Case No: 2200734/24

EMPLOYMENT TRIBUNALS

Claimant: **Ms B. Mellaro**

Respondent: **Eteam Workforce Limited**

London Central in public by CVP **30 September 2024**

Employment Judge Goodman

Representation:
Claimant: in person
Respondent: Irfan Bhat, general legal counsel for respondent

RESERVED JUDGMENT

1. The claimant was dismissed by reason of redundancy and the respondent is ordered to pay her a redundancy payment of £1,929.

2. The claim for unfair dismissal does not succeed.

3. The claim for holiday pay is dismissed on withdrawal.

REASONS

1. This claim for unfair dismissal, a redundancy payment and holiday pay was presented to the tribunal on 20 January 2024. The respondent is an employment agency in information technology activities. The claimant was employed by the respondent and assigned to work for Verizon.

2. The respondent asserts that any outstanding holiday was paid on termination. The claimant confirmed that it had been paid and this claim is dismissed on withdrawal.

3. It is denied there was a redundancy situation: the reason for dismissal is said to be the client's rule not to hire a contract worker for more than two years. As for unfair dismissal, it is agreed she was dismissed because of the client's rule, but denied that this was unfair.

Conduct of the Hearing

4. The claimant had sent the respondent and the tribunal a witness statement and her documents on 22 September. The respondent had not sent the clamant or the tribunal any documents or witness statements. I adjourned for the morning so that their representative, who was standing in for a colleague who had been taken ill, could find out if there were any. During the morning the tribunal was sent a number of documents (which duplicated those sent by the claimant). In the afternoon I was informed that the respondent proposed to call Vibha Mota but there was no witness statement. I would have been prepared to permit this without a witness statement, given the limited factual issues in this case. However, when in discussion with the representative the Muslim call to prayer could be heard. In reply to my question, I was told the representative and the witness were in India (Kashmir). The government of India has not responded to FCO requests on whether evidence may be given to a UK court or tribunal from their territory. I explained that for that reason I was unable to hear the witness.

5. Neither side applied for postponement. The claimant gave evidence and was questioned by the respondent's representative. I read the documents produced to the tribunal by each party.

6. I outlined the issues. Each party was invited to make a submission, in particular on the availability of alterative employment.

Findings of Fact

7. The respondent is an employment agency, the UK subsidiary of a group whose parent company is in New Jersey, USA. In answer to a question from the tribunal, Mr Bhat said they had 50 or 60 clients to whom they supplied workers on assignment. He was unsure how many employees they have at present. He suggested that currently they have "50 to 60, let's say 100 maximum". The only other indication of the respondent's size or administrative resources is found in the statement filed by Eteam Human Capital Group, the parent company, at Companies House, which states there were 202 employees in 2023.

8. On 1 September 2021 the claimant and the respondent signed a contract for her employment as "success account manager - Italian speaking", with a start date of 27 September 2021.

9. The contract provided for one week's notice of termination for up to two years' service, and two weeks thereafter. The language of the contract suggests it

was copied from a US template (for example it is said to be employment "at will"), but the respondent is a company registered in London, where the claimant was living, and in addition the contract provides that any dispute is to be litigated "in London UK or in the federal courts of the UK".

10. The salary was £200 per day, less tax and statutory deductions. There was provision for 28 days leave, the statutory minimum. Assuming a five day week, £200 per day equates to £52,000 per annum.

11. The claimant was assigned to work for Verizon, a large IT company. Verizon is not mentioned in the contract of employment. On 23rd September 2021 she signed a copy of Verizon's rules. These make it clear that she was not employed by Verizon, but she was obliged to cooperate with investigations, preserve their confidentiality, and so on.

12. On 16th September 2022 the claimant received an e-mail from the respondent: "Hi Barbara, we have some great news for you". Her assignment was extended until the 26th September 2023, adding: "however, as you are aware, this date can change at any time based on business or project needs".

13. On 7th August 2023 she received a similar e-mail, informing her that her assignment had been extended to 26 September 2024.

14. On 8th August 2023 the respondent's HR team signed a letter the claimant had requested to show to her landlord, saying that she was employed for 40 hours a week and had been from 27th September 2021. The claimant says that on the strength of this she renewed her tenancy for 12 months.

15. But on the 9th of August 2023, this was reversed. She was informed: "we have received an update from client that have cancelled the extension and your last working day will be 26 September 2023", and: "Please consider this as an official communication to release you from the assignment effective 26/09/2023". In other words, she was being notice of termination on 26 September 2023.

16. After that, the claimant was asked to sign an addendum to her contract giving a start date of 7 August 2022 and ending on 26 September 2023, subject to notice of termination. She was told by the respondent that: "only the end date is added to this document for audit purposes". She refused to sign. There is another unsigned document the claimant has supplied, showing her contract of employment starting 7th April 2022 "until terminated by either side". However, on the evidence, she started work on 27 September 2021, and continued work until the end of her last day, 26 September 2023, and this was never a fixed term contract.

17. The claimant says she was contacted by the respondent's employee, Adil, while she was on holiday in August 2023, soon after being given notice, about an opportunity with Adobe which he had been told about by the director of a

sister company. The claimant's CV was put forward, but she was later informed that Adobe had filled the vacancy internally.

18. Before she finished in September, the respondent informed her that the contract was coming to an end "as you have reach Verizon contingent worker tenure of 24 hours" (later corrected to 24 months), and "Clause 8 is not applicable in this case and you can apply Verizon after the cool off period as per their policy". Clause 8 is about non-solicitation of Verizon for work when employed by the agency. The claimant complained in an e-mail 23rd September 2023: "I asked for a new job to stay with you too a long time ago". She felt let down that she could have made more enquiries with other agencies if she had known that the assignment to Verizon had to end within two years because of Verizon's rule.

19. Following dismissal, the claimant registered for work with a number of online websites. In October she found a similar job at Verizon being advertised by another agency, but was told that Verizon would not hire her for six months after termination of her assignment – the cool off period. She has provided documentary evidence of applications for a large number of jobs. She had a number of interviews, including 2 for a further vacancy at Adobe, but was unsuccessful. She described the labour market as "tight".

20. Other than two temporary hourly paid jobs, the claimant did not find work until starting work with her current employer as "Business Decevlopment Representative, Italy", on 3 June 2024, at £30,000 per annum. She is described as a temp, but is told there is a good chance of continuation. In the meantime she had earned small sums from hourly paid work totalling £2,216. She was not eligible for Universal Credit because of an incomplete contributions record, after been made redundant in March 2020 when lockdown started, so she gave up her tenancy, moved in with her mother, and put her belongings in storage.

Relevant Law

21. Part X of the Employment Rights Act 1996 provides employees with the right to claim unfair dismissal. An exception is made under section 108 for those with less than two years' service, in the words of the statute: "a period of not less than two years ending with the effective date of termination". When counting the two years, the start date is included - **Pacitti Jones v O'Brien 2005 IRLR 888.** Section 97(1)(a) provides that where a contract is terminated on notice, the effective date of termination is the date on which the notice expires.

22. Redundancy is defined in section 139 of the Employment Rights Act. An employee is taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to the fact that his employer has ceased, or intends to cease, to carry on the business for the purposes of which the employee was employed by him, or to carry on that business in the place

where the employee was so employed, or that the requirements of that business for employees to carry out work of a particular kind, or for employees to carry out work of a particular kind in the place where the employee was employed by the employer, have ceased or diminished or are expected to cease or diminish".

23. Section 98 provides that to determine whether a dismissal is fair or unfair, it is for the employer to show the reason for dismissal, and that it is a potentially fair reason, meaning that it relates to the capability of the employee for performing the work he is employed to do, or to his conduct, or that he was redundant, or that there was a statutory restriction on the employment, or there was "some other substantial reason justifying dismissal".

24. By section 98(4), where an employee has shown a potentially fair reason, the question whether the dismissal for that reason was fair or unfair is to be determined on "(a) whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee… and (b) shall be determined in accordance with equity and the substantial merits off the case"**.**

25. In determining the question of fairness for these purposes, it is not for the employment tribunal to substitute its own view; it must consider whether the Respondent's decision fell within a band of reasonable responses open to a reasonable employer in those circumstances - **Iceland Frozen Food v Jones** (**1982) IRLR 439 EAT**, and **Post Office v Foley** and **HSBC v Madden (2000) IRLR 827 CA.**

26. When redundancy is the reason for dismissal, an employer is expected to consult with the employee at the earliest opportunity, and to seek ways of avoiding redundancy, which may include looking for suitable alternative employment with him.

Discussion and Conclusion

27. This is not a case where a limited term contract ended, as the claimant suggested when referring to employment over four years. The contract is clear that it is terminable on notice. The client's requirement that The assignment must end within two years of starting was not known to the claimant, and does not appear in the contract. The claimant was given notice, which was more than the statutory or contractual minimum.

28. The reason for termination was that the client to whom she was assigned no longer wished for her services, because they had a rule not to have a contract worker for more than two years. The tribunal can only speculate on the reason for this rule, but it is probably to avoid the risk that the contract worker acquires any unfair dismissal right. Whatever Verizon's reason, Eteam's requirement, in the language of section 139, for employees to carry out work

of a particular kind in the place where the employee was employed by the employer had diminished. In the tribunal's finding, the claim was dismissed by Eteam by reason of redundancy. The claim for a redundancy payment succeeds. She had worked there two years, the minimum required. The statutory maximum on a weeks pay in September 2023 was £643 per week. She was over 41 when the contract began. Based on two years' service, she is entitled to three weeks' pay: £1,929.

29. Was the claimant fairly dismissed for that reason? An employer's duty is to consult at the earliest opportunity. It is not explained why Eteam did not know about Verizon's 2 year rule: it seems the manager who had been communicating with the claimant learned this from the Europe HR team within the Eteam group. Whatever the reason, the claimant was informed very promptly, and given several weeks' notice of termination. The only alternative to dismissal was to find the claimant other work. The respondent did put her forward for at least one other opportunity in August. The claimant herself had started a search at that point. Her experience, then and later, suggests that there were few vacancies in the market, and that they were much sought after at the time. This suggests that the respondent did what it could in the circumstances.

30. There was no formal meeting to consult about redundancy, but the claimant was informed, and was in contact with the respondent about alternatives until the contract ended. Naturally she felt let down that only two days after being told she had an extension, she was told there was none, but the delay was only two days. The claimant's case is if she had been told that there was a two year rule, for example when her contract was renewed in September 2022, she would have been able to apply earlier for other work and found a job. (She has also indicated that she would not have worked so hard in the hope of getting a contract extension, if she had known about the rule). That she would have found alternative work earlier remains speculative, because of her experience of the labour market after 9th August. The tribunal does not know when discussion about a contract extension after September 2023 began. Until the 7th of August the claimant could only hope that there would be work after September 2023, but did not know that.

31. There is enough evidence to show that there was at least an informal process of consulting, and an attempt to find her other work. The nature of an employment agency's business means that they can only redeploy an employee if a client has a current vacancy for which they are suitable. There is no question of selecting the claimant from potentially redundant employees: as far as we know, Verizon's rule applied only to her at that time. The respondent's representative made the point that they have no wish to lose employees if they can find them work, as their profit is made by the client's payment of a percentage of their wages to the agency.

32. The tribunal concludes that this dismissal by reason of redundancy was fair. The unfair dismissal claim does not succeed.

Employment Judge Goodman
30 September 2024

JUDGMENT AND REASONS SENT to the PARTIES ON

15 October 2024

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FOR THE TRIBUNAL OFFICE