



EMPLOYMENT TRIBUNALS

Claimant: Ms D Foster

Respondent: Sovereign Courts Residents Association Ltd

Heard at: London South (by CVP)

On: 16 January 2024

Before: Employment Judge Routley

Representation

Claimant: Mr Barry (Counsel)

Respondent: Did not attend

JUDGMENT having been sent to the parties on 21 February 2024 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

1. Unfair dismissal

2. The Claimant worked for the Respondent from 17 May 2021 until 21 April 2023. The Claimant did not therefore have sufficient service to bring a claim for unfair dismissal.
3. It was common ground between the parties that the Claimant did not physically perform any work for the Respondent until 17 May 2021. However, the Claimant's case was that the Tribunal should treat 10 March 2021 as her start date, as this was the date on which she signed her contract and made herself available for work.
4. However, the starting point has to be the statutory language. The relevant section of statute here is section 211 of the Employment Rights Act, which states that an employee's period of continuous employment begins with the date on which the employee "starts work". It does not say "the date on which the employee signed their employment contract" or "the date on which the employee is available for work".

5. The Claimant did not perform any work for the Respondent prior to 17 May 2021. The Claimant was not paid by the Respondent prior to 17 May 2021. I therefore find that the Claimant started work for the Respondent on 17 May 2021, and that her start date for the purposes of calculating her period of continuous employment was 17 May 2021.
6. As discussed at the hearing, I appreciate that there have been cases in which the start date of employment has been found to be earlier than the date on which the employee physically started work. In particular, I have considered the case of *General of the Salvation Army v Dewsbury 1984 ICR 498, EAT*. However, the question of when an employee “starts work” is a question of fact for the Tribunal. The facts of *Dewsbury* were very different, in that the employee in question was paid from an earlier date than her first date of physical work, and had already been working for the relevant employer in a different capacity. These were not factors which applied here. There were no facts in this case which pointed to a different start date than the first day on which the Claimant attended work.
7. The Claimant was dismissed with immediate effect on 21 April 2023. Mr Barry on behalf of the Claimant invited me to add the Claimant’s full contractual notice period to the date of termination. This would mean that the Claimant’s effective date of termination was 21 May 2023, thereby giving her the required two years’ service required to bring an unfair dismissal claim.
8. The statutory position under section 97(2) of the Employment Rights Act 1996 is that I can add the Claimant’s minimum period of statutory notice when calculating her period of continuous service (in this case one week) but not her full contractual notice.
9. The hearing was adjourned for half an hour in order to give Mr Barry an opportunity to look for an authority which would enable me to depart from this position. Mr Barry was unable to point to any such authority.
10. The Claimant’s effective date of termination was therefore 28 April 2023. The Claimant did not have the two years’ continuous service required to bring an unfair dismissal claim. The Claimant’s claim for unfair dismissal therefore fails.

11. Breach of contract

12. The Claimant’s contract states that she is entitled to one month’s notice of termination.
13. It was common ground between the parties that the Claimant received pay in lieu of one week’s notice. This was the Respondent’s pleaded case in its ET3.
14. I therefore awarded the Claimant £175.45 for breach of contract.

15. Failure to comply with section 1 of the Employment Rights Act 1996

16. The hearing bundle contained a copy of the Claimant’s contract of employment. This contract did not comply with the provisions of section 1 of the Employment

Rights Act 1996, in that it did not contain a start date and did not contain the relevant information in respect of disciplinary and appeal processes. The Claimant gave evidence that she had not received any further documentation from the Respondent which set out this information.

17. In the circumstances, I found that it was just and equitable to make an award of four weeks' pay. The contract was missing fundamental information which would have been particularly significant given the circumstances of the Claimant's dismissal. The error had not been rectified by the Respondent despite the Claimant remaining in their employment for almost two years. I therefore awarded the Claimant £232.60 in this regard.

Employment Judge Routley

22 January 2024