



EMPLOYMENT TRIBUNALS

Claimant: Annette Edwards

Respondents: GS Associates (Scotland) Limited (1)
Marks and Spencer plc (2)

RECORD OF A PRELIMINARY HEARING

Date: 16 December 2022

Before: Employment Judge James (sitting alone)

At: Sheffield (by CVP)

Appearances

For the claimant: In person

For the respondents: Mr M Wishart, counsel, for the first respondent
Mr J Kinsey, counsel, for the second respondent

JUDGMENT

- (1) The claimant having agreed to withdraw any claims raised in her claim form against the first respondent, for the reasons set out below, any such claims are dismissed on withdrawal (Rule 52 Employment Tribunal Rules of Procedure 2013).
- (2) Any claims against the second respondent are struck out because the second respondent was not the employer of the claimant, and in the circumstances of this case, the claimant's claims against it have no reasonable prospect of success.

WRITTEN REASONS

The Claim

1. The claimant was employed by the first respondent, a provider of contract cleaning and support services operating within the UK and Ireland, as a cleaner, from 11 July to 19 August 2022. The first respondent has a contract with the second respondent, Marks & Spencer plc, to provide cleaning services at the Marks & Spencer store in Wakefield. The claimant was employed by the first respondent to assist in the provision of cleaning services at that store.
2. Due to concerns about health and safety, the claimant resigned on 8 August 2022 and confirmed that her final day of employment would be 19 August 2022. Although the required notice period was one week, the claimant provided two weeks notice, which the respondent accepted. Within her resignation letter, the claimant raised concerns about health and safety.
3. By a claim form presented on 22 September 2022, following a period of early conciliation from 11 August to 22 September 2022 against both respondents, the claimant brought complaints of wrongful dismissal. She also complains of 'health and safety' in box 8.1. In addition, the claimant has ticked the box at 9.1 indicating that 'if she is claiming discrimination', she is also asking for a recommendation; and has ticked the box at 10.1, indicating that her claim consists of or includes, a whistleblowing (or protected disclosure) claim.

Today's hearing

4. At the outset of the today's hearing, I asked the claimant if she accepted that the names of the respondents should be corrected, as set out in the heading above. The claimant accepted that they should be.
5. There then followed a discussion of the potential claims raised by the facts set out in the claimant's claim form, the ET1.

Notice pay claim

6. In relation to her claim for notice pay, the claimant confirmed that even though her timesheet had all of the hours correctly inserted on it, two weeks wages were missing from her final payslip. She believes that it was only because she went to Acas that the money was eventually paid to her. The claimant was paid an additional amount of £275.50 in two instalments; £220 on 1 September 2022; and £55.50 on 30 September 2022.
7. The claimant accepts that no further pay is due to her. She asked whether or not she could claim for the upset caused by the financial hardship she suffered, by the late payment of the wages due to her. I explained to the claimant that an Employment Tribunal can only make an award for the upset caused by an employer's behaviour in certain circumstances, for certain types of claim. For a claim for notice pay, the Tribunal can only award the amount due. Or a wages claim a Tribunal can also award any consequential losses, such as interest charges on a loan taken out due to later payment of wages; or bank charges, caused by the wages not being paid on time. Neither of those apply in the claimant's situation (and the claim appears to be for breach of contract in any event, not wages). The claimant is not therefore due any further compensation in relation to the notice pay claim.

Whistleblowing claim

8. I asked the claimant whether she was making a whistleblowing claim. In particular, was the claimant claiming that she had been subjected to detrimental treatment, as her result of her raising concerns about health and safety? Following a discussion, it was apparent that the claimant was not claiming that she had been subjected to any detrimental treatment as a result. Her complaint was that despite her raising health and safety concerns, nothing was done about it. As a result, she felt she had no alternative but to resign. She was out of work for a period, whilst the necessary pre-employment checks were carried out for her new job.
9. I explained to the claimant that the type of health and safety concerns that she was raising, (were she able to prove those after a full hearing at which all relevant evidence was taken into account), might give rise to a constructive unfair dismissal claim. However, Parliament has decided that employees must have two years employment, before being able to bring such a claim. The claimant only worked for the first respondent for a few weeks.
10. I also explained to the claimant that if she had been subjected to detrimental treatment as a result of raising health and safety concerns, and resigned as a result of that detrimental treatment, she might have been entitled to bring a claim for automatically unfair dismissal linked to her raising health and safety concerns and/or whistleblowing (see sections 100 and 103A Employment Rights Act 1996). For those claims, no qualifying service is necessary. However, for the reasons discussed above, such claims do not arise in the claimant's case.

Other claims

11. The claimant confirmed that she is not complaining that she was discriminated against because of a protected characteristics such as sex or age.
12. The claimant complains that as a result of what she says were poor health and safety practices, her existing back problems were exacerbated, and she has had to pay for some sessions with a chiropractor. I explained to the claimant that an Employment Tribunal does not have the power to deal with claims for compensation for personal injury, caused by alleged breaches of health and safety. Those claims must be brought in the County Court. I stressed to the claimant that I was not advising her that she had such a claim, or that she should pursue one. I was simply explaining that even if she had such a claim, that could not be taken in the Employment Tribunal.
13. It was apparent from the above discussion, that whilst the claimant's final wage was short, all the money owed to her has now been paid. In those circumstances, Mr Wishart asked me to strike out the claims because they had no reasonable prospects of success. I invited the claimant to withdraw her claims, on the basis of the discussion that had taken place, which is summarised above. In the circumstances, the claimant agreed to do so. Rule 52 of the Employment Tribunal Rules of Procedure 2013 require me to dismiss those claims on withdrawal; that is reflected in the judgment above.

The second respondent

14. In relation to the second respondent, there was before me a copy of a service agreement between the first and second respondent, and the first page of the contract of employment between the first respondent and the claimant. I explained to the claimant that on the basis of the above discussion, any claims that the claimant

might have had could only be pursued against the first respondent, as her employer. The claimant did not disagree with that. Mr Kinsey requested that I strike out the claims against the second respondent, and I agreed that was the appropriate course of action in relation to the claims against the second respondent. Again, that is reflected in the above judgment.

Concluding remarks

15. It was apparent from the discussion that took place that the claimant did have a genuine sense of injustice. I hope that by setting out the above narrative, the claimant understands why it is not appropriate for the Employment Tribunal to decide whether her sense of injustice is justified.
16. Finally, none of the above should be construed as meaning that I have accepted that the concerns raised by the claimant about alleged poor health and safety practices have been made out. Given the circumstances set above, it is not for this Tribunal to decide whether they were.

Employment Judge James

Employment Judge James

16 December 2022

Sent to the parties on:

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For the Tribunal:

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