



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Ms A Ayorinde

V

Midshire Care Limited

Heard at: Birmingham by audio

On: 3 December 2024

Before: Employment Judge Robin Broughton

Appearances:

For Claimant: in person

Respondent: Miss N Malik, solicitor

JUDGMENT

The claimant's claim of unfair dismissal fails for lack of qualifying service and is dismissed.

ORDERS

1. The claimant describes her race as African. She was initially employed by the respondent as a carer on a graduate temporary leave to remain visa. In October 2023, she asked the respondent if they would sponsor her for a skilled or health and care work visa on the expiry of her leave to remain.
2. She says she was initially encouraged by the respondent's response but there was a significant delay before she received a definitive answer which was that the respondent did not sponsor workers in her circumstances.
3. She had brought claims of race discrimination relating to the following circumstances:
 - a. The delay in informing her that the respondent would not sponsor her, including, potentially, that this was deliberate to ensure her continued service and
 - b. Refusing to sponsor her for a work visa
4. Before me today, the claimant was unable to identify how the above circumstances could amount to race discrimination.

5. In relation to a possible direct discrimination claim, the only comparator she referenced was also African.
6. It appeared that the claimant's treatment may have been unfortunate, or even unfair, but it related to her visa status rather than her race.
7. The claimant was unable to identify anyone of a different race treated more favourably, nor any circumstances in which someone of a different race might have been.
8. The respondent says that they were not in a position to meet the sponsorship requirements in any event.
9. In circumstances where the respondent is neither obliged, nor potentially able, to sponsor an employee into work, we were unable to identify a potential claim for indirect discrimination either.
10. Nonetheless, I felt it only fair to give the claimant an opportunity to reflect on our discussion, research and / or seek further advice. Accordingly, she has until 10 January 2025, to show cause why her discrimination complaints should not be struck out, including particularising
 - a. In the case of direct discrimination, why she says she was less treated less favourably than someone of a different race and why she believes the reason was her race
 - b. In the case of indirect discrimination, the policy or practice of the respondent (as opposed to that of the UK Government) that put her and other Africans at a disadvantage, compared to those of a different race.
11. Such particularisation should only relate to the matters already pleaded as detailed at paragraph 3 above.
12. I have asked the clerk to provide the claimant with our list of potential sources of advice.

Signed by :Employment Judge Broughton

Signed on : 3 December 2024

Note:

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.