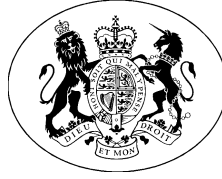


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# EMPLOYMENT TRIBUNALS

***Claimant***

Miss I Norvaisaite

***Respondents***

**AND**

FCB Inferno Limited & Others

**Heard by:** CVP

**On:**

26 January 2021

**Before:** Employment Judge D A Pearl

**Representation**

**For the Claimant:** In person

**For the Respondent:** Ms L Prince, of Counsel

## JUDGMENT

The Claimant lacks qualifying service to bring a claim of unfair dismissal and there is no jurisdiction to entertain the claim.

## REASONS

1. This was an open preliminary hearing to decide whether there was jurisdiction to entertain this claim. By ET1 received on 25 September 2020 the Claimant claims constructive unfair dismissal and she has confirmed during the hearing that this is her only claim. She gave as her dates of employment 11 June 2018 – 9 June 2020. The Respondent has understandably taken the jurisdictional point that the Claimant seemingly lacks two years' qualifying service in order to bring a claim of unfair dismissal.

2. I heard this matter by a video hearing on the CVP platform on 26 January 2021. I discussed matters with both the Claimant and Ms Prince, Counsel for the Respondent. The Claimant, as appears below, has put in a number of statements as to why she appears to lack two years' service. On 10 March 2020 she sent an email to the Respondent giving notice of termination of her contract of employment and it specified 9 June as her last day of employment. Subsequently, this was accepted in writing. Taken shortly, the Claimant maintains that she made a mistake due to her state of mind and she in particular draws

attention to the treatment that she alleges she had received from the Respondent and which caused her to resign.

3. I indicated that, for the purposes of this preliminary hearing, I could assume that all that the Claimant had set out was true. She therefore did not have to give evidence and Ms Prince concurred, saying that she did not wish to cross examine the Claimant. Ms Prince made short legal submissions and referred to a skeleton argument. However, at the conclusion of this hearing, after about one hour I decided that I did not think I should decide the matter without giving both Counsel and myself an opportunity to look further into case law relating to the giving of notice. Later that day Ms Prince was able kindly to send some materials to both myself and the Claimant. Before deciding the matter, I gave the Claimant seven days to make any further written representations that she wished to. I had explained during the hearing that what had to be resolved was in many ways a pure question of law, namely whether the written notice that she gave to the employer had the effect of ending the contract of employment one day before she would have acquired two years continuous employment, which would enable her to bring a claim.

4. The contract of employment provided that either party could give notice of termination to the other of not less than three months; and that the notice had to be given in writing. Further, if the employee failed to give notice as provided, the company “may elect by notice in writing not to accept such breach of this agreement ...” in which event the agreement would remain in force.

5. The relevant document is the Claimant’s email at page 98 sent on 11 March 2020, that in its material part states: “please accept this letter as my formal resignation from my position as Financial Controller at FCB Inferno, effective 10 March 2020”. In the next paragraph the Claimant went on to say that there had been little acknowledgement from top management of her efforts. In the next paragraph she makes a reference to the loss of trust in HR, stating that “I can no longer work here”. She attached a formal grievance. The final line of the letter ended as follows “based on my notice my last day will be 9 June 2020”.

6. It was on 1 June 2020 that the Respondent accepted the resignation, or at least acknowledged it, by writing to the Claimant: “I confirm that your termination date will be Tuesday 9 June 2020”. There was then reference to the calculation of holiday pay which was clearly up to that date. The P45 that was raised also specified 9 June as the leaving date.

7. The Claimant’s position is set out with some clarity in her email to the Tribunal dated 12 November 2020. She says that she sent her resignation email after 8pm on 10 March and that she was suffering from anxiety and stress and “made a mistake on my notice period in the email ... I stated that my last day will be 9 June 2020 when it should have been 10 June 2020, meaning I would have completed two years of service”. She goes on to say that the Tribunal should take into account the pressure and stress that she was under at the time, and she refers to the events set out in the detailed ET1. The Claimant maintains that it is in the public interest that the case be heard.

8. I am grateful to the Claimant and to Counsel for their additional material. My conclusion is that the Claimant lacks qualifying service and that there is no jurisdiction to entertain her claim. My view is that this case does not throw up any difficult or sophisticated point of law. The textbook authorities make clear that an employee has the right to determine a contract of employment by notice. In this case, the Claimant did so and she specified her last date of employment. The Respondent, before that date had arrived, accepted her notice of termination. All parties proceeded on the same basis as to when the contract would end.

9. Ms Prince, alive to her duty to refer me to any argument that the unrepresented Claimant might be able to adopt, wondered whether the Claimant's termination could amount to a repudiatory breach of contract. She says the point is entirely academic, because the Respondent did in fact accept the repudiation. I would go further and conclude that giving notice that is short by one day is not a repudiatory breach, i.e. one that goes to the root of the contract, particularly having regard to the contractual notice period of three months. But, as Ms Prince observes, the issue is entirely academic.

10. I can find no legal principle that can assist the Claimant in her argument and her final submissions are based upon fairness, equity and a description of the circumstances in which she came to give short notice. I am confronted with a stark question of law, which is on these facts, can the Claimant establish sufficient continuous service, of two years, to bring a claim? In my view, she cannot and, however regrettable it may be, I am bound to find that she lacks qualifying service and has no right to bring her claim.

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**Employment Judge Pearl**

Dated: 23 February 2021

Reserved Judgment and Reasons sent to the parties on:

26 February 2021

For the Tribunal Office