



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant
MS B KAMBUROVA

AND

Respondent
ABID AZIZ LTD

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT: BRISTOL ON: 12TH MAY 2021

EMPLOYMENT JUDGE MR P CADNEY
(SITTING ALONE)

APPEARANCES:-

FOR THE CLAIMANT:- IN PERSON

FOR THE RESPONDENT:- MR ABID AYOUBI

JUDGMENT

The judgment of the tribunal is that:-

1. The claimant's claim that she was unfairly dismissed is dismissed as the tribunal does not have jurisdiction to hear the claim.
2. The claimant's claim of unlawful deduction from wages is not well founded and is dismissed.
3. The claimant's claim for the failure provide written particulars of employment is not well founded and is dismissed.

Reasons

1. By this claim the claimant brings claims of unfair dismissal, the failure to provide written particulars (a contract) of employment, and unpaid wages.
2. At the commencement of the hearing I canvassed the issues with the parties to determine what was in dispute and what was agreed. Both parties agreed:-
 - i) That the claimant was not provided with a written contract of employment;

- ii) That the terms on which the claimant was engaged was a zero hours contract to make deliveries for the respondent as and when required without any minimum or maximum or guaranteed number of daily or weekly deliveries.
 - iii) That she would be paid £3.50 per delivery.
 - iv) That she worked between 25th April 2020 and 25th June 2020, and has not been provided with work since.
 - v) That the amounts she was paid are correctly set out in the information provided by the respondent to the tribunal (see below).
 - vi) That there are no amounts unpaid or owing in respect of work actually carried out by the claimant between 25th April 2020 and 25th June 2020.
3. The tribunal is extremely grateful to both parties for the entirely frank and honest approach to this dispute reflected in the points of agreement set out above.
 4. Given those points of agreement there are a number of consequences for the claims brought in this case.

Unfair dismissal

5. Even if the contract under which the claimant was engaged was a contract of employment within the meaning of s230 Employment Rights Act 1996 (see below), on any analysis she does not have two years' continuous service and the tribunal does not have any jurisdiction to hear the claim. The date of termination may be 25th June 2020 when she was last provided with work or, as is in fact the claimant's case, 29th December 2020 when she was informed that the contract had been terminated. Whichever is correct the tribunal clearly has no jurisdiction to hear the claim.
6. By a letter sent on 22nd March 2021 the claimant set out the amounts she was claiming by way of compensation. This included £5746.60 which represented nine times £638.51, the average amount received fortnightly by her whilst she was working, i.e. £3192.56 divided by 5, the number of payslips. The difficulty for the claimant is that in the absence of having jurisdiction to hear the claim for unfair dismissal I cannot award any amount of compensation for unfair dismissal, and cannot make the order for compensation sought .

Unlawful Deduction from Wages

7. As set out above the parties are agreed that the amounts received by the claimant for the work carried out between 25th April 2020 and 25th June 2020 are correct and that there are no further sums owing for that period.

There is, therefore, necessarily no unlawful deduction relating to that period. As both also agree on the terms of the agreement, even if no formal written contract was provided, there was no obligation on the respondent to provide any minimum number of deliveries and therefore no unlawful deduction from wages after 25th June 2020 either. It follows that this claim must be dismissed.

Failure to Provide Written Particulars of Employment

8. As set out above, there is no disagreement as to the terms of the contract nor that the respondent did not reduce those to writing and provide a written contract. Section 1 of the ERA 1996 requires an employer to provide written particulars of the main terms of employment to an employee within two months, the exact period of time worked by the claimant in this case. However that obligation relates to employees of the employer within the meaning of s230 ERA 1996. In this case I have little doubt that the claimant would be classed as what is known as a limb (b) worker for the purposes of the ERA and other legislation. However given the agreed terms, and the absence of mutuality of obligation in the terms agreed, the contract is not a contract of employment and that the obligation contained in s1 ERA 1996 does not apply and was not owed to the claimant. For the avoidance of doubt even had I found that there was a breach of the obligation I could not have made any award of compensation to the claimant under s38 TULR(C)A as making any such award is dependent upon another award being made in the claimant's favour. In the absence of upholding any of the other claims I would have no power to make any such award.
9. For the avoidance of doubt the claimant also seeks compensation for consequential losses caused by the failure to provide a contract of employment. This resulted in the withdrawal of an offer of a rental property and consequential expenses. However, in the absence of making any primary finding of liability I cannot award any consequential losses to her.

Other Matters

10. Although that deals with the claims themselves the claimant raised two other matters which I agreed I would refer to. The first relates to income tax. The claimant asserts that her tax records are incorrect as they record her as having been paid multiple times on the same day, sometimes in the same and sometimes in different amounts, whereas she was in reality only paid once each time. The records therefore overstate both her income and the amount of tax she has paid. Although the tribunal has no jurisdiction in relation to these matters I agreed that I would record the sums paid which both parties agree are the correct record of amounts paid to the claimant:-

- i) 7/5/20 - £907 (£931.00 gross)
- ii) 20/5/20 - £550.38 (£591 gross)

- iii) 3/6/20 - £862..00 (£987 gross)
- iv) 17/6/20 £585.08 (£654.50 gross)
- v) 29/6/20 £205.50 (136.5 gross)
- vi) 17/7/20 £82.60 (overpaid tax).

11. The claimant also complains that there is no record of any payment into her NEST pension. Again this is not something over which the tribunal has any jurisdiction but the respondent' accepts that this is correct. Its case is that the claimant was initially automatically enrolled but subsequently opted out. At that stage the relevant sum had been deducted from her but not yet paid to the NEST pension. Accordingly it was simply repaid to her in her next payslip.

**Employment Judge Cadney
Date: 13 May 2021**

Judgment sent to the Parties: 14 May 2021

FOR THE TRIBUNAL OFFICE