



EMPLOYMENT TRIBUNALS

BETWEEN

Ms I . C. Carrillo Claimant and Interopa Holidays Limited Respondent

Judgement

HELD AT: London Central

ON: 9 September 2020

BEFORE: Employment Judge Russell (sitting alone)

Claimant - in person
Respondent - Ms C Cuttica

(1) Whilst the Respondent was critical of the Claimant for some conduct issues the principal reason for the Claimant's dismissal was due to her performance (capability under s 98(2)(a) ERA) .

(2) The Claimant was not dismissed for the reason or principal reason that she had alleged that the Respondent had infringed a statutory right of hers and her claim under Section 104(1)(b) of the Employment Right Act 1996 (ERA) fails .

(3) Nor did the Claimant (in her email of 30 January 2019 upon which she relies or at any other time during her employment or in her claim form) ever make it sufficiently clear what right she was (and is) claiming was infringed .Her email of 30 January on which she now relies reflected a dispute about punctuality and flexibility of working hours and did not clearly allege a breach of Regulation 4 of the Working Time Regulations 1998 (WTR) . An alleged breach upon which her claim under Section 104(1)(b) of the ERA rests. A claim she was permitted to bring only after an amendment to her ET1 permitted by order of the Tribunal on 5 November 2019.

(4) There was no breach of Regulation 4 of the WTR. At no time was the Claimant required to work more than 48 hours against her will in any particular week. To the extent that she did so at all it was only on one or two occasions , such hours were voluntary and any request relating to her employment hours or work she undertook by choice was in accordance with her contract of employment. With weekend work , where undertaken, occasionally entitling her to time off in lieu. Nor did the Respondent discount travelling time for work duties or deny that this was part of her working week.

(5) The Claimant does not have the requisite period of two years continuous service to enable her to bring an ordinary unfair dismissal claim under section 98 of the ERA and so having determined that the reason or principal reason for dismissal was capability there is no requirement to consider the fairness of unfairness of the dismissal under , in particular, clause 98(4) of the ERA .

(6) To the extent that the Claimant makes a wrongful dismissal claim (which she raised at the start of the hearing so I deal with it here) this fails as she was paid for her notice on dismissal and does not now suggest otherwise nor does she have any other claims of unauthorised deduction from wages or contractual breaches relating to pay due .

(7) The Claimant's remaining claim of whistleblowing under Part IV A of the ERA 1996 also fails as anticipated in the Tribunal case management order of 7 October 2019 as the Claimant accepted neither of her two alleged protected disclosures led to any detrimental treatment of her as required under section 47B nor did she reasonably believe that she would have been subject to a detriment at the time of making such disclosures as required under section 43G of the ERA 1996. Nor does she claim her alleged disclosures led to her dismissal . Nor was any evidence presented in the hearing in respect of any Public Interest Disclosure claim .

(8) For all these reasons all the Claimant's claims fail and are dismissed .

(9) Given the findings that led to this judgement substantially match the reasons given by Employment Judge Stout when making a deposit order following an Open Preliminary Hearing of 5 November the Claimant shall be treated as having acted unreasonably under Rule 39(5)(a) of the ET (Constitution & Rules of Procedure) Regulations 2013 and the deposit paid of £150 paid by the Claimant to HMCTS between 6 and 19 November 2019 shall be paid to the Respondent.

(10) There is no order as to costs. The Claimant in further pursuing her claim has acted unreasonably in the way she has conducted proceedings in contravention of rule 76(1)(a) and in pursuing a claim with no reasonable prospect of success in contravention of Rule 76(1)(b) of ET(Constitution & Rules of Procedure) Regulations 2013 which may lead to a costs order .However the Tribunal has had regard to the fact the Claimant is unrepresented , does not have English as her mother tongue which has led to some of her confusion and also has had regard to her limited financial means under Rule 74 ET(Constitution & Rules of Procedure) Regulations 2013. Nor did the Respondent wish to pursue an application for costs against the Claimant when given the further opportunity to do so .

Employment Judge Russell
Date of the Order: 9 September 2020

Sent to the Parties on: 09/09/2020

For the Tribunal: