EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Miss R Roy	**v**	G4S Secure Solutions (UK) Limited

Heard at: Central South Employment Tribunal On: 12 September 2022
Before: Employment Judge Norris, sitting alone (via CVP)

Representation:
Claimant – Mr S Mukherjee, Claimant's Colleague
Respondent – Mr A Clark, Solicitor

JUDGMENT AND REASONS – PRELIMINARY HEARING

Background

1. The Claimant works as a security officer. According to her claim form (which was submitted against G4S Facilities Management (UK) Limited), she started work for the Respondent on 23 March 2018 and her employment is continuing. She says that she was engaged on a zero-hours contract but that from October 2020 she was assigned on a "permanent/regular" basis working 48-hours a week at a COVID test site at Greenwich University. The Claimant claims she was removed from the site and told on 17 January 2022 that her assignment had ended and she was not allowed to work on NHS sites again.

2. The Claimant says (in summary): that the situation with the termination of the assignment arose because her son tested positive for COVID on 8 January 2022 though she tested negative. She tested positive herself on 13 January following a fever the previous day and had to self-isolate. She mistakenly sent her son's positive test of 8 January to her manager. As a consequence, the Respondent wrongly concluded that she had knowingly continued to work on site following a positive test when she should have been self-isolating. When she sought to challenge this, an HR Business Partner (HRBP) told her Claimant she was not employed on that site by the Respondent but by a third party. Although she has been told she can work at other sites for the Respondent, it does not have the kind of regular ongoing work available to make up the hours she has lost on the COVID test site.

The claim

3. The Claimant entered ACAS Early Conciliation between 26 January and 14 February 2022. She submitted her ET1 (claim form) on 12 March 2022. The case was originally listed for a full merits hearing on 12 September 2022. However, G4S Facilities Management (UK) Limited submitted its ET3 on 11 April 2022. It said that it did not employ the Claimant, whose services were supplied by a third party, and that in any case she was not dismissed, as she appears to acknowledge. It contends the Tribunal does not have jurisdiction to hear the claim. It reserved its position as to the factual issues if these legal questions were determined in the Claimant's favour.

4. In response to the ET3, the Claimant observed that she had brought the decision against the Respondent, G4S Facilities Management (UK) Limited, because it was their decision to remove her from site. However, she said that she was working for G4S Secure Solutions (UK) Limited. She asserted that both these companies are "under" G4S, which has multiple subsidiaries listed at addresses in Gillingham Street, London SW1V and St Nicholas Way, Sutton. She has a G4S ID number.

5. As to the decision to bar her from site, the Claimant says she worked at the COVID test centre at Greenwich University's Avery Hill premises from around September 2020 and that it was written on her assignment that it would continue until the test centre closed. She believes it did close on 25 April 2022 and seeks the difference in her pay until then from the termination of the assignment. The Claimant says that removing her from a 48-hour a week role and putting her back on a zero-hours basis is equal to losing her job, in light of the significant impact on her pay.

Submissions

6. The Respondent initially said that it does not employ security guards and that the Claimant's services were supplied through a third-party agency, Blue Arrow. In its submissions, it acknowledges that this is incorrect. It says now that there was confusion about the point because the Claimant was engaged between 20 January and the end of March 2022 by Blue Arrow.

7. The Claimant now says that she was engaged by the Respondent, and it is accordingly substituted as set out above.

Evidence

8. It appears from the evidence in the bundle that the "site manager" at Greenwich University was a Ms Fiona Kennedy. She has an email address indicating that she works for G4S, though it does not say for which division/subsidiary. For her to approve the ending of an assignment, she had to obtain approval from her HRBP. The form for her to complete states, "Though the agency will end the assignment, the HRBP will need to approve it first". The HRBP who approved the termination of the Claimant's assignment was Ms Mani Malhotra, who works (according to **her** email) for G4S Facilities Management (UK) Limited. Ms Malhotra told Senior Area Operations Controller Ms Sharna Viera to remove the Claimant from the assignment.

9. A response was sent to that instruction, which gives Ms Vieira's employer as the Respondent.

10. When the Claimant challenged the grounds for terminating the assignment, it was Ms Malhotra who replied on 1 February saying that the Claimant was not employed by G4S Facilities Management (UK) Limited but by a third party; she did not say which one. She also said that there was no right of appeal against the decision because the Claimant was not an employee.

11. On 3 September 2022, Mr Mukherjee, who represents the Claimant, emailed Mr Clark, who represents the Respondent in this matter, saying that the Claimant "is one of the staff member[s] of G4S Secure Solutions UK". He attached P60s for each of the years between 2019 and 2022 inclusive in support of that position.

12. Timesheets in the bundle show that the Claimant has continued to work for "G4S" from January 2022 until August 2022 inclusive, after her purported dismissal, first at the ExCel COVID test centre and thereafter at a football event in a London stadium, the DWP's Nelson House and Powis Street sites in Woolwich and Equinix London. Payslips in the bundle bear only the G4S logo and do not differentiate between the subsidiaries of the parent company.

13. Finally, in the bundle is a document entitled Security Assurance Procedure (according to the index and headnote). It also bears the G4S logo and refers exclusively to G4S Facilities Management (UK) Limited Test Centres.

14. Mr Mukherjee had also sent in a document (an email of 30 July 2021), the contents and significance of which I return to below.

The hearing

15. The Respondent applied for the full merits hearing to be converted to an open Preliminary Hearing to consider whether the Employment Tribunal has jurisdiction to hear the claim. The Tribunal agreed to convert the hearing by letter sent to the parties on 20 July 2022. Accordingly, that is all I was considering at the hearing. I was not considering the underlying merits, or otherwise, of the claim.

16. Neither party had prepared witness statements and the Respondent indicated it did not propose to give evidence. Mr Clark had sent in a bundle and written submissions. Mr Mukherjee had also sent in submissions.

17. The Claimant did not attend the hearing. I explained the legal concepts of "employee" and "worker" and heard additional oral submissions from Mr Mukherjee.

The law

18. Pursuant to section 94 Employment Rights Act 1996, an employee has the right not to be dismissed unfairly by their employer (subject to meeting the

requirement for two years' continuous service required under section 108 of the same Act).

19. An employee is dismissed (according to section 95) if the contract under which they are employed is terminated by the employer; or where a limited-term contract expires and is not renewed; or the employee terminates the contract in response to the employer's conduct.

20. "Employee" is defined at section 230(1) of the Act as "an individual who has entered into or works under … a contract of employment". "Worker" is defined at section 230(3) as "an individual who has entered into or works under a contract of employment, or any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual".

Findings and conclusions

21. The Claimant has acknowledged that she entered a contract with the Respondent and not G4S Facilities Management (UK) Limited although she was working on a site managed by the latter at the relevant time. Since she has not produced a copy of that contract/assignment and did not appear to give evidence before the Tribunal, I have had to draw inferences from what the parties have produced.

22. The Claimant seeks to rely on an email sent to her 30 July 2021 from the events management team. This says:

    "Our initial contract with the current terms and conditions expires in the near future and we have been successful in a new contract award to support the programme for another 12 months, across a slightly different estate, should the testing capacity be required. … The pay rates for continuing to work under your casual worker agreement on testing security roles, effective 27.08.21, are as follows: SIA £11 SIA London £11.85. Please continue to register your interest via Javelin should you wish to continue to support the testing programme. With the return of spectators at Events it is great to see the requirement for trained and experienced safety and security staff to return. You will remain a valued member of the G4S Events team on our casual database and we would encourage you to register for the various requirements via Javelin".

    Mr Mukherjee, who as I have said above describes himself as a colleague of the Claimant, confirmed that Javelin is the portal on which staff at G4S book their work.

23. I do not accept Mr Mukherjee's submission that the use of the word "contract" in the email extract above is a reference to an employment contract between the Claimant and the Respondent. I conclude that it is a reference to the contract between G4S and the testing programme organisers. The wording does not permit any other interpretation.

24. On the basis of the evidence before me I therefore conclude that the Claimant was expressly engaged by the Respondent as a “casual worker”, i.e. that she could use the Javelin platform to register her interest in working at a particular site or sites but that there was no obligation on the Respondent to offer her work and none on her to accept any work that was offered.

25. Indeed, the Claimant herself states at 8.2 of the claim form that she is on a zero-hours contract. I have not seen anything to say that this express provision was altered by her assignment to the Greenwich site nor is that impacted by the fact that, according to Mr Mukherjee, the Claimant’s assignment was extended so that it lasted for well over six months and was intended to last until the programme ended.

26. There is no legal provision that might convert the Claimant’s express zero-hours worker contract into a permanent contract of employment. It was the very definition of a contract for services to be provided “as and when”. In fact, although the Claimant says in her comments in the bundle that she was booked until June 2022 on Javelin, she also says that the site closed on 25 April 2022. If her assignment had not terminated in January, she would no longer have been needed from that point on but would have had no recourse in law if her bookings were cancelled early as a result.

27. In any case, the Claimant has continued to work for the Respondent at other sites on other assignments, even though I accept that it has not been possible for her to replicate the number of weekly hours that she had booked at Greenwich. If she had been an employee on a zero-hours contract of employment, she would still not have been entitled to claim unfair dismissal because she has not been dismissed, as she also acknowledges in the claim form. She has been redeployed elsewhere by the same employer and without any loss of contractual hours, since she was not entitled to a minimum number of working hours in any week.

28. In the circumstances, since the Claimant was not an employee and was not dismissed, the Tribunal does not have jurisdiction to hear her claim of unfair dismissal under section 94 Employment Rights Act. Accordingly, the claim is struck out.

Employment Judge Norris
Date: 13 September 2022

Case No: 2300944/2022

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