contract, he was not entitled to be given work or be paid after his furlough payments came to an end.
14. His contract continued after 6/8/20 but was terminated by mutual agreement on 19/10/2020 when the Claimant asked for a p45 and Ms Kyshakivska agreed to send him one.
15. The Claimant had not claimed notice pay in his ET1 but for the avoidance of doubt zero hours workers (such as the Claimant was) are not entitled to paid notice.

Date 3/2/21
J S Burns Employment Judge
London Central
For Secretary of the Tribunals

Date sent to the Parties – 04/02/21