



EMPLOYMENT TRIBUNALS

Claimant: Mrs L. Smith

Respondent: The Works Family Ltd

Heard at: Watford (by CVP) **On:** 19 August 2021

Before: Employment Judge McNeill QC

Appearances

For the Claimant: In person

For the Respondent: Mr Bolton, Director of Respondent company

JUDGMENT – PRELIMINARY HEARING

1. Although the Claimant's claim was brought within the statutory time limit for bringing a claim, she does not have the necessary two years' qualifying service to bring a claim for ordinary unfair dismissal.
2. The Claimant having confirmed that she has no claims against the Respondent other than her claim for ordinary unfair dismissal, her claim cannot proceed further and is dismissed.

REASONS

- (1) The Claimant claims that she was unfairly dismissed by the Respondent. She explained to me that she left the Respondent's employment because of the behaviour of Mr Bolton. The explanation she gave was consistent with a claim for constructive dismissal.
- (2) The Claimant presented a claim form to the Tribunal on 19 October 2020. In a response presented to the Tribunal on 22 December 2020, the Respondent disputed the Claimant's claim.
- (3) On 28 March 2021, the Claimant sent a "position statement" to the Tribunal. The documents on the Tribunal file indicate that this was in response to an email from the Tribunal dated 2 March 2021, although that email was not available to me. She set out further details of her claim in that statement.

- (4) By a notice of hearing dated 25 April 2021, the Claimant was informed that there would be a hearing today (19 August 2021) to determine whether the complaint of unfair dismissal should be dismissed because the Claimant was not entitled to bring it if the statutory time limit had expired.
- (5) In the same letter, the Claimant was asked to provide some further information about her claim before 10 May 2021. The information that she was required to provide related to a possible whistleblowing claim. That information was not provided.
- (6) The Claimant confirmed at today's hearing that she decided to leave the Respondent's employment because of Mr Bolton's behaviour as set out in her position statement and not because of any protected disclosure (whistleblowing). Although she raised a matter concerning Covid restrictions and the "rule of six" with Mr Bolton, this was not what caused her to decide that it was impossible for her to continue to work for the Respondent but rather that she was shouted at after she challenged him about a shift issue and was then trapped in his office.
- (7) By a letter from the Tribunal dated 13 August 2021, the notice of hearing was amended to add to the matters to be considered today, whether the Claimant had completed the two years' service with the Respondent necessary to the bringing of an ordinary unfair dismissal claim. This requirement was explained to the Claimant by me at this hearing.
- (8) There is no dispute between the parties as to the Claimant's dates of employment. She was employed by the Respondent from 15 February 2019 until 15 October 2020.
- (9) Under section 108 of the Employment Rights Act 1996 (ERA) the right not to be unfairly dismissed in section 94 of the ERA does not apply to the dismissal of an employee "*unless [the employee] has been continuously employed for a period of not less than two years ending with the effective date of termination*".
- (10) The Claimant was employed by the Respondent for less than two years and her claim must therefore fail.
- (11) The Claimant confirmed that she was not owed any money by the Respondent under her contract of employment. No other claims were outstanding. I therefore dismissed her claim.

Employment Judge McNeill QC

Dated: 19 August 2021

Sent to the parties on:

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For the Tribunal:

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