



EMPLOYMENT TRIBUNALS

Claimant: Ms Efstathiou

Respondent: London Borough of Enfield

RECORD OF A PRELIMINARY HEARING

Heard at: Watford Employment Tribunal **On:** 12th December 2023

Before: Employment Judge Shrimplin

Appearances

For the claimant: In person but did not attend

For the respondent: Present only via its representative, Mr Stephen Bishop (Counsel) via CVP

JUDGMENT

The claimant's claim for a redundancy payment under s135 Employment Rights Act 1996 is dismissed.

Reasons

1. On 13th January 2023, Employment Judge R Lewis determined that there should be a hearing to decide the following issues:
 - 1.1 whether the case should be struck out and, if not
 - 1.2 whether the claim was presented out of time and/or capable of being the subject of a fair trial.
2. That hearing was listed to take place on 24th April 2023. On the application of the claimant and on the order of EJ Quill, that hearing was postponed and rearranged for 11th September 2023. Unfortunately, as it was extremely unlikely the case would have been heard, Regional Employment Judge Foxwell further postponed the hearing to the 7th November 2023.
3. On 7th November 2023 the hearing was adjourned to 12th December 2023. Ms Efstathiou was called at 10 am, 11am and 12 noon and did not attend. During the adjournments, a search was carried out for any further email correspondence from the claimant and there was none. The claimant's mobile was called but there was no answer and it was not possible to leave a message. An email was

sent to the claimant's address at about 11am but there was no response by 12 noon. Mr Bishop, counsel for the respondent, was present at each time the case was called via CVP.

4. The claimant was present in person at the last hearing. I noted an email from the claimant dated Saturday 2nd December to the respondent solicitors and the tribunal indicating that the claimant would provide her documents and she had been "asked to do it before the 12th". The claimant was therefore aware of the hearing date and had not contacted the tribunal.
5. Where a party fails to attend, Rule 47 of the Employment Tribunals Rules of Procedure 2013 ("the 2013 Rules") applies and provides:
"If a party fails to attend or to be represented at the hearing, the Tribunal may dismiss the claim or proceed with the hearing in the absence of that party. Before doing so, it shall consider any information which is available to it, after any enquiries that may be practicable, about the reasons for the party's absence."
6. At 12 noon I discussed the claim with Mr Bishop and Hearing Note for today which summarised the respondent's case as follows:-
(a) There was no contract of employment arising from the operation of the Primary Schools Supply Pool (PSSP), previously known as the Relief Teachers Register ('RTR'). There was a matching service provided to schools and supply teachers ("STs") who signed up to the scheme. It was, in effect, an 'agency'. Any contracts, whether of employment or services, would have been with the schools who used C's services. There was no contract of employment, so there could be no dismissal or redundancy.
(b) If, which is denied, there was a contract with R, it was a zero hours contract. C did not have the required 2 years continuous service to bring a claim for a redundancy payment as C did not work at a school within the Borough between 7 June 2019 and 7 January 2020, and there were further breaks in 2020.
(c) The register was closed on 23 July 2021. Even if, which is denied, there was a contract of employment, the claim is out of time. It was reasonably practicable to bring the claim in time.
7. An employee has a right, in certain circumstances, to claim for a redundancy payment under s135 Employment Rights Act 1996 (ERA). The right to claim a redundancy payment is limited under s155 ERA 96 to employees who have continuous employment of not less than two years, ending with the relevant date. Mr Bishop accepted that the statutory time limit for the claim of six months was set out in s164(1) ERA 96, which may be extended for a further six months in the circumstances set out in s164(2) ERA96 where the tribunal considers it to be just and equitable for the employee to receive a redundancy payment.
8. I considered whether to proceed in the claimant's absence. I noted the documents in the bundle and the respondent's Hearing Note which set out the respondent's view of the nature of its relationship with the claimant and the periods of that relationship. I noted substantial gaps in that record, particularly between March 2020 and July 2021 when the pool was closed. I also noted that I had limited information from the claimant in relation to those matters on which to make findings of fact.

9. I concluded that the right and just approach was to dismiss the claim. In reaching that conclusion, I took into account the fact that the claimant had not pursued her claim by complying with the case management order issued on 7th November as she had not provided documents nor a witness statement addressing why the tribunal should consider it was just and equitable for her to receive a redundancy payment.
10. If the claimant had a genuinely good reason for not attending (whether in person or by a representative) the hearing of 12th December 2023, then she can apply for a reconsideration of my above judgment under Rule 70 of the 2013 Rules.
11. However, even if she puts before me cogent evidence to show why she did not attend the hearing, in order to persuade me that the interests of justice require the revocation of my above judgment, she will have to say, precisely, on what basis she asserts that she was entitled to a redundancy payment. In particular, she must address the points made on behalf of the respondent which are summarised in the Hearing Note. If she does not, an application for reconsideration will be likely to have no chance of success and will therefore be liable to be dismissed.

EJ Shrimplin
12th December 2023

Sent to the parties on:

23/1/2024

For the Tribunal Office:

N Gotecha