



EMPLOYMENT TRIBUNALS

Claimant: Mrs P. Nxumalo-Hlabangana

Respondent: Errand Plus and Personal Services Ltd

JUDGMENT

The respondent's application dated 20 October 2022 for reconsideration of the judgment sent to the parties on 23 September 2022 is refused.

REASONS

There is no reasonable prospect of the original decision being varied or revoked, because:

1. It is correct that the claim for unfair dismissal was struck out by the Tribunal as the claimant did not have a continuous 2-year period of employment as required by The Employment Act 1996. Accordingly, the Employment Tribunal did not have jurisdiction to hear this claim.
2. The claim for notice pay, and judgment in respect of this, stands. While the claimant did not identify a claim for notice pay in section 8 of the ET 1 this does not in and of itself defeat the claim. The claimant was not legally represented. She indicated at section 6.3 of the ET that her claim included an issue with notice pay. The claimant's Particulars of Claim state: '*On the day I submitted an application to deregister myself I informed Kehinde and he automatically dismissed me.*' This was consistent with her evidence at the hearing. She also gave evidence in her witness statement and to the Tribunal that she did not receive pay for the period of notice. Further, the Employment Tribunal accepted a complaint of failure to pay notice pay as part of this claim and the claim for notice pay had not been struck out by the Tribunal at the date of the final hearing.
3. While the Tribunal does not have jurisdiction in the claim for unfair dismissal, the claim for notice pay is not subject to a 2-year time period; the claim for

notice pay stands independent and separate from the claim for unfair dismissal.

4. The Order of Judge Bloom dated 3 February 2022 states:

'The remaining items still are disputed –gross salary for December 2020 £884.87; notice pay £1,769.73; and overtime of £296.09'

5. Accordingly, the claim for notice pay was a live claim at the case management hearing on 14 September 2022. The Judgment dated 14 September 2022 states:

'Accordingly, the complaint of unfair dismissal is struck out. The claimant's other claims are not affected by this judgment.'

6. At that hearing the Tribunal struck out only the claim for unfair dismissal. The claim for notice pay was not struck out, as suggested by the respondent in the email from its representative dated 20 October 2022, and remained a live claim for consideration by the Tribunal at the hearing on 23 September 2022. The Tribunal did not err in considering the claim for notice pay at this hearing.

7. While it may have *'always been the Respondent's position that the claimant resigned her position and was not dismissed'* at the hearing the Tribunal preferred the claimant's evidence and found, as a matter of fact, that Mr Kehinde Babatunde gave notice to the claimant and this is how employment ended, based on the claimant's written and oral evidence to the Tribunal. Mr Babatunde did not attend the hearing so the claimant could not cross examine him on his witness evidence nor could the Tribunal ask questions of Mr Babatunde. He was legally represented at the hearing. His representative did not question the claimant on whether she resigned or was dismissed. The respondent's representative did not raise in closing submissions, or at any time in the hearing, and the Tribunal's jurisdiction in respect of a claim for notice pay, which is pleaded in the claimant's Particulars of Claim document, supported by her written and oral evidence.

8. For these reasons, the Judgment of the Employment Tribunal dated 23 September 2022 stands. The claimant is entitled to notice pay of pay £1,769.73 gross.

Employment Judge Hutchings

2 March 2023

JUDGMENT SENT TO THE PARTIES ON
2nd March 2023

GDJ
FOR THE TRIBUNAL OFFICE