



EMPLOYMENT TRIBUNALS

Claimant: Cree Odimah-Webster

Respondent: Goma Limited T/A Caia

Heard at: London Central (by CVP) **On:** 27, 28 June 2023

Before: Tribunal Judge Andrew Jack, acting as an Employment Judge

Representation

Claimant: In Person

Respondent: Miss D Ajibade, Peninsula

RESERVED JUDGMENT

The judgment of the tribunal is that the claim of automatically unfair dismissal fails and is dismissed.

REASONS

Claims

1. This is a claim for automatically unfair dismissal.
2. The claimant was dismissed on 14 June 2022.
3. Notification was received by ACAS on 13 July 2022 and they issued a certificate on 3 August 2022. The claim was presented on 23 August 2022. The claim against Goma Limited T/A Caia was accepted (a claim against Rishabh Vir was rejected on 27 September 2022, on the basis that the claim did not contain an early conciliation number for him). A complaint of breach of contract (wrongful dismissal) was dismissed on 10 February 2023, following withdrawal by the Claimant.
4. The issues relating to liability were identified by Tribunal Judge McGrade in the Record of a Preliminary Hearing dated 10 February 2023:

- 4.1 Was the reason or principal reason for dismissal that the claimant asserted the statutory right to a statement of employment particulars and to be notified of any changes?
- 4.2 If so, the claimant will be regarded as unfairly dismissed.
5. There was a bundle of 123 pages, a number of documents which were not included in the bundle, and three witness statements. The claimant, Mr and Mr Rishabh Vir and Mr Tim Lang each gave oral evidence. Each party provided written closing submissions.

Amendment Application

6. Both parties made submissions regarding the claimant's application to add a claim of unauthorised deduction from wages. The reasons for this application were first set out in the claimant's email to the tribunal of 21 June 2023.
7. I refused the application and gave the following reasons.
8. The claimant became aware on 20 March 2023 that she would receive a refund of £1,900 tax from HMRC as she had overpaid tax. She accepts that as a result of a payment made in June 2022 she was no longer owed any money by the respondent. However she complains that had the respondent been properly organised, less tax would have been deducted and her finances would have been easier to manage after her dismissal.
9. When exercising the discretionary power to amend, the tribunal must have regard to all the circumstances, and in particular to any injustice or hardship which would result from the amendment or a refusal to make it. Relevant factors include the nature of the amendment, the applicability of time limits, and the timing and manner of the application: *Selkent Bus Co Ltd v Moore* 1996 ICR 836, EAT.
10. When considering applications to amend which raise new causes of action the tribunal should focus on the extent to which the new pleading is likely to involve substantially different areas of inquiry compared with the old. The greater the difference between the factual and legal issues raised by the new claim and by the old, the less likely it is that the application will be permitted: *Vaughan v Modality Partnership* 2021 ICR 535, EAT, paragraph 20.
11. No one factor is likely to be decisive. The balance of justice is always key. *Vaughan v Modality*, paragraph 25.
12. If the amendment were allowed, it would bring a new claim for unauthorised deduction from wages.
13. The claimant in effect applied to make the amendment in her email of 21 June 2023, one year after the last payment from the respondent was made in June 2022 and three months after she became aware of the tax refund.
14. It is also relevant that she has received a tax refund. So any claim would be at most for financial loss sustained by her which is attributable to the overpayment of tax. That tax has been refunded is not in itself sufficient to

show that the respondent made errors or that it made unauthorised deductions beyond what is permitted by statute. She would need to show that the relevant statute did not give the employer the right to make the deduction or that the employer had not followed the correct procedure before making the deduction. That would involve new areas of inquiry regarding whether the correct procedures were followed, and what financial losses she sustained attributable to the overpayment of tax.

15. Taking account of all the relevant factors, the balance of justice favours refusing the application.

Findings of Fact

16. The claimant's employment began on 28 March 2022.
17. Negotiations took place after the claimant had started work about her contract. Those negotiations were initially with Mrs Anjuli Vir, the wife of Mr Rishabh Vir. Mr Vir is a director of the respondent, which runs a restaurant in Notting Hill. Only after the claimant started work did Mr Vir decide that the claimant would be employed by the respondent rather than by Mr Vir himself. The claimant was ultimately employed by respondent, although 95% of her work was work for the family of Mr Vir and not for the restaurant business.
18. The claimant was not happy about working without a written contract and asked a number of times when she would receive a written contract. For example, on 5 April 2022 the claimant asked Mrs Vir if there was an update on her contract of employment (bundle, p. 84).
19. Neither Mr Vir nor the respondent put arrangements in place to ensure that the claimant was paid in April 2022 the wages for the work she did that month. So that she would not be out of pocket, Mr Vir sent her a payment from his personal account. He thought of this as a loan, and the claimant did repay it in May when she was paid for her work in both April and May 2022.
20. The claimant was provided with a statement of the main terms of employment (bundle, p. 59). She signed it on 11 May 2022 (and not, as it incorrectly states on its face, 28 March 2022). She was employed by the respondent as Executive Assistant to Mr Vir. There was a three month probationary period, and if her work was not up to the required standard, or she was considered to be generally unsuitable, the respondent could extend the probationary period or terminate her probation with two week's notice.
21. On 1 June 2022 the claimant asked Mr Vir for payslips. On 2 June 2022 the claimant was provided with a payslip dated 31 May 2022, which made a deduction for the amount already paid. On 6 June 2022 the claimant asked Mr Vir questions about her payslip, which she found confusing, and Mr Vir engaged with her concerns the same day, asking the accountant to clarify the context for the claimant.
22. The claimant was on occasion asked by Mrs Vir to say whatever was necessary when cancelling flights (in an effort to obtain a refund) or appointments (so as to avoid a charge). The claimant's evidence on this

was clear and credible and, since Mrs Vir did not give evidence, the claimant's is the only direct evidence of these conversations.

23. The claimant organised a move of furniture from a family property in central London into storage. The claimant sent an email from her work email on 9 June 2022 referring to her "very difficult boss" (bundle, p. 63). This email was intended for Daniel, at the contractors who were organising the move and providing storage for the furniture. However it was accidentally sent to Mr Vir. The email says that the claimant's difficult boss had checked with his house manager and that the furniture was in fact worth more than £10,000, and asks Daniel for a new costing. This was untrue: there was no house manager.
24. On 13 June 2023 the claimant was invited to a probationary meeting by Tim Lang, who is a director of the respondent. A letter was sent to the claimant on the same day, saying that the respondent was concerned about breach of trust and unprofessional behaviour i.e. that on 9 June 2022 the claimant intended to send an email to a contractor making negative comments about her manager (bundle, p. 67).
25. The probationary meeting took place on 14 June 2023 between the claimant and Mr Lang. Following the meeting, Mr Lang took the decision to dismiss the claimant and sent her a dismissal letter. The dismissal letter was emailed to the claimant at 10:23 on 14 June 2022. (The claimant had seen it before sending an email at 10:24 the same day, saying that she resigned.)
26. The letter of dismissal states that the reason for dismissal was that she had failed to demonstrate professional behaviour, and that the result could have been a loss of business and damaged reputation (bundle, p. 76). She was dismissed with immediate effect and received pay in lieu of notice.

The Law

27. An employee who is dismissed shall be regarded as unfairly dismissed if the reason or the principal reason for the dismissal is that the employee alleged that the employer had infringed a right of his which is a relevant statutory right: Employment Rights Act 1996 ('ERA') s. 104(1)(b). It is immaterial whether or not the employee has the right, or whether or not the right has been infringed: ERA 104(2).
28. The relevant statutory rights include:
 - 28.1 Where a worker begins employment with an employer, the worker has a right to a written statement of particulars of employment: s. 1(1) ERA.
 - 28.2 If there is a change in any of the matters particulars of which are required to be included in a statement under s. 1, the employer shall give to the worker a written statement containing particulars of the change: s. 4(1) ERA.

- 28.3 A worker has the right to be given by her employer, at or before the time at which any payment of wages or salary is made to her, a written itemised pay statement: s. 8(1) ERA.
29. Where an employee lacks the two years continuous service necessary to claim ordinary unfair dismissal, she has the burden of proving that the reason for dismissal was an automatically unfair reason: *Smith v Hayle Town Council*, [1978] ICR 996, CA.

Conclusions

30. The claimant asserted her right to a written statement of particulars of employment. As I have found, she asked a number of times when she would receive a written contract.
31. The claimant asserted her right to payslips. As I have found, on 1 June 2022 the claimant asked Mr Vir for payslips.
32. The respondent says that the reason for her dismissal was not that she had asserted her rights, but that she had attempted to send an untruthful email to a contractor criticising Mr Vir during her probationary period. The claimant says that this was not the real reason, and says that she had previously been asked by Mrs Vir to say whatever was necessary to obtain refunds for cancelled flights or move appointments without charge. The claimant says that the email of 9 June 2022 was an excuse, rather than the real reason. I have found that the claimant was on occasion asked by Mrs Vir to say whatever was necessary when cancelling flights (in an effort to obtain a refund) or appointments (so as to avoid a charge). That is different, however, to being willing to criticise and be untruthful about one's manager in writing to a contractor.
33. Further, the issues regarding a written contract and payslips had been resolved by the time of her dismissal. The claimant had been provided with a statement of the main terms of employment, and signed it on 11 May 2022. On 2 June 2022 the claimant was provided with a payslip dated 31 May 2022, in respect of her pay for April and May 2022. She was dismissed on 14 June 2022, after these issues had been resolved.
34. It is for the claimant to prove that she was dismissed because she asserted relevant statutory rights. Taking account of the contemporary evidence (the dismissal letter) and the chronology, I am satisfied that the reason for her dismissal was that in, having been willing to criticise and be untruthful about her manager in writing to a third party, the respondent considered her to have been unprofessional. I am therefore satisfied that the reason for the dismissal was not that the claimant asserted the statutory right to written particulars and to payslips. I am satisfied that there was not a causal link between her asking for payslips and for a written contract and her being dismissed.
35. The claim for automatic unfair dismissal therefore fails.

Employment Judge Andrew Jack

Date 28 July 2023

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON
28/07/2023

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FOR EMPLOYMENT TRIBUNALS