



EMPLOYMENT TRIBUNALS

Claimant: Mrs S Rushton

Respondent: OC Cleaning Solutions Limited

Heard at: Manchester **On:** 19 April 2021

Before: Employment Judge Holmes

Representatives

For the claimant: In Person

For the respondents: Mr M White, Managing Director

JUDGMENT ON PRELIMINARY HEARING

It is the Judgment of the Tribunal that:

Upon concession by the respondent, the claimant has the requisite qualifying service to present a claim of unfair dismissal, and her claim can proceed.

NOTICE OF HEARING

The claim will be heard by an Employment Judge sitting alone on 19 and 20 January 2022 at 10.00 at **Manchester Employment Tribunal , Alexandra House, 14-22 The Parsonage, Manchester, M3 2JA**. Unless otherwise notified, or requested by either party, the hearing will be held in person.

REASONS

1. Following the postponement of the final hearing listed for 30 October 2020, at which the issue of the claimant's length of service was raised, and case management orders made for the parties to obtain the evidence necessary for its determination, the Tribunal re- convened for a preliminary hearing to determine whether the claimant could proceed with her claim.

2. Further bundles had been prepared, and both parties had made enquiries of the claimant's previous employer, Minster, from whose employment the claimant had been transferred pursuant to a TUPE transfer in 2018. The documents obtained were

included in the respondent's bundle. From a perusal of the these documents, it did seem to the Employment Judge that, despite some inaccuracies on dates , Minster had confirmed that the claimant had been employed by that company since 2015, and had been employed to work on the Utilities/Utiligrp N6 contract (i.e that which passed to the respondent on transfer) since August 2016, and not, as the respondent had originally been told, since 1 May 2018. On that basis the claimant would have two years qualifying service as at the date of her dismissal on 19 September 2019

3.The Employment Judge invited Mr White who appeared again for the respondent, what the respondent's case would be upon continuity, in the light of this evidence. In addition to the emails from Minster, payslips had been provided which showed "Utili N6" , indicating that was where the claimant worked well before the transfer in 2018.

4.After some discussion, Mr White accepted that the respondent could not challenge this evidence, and conceded that the claimant did indeed have the requisite qualifying service. As that was the only issue before the Tribunal, the Employment Judge proceeded to obtain the listing above. Whilst two days may seem long for an unfair dismissal hearing, the respondent has disclosed several witness statements. Whilst only the dismissing officer and appeal officer may be necessary, with the claimant giving evidence as well, the Employment Judge could see how one day would not be enough, and he wanted to avoid the case going part heard.

5.Mr White raised as number of matters. The first was the position of Minster (the trading name of Cardinal Contracts Limited. The respondent had been given, on its case, incorrect information about the claimant's employment history before the transfer. What could be done about that?

6.Whilst it is not the Employment Judge's function to give legal advice, he did refer the respondent to the possibility of claims between transferor and transferee (under reg. 12 of TUPE) , but this may not cover this situation, or provide an adequate remedy. There are also likely to be time limit issues. Outside such a claim in the Tribunal, the respondent would probably be left to claims in negligent misstatement , which would have to be made in the civil courts, and upon which the Employment Judge could give no further advice.

7.Secondly, Mr White enquired as to the potential relevance of the respondent dismissing the claimant when under a misapprehension as to whether she had qualifying service. Again the Employment Judge could not advise, and the respondent must seek its own advice on this aspect. Such a proposition may require consideration of "mistaken belief" cases such as **Klusova v London Borough of Hounslow [2008] ICR 396 .**

Other Matters.

8.There was discussion as to the bundle, the claimant complaining that the respondent had "left out" items that she wanted included. She also had some criticisms of the layout and ordering of the bundle.

9.The Employment Judge proposed that the Tribunal continue to use the respondent's bundle, as it was paginated and logical, if not in the order that the claimant wanted. If

there remained items which the claimant considers have been omitted, the claimant should raise this with the respondent, to see if the respondent will agree to add the material to the bundle (at the back, as additional documents and numbering, so as not to disrupt the current bundle) . If not, the claimant should prepare her own bundle, and send/bring that to the Tribunal.

10. On the topic of the Bundle (whilst not mentioned in the Hearing) the Employment Judge notes that, whilst it contains the claimant's payslips with Minster, both pre – and post – dismissal, there do not appear to be any payslips showing her pre-dismissal earnings with the respondent. The claimant does not appear to have included this information anywhere else (apart from her statement) , and it is required, if the Tribunal is to be able to assess what award it should make.

11. The Employment Judge also reminds the parties of the discussion in para.17 of the Reasons for the Tribunal's Orders on 30 October 2020, as to the limitations upon awards for unfair dismissal. It is unclear whether the claimant has disclosed all documents relating to her post dismissal earnings, but if she has not, she should do so.

Employment Judge Holmes

Date: 19 April 2021

Judgment sent to the parties on:

22 April 2021

For the Tribunal: