



EMPLOYMENT TRIBUNALS
London Central Region

Heard by CVP on 18/8/2021

Claimant: Ms U Verton

Respondent: Trenitalia C2C Ltd

Before: Employment Judge Mr J S Burns

Representation

Claimant: In person

Respondent: Mr M Waseem (Counsel)

JUDGMENT

1. The claim is struck out.
2. The Respondent's costs application is refused.

REASONS

1. The hearing to consider strike-out was listed of the Tribunal's own motion by letter dated 4/8/21.
2. The documents were in a bundle of 127 pages. This contained a witness statement of the Claimant at pages 49 and 50. I was also referred to a Respondent's skeleton argument and bundle of authorities and I received oral submissions.
3. The Claimant was employed from 1/6/2020 to 1/10/2020 but was dismissed with one month's pay in lieu of notice after 4 months during her probation period, the reason being given as unsatisfactory performance.
4. The Claimant has not bought an unfair dismissal claim and she acknowledges that she was not entitled to claim unfair dismissal because of her lack of 2 years' service.
5. Instead her ET1 states that she brings "*another type of claim which the tribunal can deal with*". The particulars of claim on the ET1 form and the Claimant's witness statement complains that her dismissal during her probation period was procedural unfair, unjustified and in breach of the ACAS Code of Practice on Disciplinary and Grievance Procedures. In particular the Claimant submits that her performance was satisfactory and that the reason given for her dismissal (namely poor performance) was untrue. She submitted a number of times that her dismissal was "*simply wrong*". The closest she has come to identifying what claim she is making is that she is claiming wrongful dismissal.
6. Mr Waseem elected not to cross-examine the Claimant on her witness statement as its contents were assumed to be true and the Claimant's contentions have to be taken at their highest for purposes of the strike-out consideration.
7. Under the employment contract the Respondent was entitled under clause 2.5 to terminate the employment with one month's notice during the 6 month probation period and with three months' notice after the probation period was completed. Clause 7.2.1 contained a

PILON provision. Clause 15.1 provided that the Respondent's disciplinary procedures did not form part of the contract.

Relevant law

8. A wrongful dismissal claim does not respond to the manner in which a person dismissed but simply to whether it was a breach of contract. The remedy for wrongful dismissal is notice pay. A wrongful dismissal claim cannot be based on alleged unfair procedures and lack of good reasons for dismissal – the sole question is whether the contract has been breached.
9. The implied term of trust and confidence in all employment contracts does not include an obligation to dismiss fairly and in good faith.
10. As stated in Harvey on Industrial Relations at paragraph 409; *“At common law, dismissal may be effected without good cause. In Rawlinson v Brightside Group Ltd [2018] IRLR 180, EAT, it was said (at [34]) that ‘the implied term [of trust and confidence] import[s] no common law obligation upon an employer to exercise a contractual right to dismiss fairly or in good faith.’ There is no implied term to the effect that an employer will only dismiss for cause and give an employee the chance to show that such cause does not exist. Such is of course the province of an unfair dismissal claim. “*
11. Lord Hoffman in Johnson v Unisys Ltd [2001] UKHL 13 at paragraphs 41 and 42 stated : *“The action for wrongful dismissal could therefore yield no more than the salary which should have been paid during the contractual period of notice. In the present case Mr Johnson’s letter of engagement referred to terms and conditions of employment contained in the company’s employee handbook, which stipulated expressly that “The company reserves the right to make payment in lieu of notice”. Unisys exercised that right. ... My Lords, in the face of this express provision that Unisys was entitled to terminate Mr Johnsons employment on four weeks’ notice without any reason, I think it is very difficult to imply a term that the company should not do so except for some good cause and after giving him a reasonable opportunity to demonstrate that no such cause existed.“*

Conclusions

12. Any claim in this matter for wrongful dismissal cannot succeed. The dismissal was in accordance with the contract because the Respondent had a right to dismiss during the probation period on the giving of one month's notice or pay in lieu of notice for any reason or no reason.
13. Even if there had been a breach, the damages would be limited to one months' notice pay which the Claimant was paid before she issued her claim.
14. Any unfairness or lack of substantive merit in the decision to dismiss is irrelevant because there is no unfair dismissal claim.
15. The Claimant has failed to bring a valid claim before the tribunal and to the extent that she has brought any claim, it is struck out as having no reasonable prospect of success.

Costs application

16. The Respondent claimed its costs of £10211 in defending the claim.
17. As the claim has been struck out for having no prospects I must consider making a costs order.
18. The Claimant received three costs warnings on 10/6/21, 4/8/21 and 6/8/21 respectively. The second of these was from the Tribunal itself.
19. The Claimant told me, and I accept, that after receiving the second warning she telephoned the CAB and was encouraged by the advisor to think that her claim had some validity because of the claimed breaches of the ACAS code.
20. The Claimant stated that she decided to continue with the claim because she felt her dismissal was “wrong morally and ethically” and she believed that “justice would prevail”.
21. The Claimant also failed to comply with directions previously such that the general trial preparation had to be suspended and the trial listed for today vacated.
22. Despite the foregoing points, I have decided not to make a costs award for the following reasons:
 - It is clear that the Claimant has acted throughout in good faith and with a sincere belief that she has suffered an injustice for which in some way the Tribunal could provide a remedy.
 - Despite trying, she does not appear to have received proper and relevant advice from the CAB.
 - She is a single woman in her 50s who has been unemployed since she was dismissed by the respondent and who is living in rented local authority accommodation on state benefits. It is unlikely that the Respondent would be able to enforce any costs award in any event and if it did so, it might cause the Claimant undue hardship.

J S Burns Employment Judge
London Central
18/8/2021
For Secretary of the Tribunals
Date sent to parties: 18/08/2021
