



EMPLOYMENT TRIBUNALS

Claimant: Ms O Odutayo
Respondent: Compass Group UK & Ireland Limited
Heard at: London South by CVP.
On: 18 August 2022
Before: Employment Judge Truscott QC (sitting alone)

Appearances

For the claimant: In person
For the respondent: Mr J Byrne HR representative

JUDGMENT

The claim of unfair dismissal is dismissed as the claimant does not have the necessary qualifying period of employment with the respondent.

REASONS

Preliminary

The claimant and Mr Byrne were in attendance at the hearing. The respondent had provided a bundle of documents and written submissions. The claimant provided further documents for consideration. Reference in the judgment to page numbers is to pages in the bundle unless otherwise stated.

Findings of fact

1. The claimant commenced employment with the respondent on 5 or 6 March 2020 in the position of a customer services assistant [55-57].
2. Within the particulars of the attachment to the ET1 claim [14-15], the claimant claims that she was dismissed from her position by the respondent. At the hearing, she said she was dismissed by Ms Denise Spillane on 11 June 2021 by telephone. The claimant states her belief that she had been dismissed in an e-mail on 11 June 2021 [84]. The respondent's position is that the claimant has not been dismissed, which is supported by the claimant's line manager clarifying this to her via e-mail on 21 June 2021 [81-82].

3. The respondent considers that she remains employed on a 0-hour contract which the claimant agreed to on 17 August 2020 [66] and which took effect on 1 September 2020 [67]. The claimant also stated within the ET1 claim form that she accepted the offer of a 0-hour contract [14]. She disputed this at the hearing. This is supported by the evidence that the contract director requested discussions regarding the claimant's availability for work on the 3 and 13 December 2021 [88-90].

Law

4. The right to claim unfair dismissal is set out in section 94 of the ERA which provides:

(1) An employee has the right not to be unfairly dismissed by his employer.

5. *Section 108 provides:*

Exclusion of right

Qualifying period of employment

(1) Section 94 does not apply to the dismissal of an employee unless he has been continuously employed for a period of not less than [two years] ending with the effective date of termination.

Discussion and decision

6. The claimant thought that the two-year qualifying period did not apply to her as she was a whistleblower. The Tribunal examined all the material available to it and noted that this contention was only made at the hearing. The substance of the complaint was one of "ordinary" unfair dismissal. The qualifying period does apply to her.

7. The Tribunal considered that the respondent's argument that the claimant remains employed and thus the Tribunal has no jurisdiction to hear her claim of unfair dismissal on those grounds was correct. The Tribunal also addressed the claimant's claim taking it at its highest. It considered what the position would be if the claimant was correct that she was dismissed on 11 June. Her claim was not submitted within 3 months of the dismissal. Further as she was employed on 5 or 6 March 2020 and submitted her ET1 claim form on the 30 September 2021, at the time of submitting her claim, the claimant had a length of service of 1 year and 6 months or 1 year and 3 months as at the date she said she was dismissed.

8. The claim falls to be dismissed.

Employment Judge Truscott QC
18 August 2022