



EMPLOYMENT TRIBUNALS

Claimant: Mrs B Lubanska

Respondent: Ideal Recruit Limited

JUDGMENT

The claim of unfair dismissal is struck out as having no reasonable prospect of success.

REASONS

1. At a Preliminary Hearing on 17 January 2023, the Tribunal informed the Claimant that it proposed to strike out her claim of unfair dismissal on the ground that it had no reasonable prospect of success because she had not completed the two years' service that is normally required to qualify to bring such a claim. It gave her until 7 February 2023 to make any comments she wanted to make on that proposal.
2. On 7 February 2023 the Claimant wrote to the Tribunal and said that she considered she had the right to bring a claim because the reason for her dismissal was that she had been deprived of her right to be accompanied at a disciplinary hearing and to access the company's disciplinary rules and procedures.
3. Section 104 of the Employment Rights Act 1996 gives the right to complain of unfair dismissal, regardless of length of service, if the sole or principal reason for dismissal is that the employee has alleged that the employer has infringed a relevant statutory right. The right to be accompanied at a disciplinary hearing, which is provided by Section 10 and enforced under Section 11 of the Employment Relations Act 1999, is not one of the listed relevant statutory rights. Nor is the right to access company disciplinary rules and procedures, the other right referred to in the Claimant's letter.

4. Section 12 of the Employment Relations Act 1999 gives the right to complain of unfair dismissal, regardless of length of service, if the sole or principal reason for dismissal is that that the employee has sought to exercise her right to be accompanied at a disciplinary hearing. The employee's right is for the employer to permit her reasonable request to be accompanied by a co-worker or trade union official of her choice and to have the hearing postponed to a reasonable alternative date within five working days if her chosen companion is not available. From the information given by the Claimant, she never requested to be accompanied at the disciplinary hearing by a co-worker or union official and nor did the Respondent refuse to permit her to be accompanied by a co-worker or union official: the postponement she requested was so that she could arrange to be accompanied by a legal representative and an interpreter.
5. The Tribunal therefore dismisses the claim of unfair dismissal on the ground that it has no reasonable prospect of success, the Claimant not having completed the two years' service she needs to qualify to bring such a claim.

Employment Judge Cox

Date: 23 February 2023