



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mrs Maria Oliveira

v

Mach Recruitment Limited

Heard at: Cambridge (in person)

On: 2 and 3 October 2023

Before: Employment Judge M Ord

Appearances:

For the Claimant: Mr H Oliveira, Son

For the Respondent: Mr T Wood, Counsel

JUDGMENT having been sent to the parties on 15 November 2023 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunal Rules of Procedure 2013, the following reasons are provided:

REASONS

1. The Claimant was engaged by the Respondent from 18 July 2018.
2. The Respondent is a temporary work agency supplying workers to the food manufacturing and warehouse sectors of business across the UK.
3. Prior to being engaged by the Respondent, the Claimant was employed by G-Staff Limited, another work agency.
4. Her contract was a contract of employment and it is not disputed that up to the date of engagement with the Respondent, the Claimant was an employee of G-Staff Limited and had been employed by then since 8 June 2015.
5. On 13 July 2018, the Respondent entered into a service level agreement to provide staff to 'Butchers Pet Care Limited' ("Butchers") which was where the Claimant had worked throughout her employment with G-Staff Limited.
6. From 13 July 2018, the Respondent began providing staff to Butchers. The Respondent has produced no evidence as to who was provided to Butchers, when, how they were chosen, or any other evidence which would assist me in determining whether or not there was, before or after

the Claimant's engagement with the Respondent, an "organised grouping of employees" as defined in Regulation 3(3)(a)(i) of the Transfer of Undertaking (Protection of Employment) Regulations 2006 ("the Transfer Regulations").

7. The Claimant's unchallenged evidence was that she signed an agreement with the Respondent on 18 July 2018 during one of her working shifts at Butchers. She signed a document headed "Application Form" giving her address, date of birth, National Insurance number and bank details. It was stated in the form that she was interviewed by "Michelle" (surname undecipherable).
8. The Claimant also signed a five page document headed "Terms and Conditions", a schedule opting out of the maximum weekly working hours under the Working Time Regulations 1998 and a document in two parts: the first being "Guidance on Health and Safety" and the second a declaration which included that she was aware of all the Respondent's Policies and Procedures.
9. The Claimant's first language is Portuguese. Her unchallenged evidence was that she lacked sufficient knowledge or understanding of written English to comprehend the contents of the relevant documents and that she signed them because otherwise she was fearful that she would be out of work.
10. No one else who was present at this time has given evidence and the Claimant's evidence was not challenged in any way.
11. The Claimant says that she was told that "*nothing would change*" other than the Respondent was taking over from G-Staff Limited. The Claimant was not told that she was no longer an employee.
12. The Claimant struck me as an honest witness. Her evidence was unchallenged and I accept it.
13. The Claimant also says that when she began work with G-Staff Limited she was assigned to work at Butchers. Her work was always there and her work (as an Alutray Operative) did not alter. She worked with and alongside the same people throughout, except when someone would leave and be replaced by a new person.
14. I am satisfied that this amounted to an organised grouping of employees. It was (other than the normal departures and replacements that occur in any workplace, a settled group of employees, placed by the respondent (and its predecessor) to work in a specific location. I am reminded of the decision of the Employment Appeal Tribunal in Eddie Stobart Limited v Moreman and Others [2012] ICR919, that the organisation of the grouping must be more than coincidental or merely circumstantial. The employees must have been organised intentionally. Here I am satisfied that they were.
15. The evidence about this was very limited. In particular the Respondent has produced no evidence either from itself or from G-Staff, whether written or oral, about this matter. Therefore, based on the Claimant's

evidence alone (which is all I have), the Respondent having called no evidence whatsoever on this topic, I find that this was an organised grouping.

16. The principal purpose of the group of employees assigned by G-Staff Limited to Butchers was to carry out the activities in question for Butchers. In relation to the Claimant and her colleagues that was working as a Multi Pack Alutray Operative, i.e. carrying out packing duties. That was the only work they were carrying out as the settled group of employees in question and they were only carrying out work for Butchers. They were assigned by G-Staff Limited to carry out that work. They did not work for other clients (as had been originally the position in Moreman). They were organised to solely carry out packing and related work for Butchers.
17. Accordingly, applying the five stage test in Enterprise Management Services Limited v Connect Up Limited and Others [2012] IRLR 90, in determining whether a service provision change amounts to a relevant transfer I find as follows:-
 - 17.1. The activities performed by the original contractor were packing duties on Multi Pack / Alutrays for Butchers as a sole client;
 - 17.2. These are fundamentally the same as those carried out by the new contractor;
 - 17.3. There was before the transfer an organised grouping of employees which had as its principal purpose the carrying out of those activities on behalf of the client;
 - 17.4. The exceptions in Regulation 3(3)(b) and (c) do not apply. This was not a single event or short term duration appointment and was not wholly or mainly for the supply of goods; and
 - 17.5. The Claimant was assigned to the organised grouping of employees.
18. I therefore find that this was a relevant transfer. It is surprising that the Respondent is providing no evidence to support its contention that there was not, or the Claimant was not part of, an organised grouping of employees at any time including after they took over the contract.
19. Under the Transfer Regulations the Claimant's terms and conditions of employment are protected so that the Claimant transferred to the Respondent as an employee on the same terms and conditions as pertained whilst she was employed by G-Staff Limited. She remained an employee of the Respondent throughout with continuous service from the commencement of her employment with G-Staff Limited.
20. The Claimant suffered an accident at work on 30 April 2021 and was unfit for work for three to four weeks.
21. By the time the Claimant was able to return to work, the volume of work at Butchers which required staff from the Respondent, had significantly reduced. There were, on the Claimant's evidence, prior to her accident,

up to ten (from time to time 11) people from the Respondent engaged in packing. On the basis of an email sent by Butchers to the Respondent the need had reduced to three persons.

22. The Respondent's contract with Butchers ended on 30 September 2021, on which date (if not before had the Respondent taken any action) the Claimant could have been fairly dismissed on the ground of redundancy (assuming there was no relevant transfer to a new service provider).
23. In fact, because the Claimant was not in receipt of any word from the Respondent, she commenced alternative work from 1 September 2021. Her work has been continuous since that date.
24. The Claimant had brought a claim for unpaid holiday pay. The Respondent had admitted throughout these proceedings that holiday pay was owed to the Claimant but could not agree with the Claimant the amount. No payment was made prior to the first day of this Hearing when the Respondent made payment to the Claimant in an accepted sum.
25. The Claimant's complaint that she was not paid sick pay was resolved prior to the presentation of her Employment Tribunal Claim.
26. The Claimant received a P45 from the Respondent, which was dated 4 June 2021, but was not provided to the Claimant until 13 February 2022. Prior to that date she had had no communication regarding the termination of her employment with the Respondent.
27. The real reason for the Claimant's dismissal was that she was redundant. The Respondent failed to follow any process in relation to that dismissal. The Respondent has produced no evidence to indicate whether or not (and if so how) they endeavoured to find alternative employment for the Claimant.
28. There was no process followed by the Respondent in relation to the Claimant's dismissal and her dismissal was therefore unfair.
29. Had the Respondent followed a fair process it was one hundred per cent certain that the Claimant would have been fairly dismissed on the ground of redundancy on 30 September 2021.
30. The Claimant did not receive any notice pay and her dismissal was therefore in breach of contract.

Conclusions

31. Summary:
 - 31.1. The Claimant's complaint that she was not paid sick pay is dismissed on withdrawal;
 - 31.2. The parties having reached a private agreement in relation to the Claimant's complaint that she was not paid outstanding holiday pay, that claim is dismissed;
 - 31.3. The Claimant was employed by the Respondent continuously from

8 June 2015 (transfer from G-Staff Limited under the Transfer Regulations on 18 July 2018);

- 31.4. The Claimant was dismissed by the Respondent (according to her P45) on 4 June 2021 but this was not communicated to the Claimant until 13 February 2022;
 - 31.5. The Claimant was dismissed on the ground of redundancy;
 - 31.6. The Respondent failed to follow a fair process in dismissal and the dismissal is unfair;
 - 31.7. Had the Respondent followed a fair process, it was 100% certain that the Claimant could have been fairly dismissed on the ground of redundancy; and
 - 31.8. The Claimant was dismissed in breach of contract.
32. I gave the parties time to agree Remedy if possible and they were able to do so. The agreed Remedy forms part of the Judgment already delivered.

Employment Judge M Ord

Date: 18 January 2024

Judgment sent to the parties on
7 February 2024

For the Tribunal office

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