



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms Terri-lea Gilbert

**Respondent:** TNK Services Ltd

**By CVP**

**On:** 24 January 2022

**Before:** Employment Judge Martin

**Representation**

**Claimant:** In person

**Respondent:** Mr N Thota - Director

## Written Reasons

1. Judgment was given at the conclusion of the hearing on 24 January 2022. These reasons are being provided at the request of the Respondent.
2. The Claimant brought a claim of unfair dismissal against the Respondent in her claim form date 10 January 2020. The act of dismissal being the Respondent not giving her any working hours. The Respondent denies dismissing the Claimant saying that she was employed on a zero hours contract and he could withdraw her hours as he pleased. It was accepted that the Claimant was an employee.
3. The issue for me to determine is whether the Claimant was employed on a zero hours contract that entitled the Respondent to withdraw her hours and not provide work.
4. The Claimant was employed as a Sandwich Artist at Subway from 11 September 2017 until 1 October 2019. She was initially employed on a zero hours contract filling in hours as needed to fit in with her childcare requirements. Her evidence was that as her children got older, she increased her hours and was promoted to Assistant Manager on or about February 2018 and was given the keys to the premises.
5. The Claimant was not given a contract of employment or any written statement of particulars of employment when she started work. The Claimant's evidence is that as time went on and especially once she had been promoted to Assistant Manager she worked regularly for her employer. She had no weeks (save for when on holiday, which was recorded as holiday absence) where she was not given any hours. Whilst her hours varied to some degree according to the needs of the business, she was usually given between 10 and 35 hours per week.

Hours were set on a rota basis.

6. There were various TUPE transfers when the franchise was sold on. The last being to the Respondent in July 2020. The Respondent produced a document titled business enquiries which he says was part of the sale process when the franchise was transferred to him. This is a handwritten document, with different coloured ink and what looks like more than one person's handwriting. This states that all employees were on zero hours contracts. I do not accept this document as being determinative of the issue I have to decide. I need to look at what the reality of the working relationship was.
7. The Claimant's case is that on 1 October 2019, Mr Thata who then owned the franchise, did not offer any hours. She says she was originally given a rota with hours on it, but then they were taken away. She complained saying she was going to seek advice from the Citizens Advice Bureau. Mr Thata said that because of this he did not offer her any more work. The Claimant tried to contact the Respondent but did not get a reply. The Claimant therefore considered herself to be dismissed as the Respondent had not provided her with work.
8. In considering this, I looked at what the working arrangement was. The Claimant's evidence which I accept is that she received regular hours throughout her employment with no weeks where hours were not provided. Mr Thata could obviously not give any evidence as to what the working arrangements were prior to the TUPE transfer to his company. He relied on his documentation (which was disputed by the Claimant) showing that she had variable hours.
9. I find that the Claimant's employment changed through custom and practice and that she was employed from when she was promoted to Assistant Manager on a contract with regular albeit variable hours. There is an implied term in an employment contract that the employer will provide work. The withdrawal of all hours for the Claimant constituted a dismissal. It was reasonable for the Claimant to have considered herself to be dismissed.
10. Remedy was not dealt with, and a separate order was sent setting out how this will proceed. The parties are required to adhere to the terms of this order.

Employment Judge Martin

Date: 27 January 2022