



EMPLOYMENT TRIBUNALS

Claimant: Miss S Francis

Respondent: Fraser Capital Management Limited
Trading as Club 3000 Bingo

JUDGMENT

The claim is struck out.

REASONS

1. The claimant complains of unfair dismissal.
2. Section 108 of the Employment Rights Act 1996 requires a claimant to have not less than two years service to make an unfair dismissal complaint.
3. The claimant accepts that she was employed by the respondent for less than two years.
4. Therefore, the claimant is not entitled to bring these proceedings.
5. The claimant has failed to give an acceptable reason, despite being given the opportunity to do so, why the complaint should not be struck out. The claimant was warned on 3 July 2024 that EJ Holmes was considering striking out the ordinary unfair dismissal claim.
6. The claimant responded suggesting for the first time that she may have an automatically unfair dismissal complaint and so would not need two years service to bring her claim. At its highest she says that in seeking to complain about the person who dismissed her for gross misconduct she may be a whistleblower.
7. I find that the claim form does not disclose a whistleblowing complaint
8. Such a complaint, even if brought, would have no reasonable prospect of success because the alleged disclosure comes after the alleged detriment..

The box was not ticked and there was no language in the Form that could be interpreted in such a way as to support a whistleblowing complaint.

9. In so far as the claimant's assertion in response to the warning letter might amount to an application to amend it is rejected as being deficient. At its highest the claimant says *I believe that because I wished to put in a formal complaint against the manager of the club she took it upon herself to fire me and I believe that this might fall into the whistleblowing policy as I was attempting to outline the poor conduct of the store manager.* It does not set out sufficient detail of the disclosure and detriment to allow the respondent to know the case against it.
10. Even if the amendment application were allowed I accept the respondent's submissions that the claimant will have no reasonable prospect of showing that she made qualifying protected disclosures; particularly in relation to the requirement that she make disclosures that she reasonably believed tended to show breaches of legal obligations, (at its highest she is complaining about the store manager handling of a conduct hearing at which she the claimant accepted she had called a colleague "bitch" in front of customers) and particularly in relation to the requirement that she make disclosures in the public interest (she was wanting to complain about how she was treated). Accordingly, if there were an amendment application and it were considered I would find that the balance of prejudice lay with the respondent.
11. A request to be allowed to bring a whistleblowing claim (made after a claim form that discloses no such cause of action in response to a strike out warning) is a clear attempt to contort facts and complaints into a jurisdiction that would allow the claimant to proceed without two years service. The Tribunal has no jurisdiction to hear the claim.
6. Accordingly, the claim in its entirety is now struck out.

Employment Judge **Aspinall**

Date: 4 October 2024

JUDGMENT SENT TO THE PARTIES ON

Date: 8 October 2024

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FOR THE TRIBUNAL OFFICE