



EMPLOYMENT TRIBUNALS

Claimant

Mrs Cleo-Jane Yates

v

Respondent

(1) Morgan Hunt;
(2) Umbrella-Company Limited; and
(3) The London Borough of Hounslow

Heard at: Norwich (by CVP)

On: 4 April 2022

Before: Employment Judge M Warren

Appearances

For the Claimant: In person

For the First Respondent: Mr Crow, Head of Support Services

For the Second Respondent: Did not attend and was not represented

For the Third Respondent: Mr Lester, Counsel

JUDGMENT

on

Application for Interim Relief

The Claimant's Application for Interim Relief does not succeed.

REASONS

Background

1. Mrs Yates' working relationship with The London Borough of Hounslow, (Hounslow) began on 10 October 2019 and ended on 10 March 2022. By a claim form submitted on 17 March 2022, she has brought complaints of automatic unfair dismissal for having made protected disclosures, (whistle blowing), of discrimination on the grounds of religion or belief and for unpaid wages. She has not submitted an Early Conciliation Certificate, but at page 2 Section 2.3 of the ET1 she has ticked the box to indicate her complaint of unfair dismissal includes an Application for Interim Relief, (for which an Early Conciliation Certificate is not required).
2. The parties were notified of this Hearing by letter dated 22 March 2022.

3. As is usually the case in these situations, no responses have been received yet from the Respondents.

Documents Before Me Today

4. Due to a fire at the Norwich Employment Tribunal building over the weekend, at short notice this hearing was conducted by Cloud Video Platform (CVP) from my home. I did not therefore have the Tribunal file. There is no bundle, (no criticism there, none was ordered) and the documents which I had before me were as follows:
 - 4.1 A copy of the Claimant's claim form;
 - 4.2 A copy of the Tribunal's letter to the parties giving notice of this hearing, dated 22 March 2022;
 - 4.3 A Contract of Employment between Umbrella-Company Limited and Mrs Yates;
 - 4.4 A Health and Safety Temporary Workers Handbook for Morgan Hunt;
 - 4.5 A Line Candidate Report from Morgan Hunt;
 - 4.6 A document entitled, "Scrutiny Review of Non-Permanent Staff for Hounslow" dated 27 January 2011; and
 - 4.7 Mrs Yates' written grievance dated 8 March 2022.

Relevant Law

5. Section 128 of the Employment Rights Act 1996, ("ERA"), provides that an employee who complains to an Employment Tribunal of automatic unfair dismissal for having made protected disclosures pursuant to s.103A may apply to the Tribunal for Interim Relief. Such an Application must be made within 7 days of the effective date of termination.
6. Interim Relief is, in short, an order that the employer either re-instate the dismissed employee pending the outcome of the claim for unfair dismissal, or continue to remunerate the employee in accordance with her Contract of Employment pending that outcome.
7. The application must be determined as soon as practicable after receipt by the Tribunal.
8. Pursuant to s.129, such an application shall succeed if it appears to the Tribunal that it is likely that on determining the complaint, the Tribunal will find that the reason (or if more than one, the principal reason) for the dismissal was that the Claimant had made protected disclosures.

9. The expression, “likely” means, “a pretty good chance of success”, see Taplin v Shippam Limited [1978] IRLR450.

10. In Dandpat v University of Bath UK EAT/0408/09 the then President of the EAT, Mr Justice Underhill, (as he then was) set out that he had been invited to revisit *Taplin*. Declining that invitation, he said:

“We see nothing in the experience of the intervening period to suggest that it should be reconsidered. On ordinary principles we should be guided by it unless we are satisfied that it is plainly wrong. That is very far from being the case. We do in fact see good reasons of policy for setting the test comparatively high in the way in which this Tribunal did, in the case of applications for interim relief. If relief is granted the Respondent is irretrievably prejudiced because he is obliged to treat the contract as continuing and pay the Claimant until the conclusion of the proceedings. That is not a consequence that should be imposed lightly”.

11. In London City Airport v Chacko [2013] IRLR 610, Mr Recorder Luba QC said that the question is whether it appears to the tribunal that the case has a pretty good chance, based upon an expeditious summary assessment on how the case appears on the material available, doing the best it can on the untested evidence advanced by each party. Necessarily, there will be a far less detailed scrutiny of the parties’ cases than would take place at the final hearing.

12. In Al Qasimi v Robinson UKEAT/0283/17/JOJ HHJ Eady QC, (as she then was) similarly described the role of the Tribunal:

‘By its nature, the application had to be determined expeditiously and on a summary basis. The [tribunal] had to do the best it could with such material as the parties had been able to deploy at short notice and to make as good an assessment as it felt able. The employment judge also had to be careful to avoid making findings that might tie the hands of the [tribunal] ultimately charged with the final determination of the merits of the points raised. His task was thus very much an impressionistic one: to form a view as to how the matter looked, as to whether the claimant had a pretty good chance and was likely to make out her case, and to explain the conclusion reached on that basis; not in an over-formulistic way but giving the essential gist of his reasoning, sufficient to let the parties know why the application had succeeded or failed given the issues raised and the test that had to be applied.’

Discussion

13. I must emphasise that I am not making findings of fact. Mrs Yates’ claim form is scant on detail. I have discussed with her today the nature of her case in relation to the claim for unfair dismissal, so that I can understand it

before reaching a view on its prospects of success. Broadly speaking, I set out her case below.

14. In 2019, Mrs Yates learned of a vacancy for a Community Engagement Officer with Hounslow. She was told that in order to apply for that post, she would have to submit her application through an employment agency, Morgan Hunt.
15. Mrs Yates registered with Morgan Hunt on 19 September 2019. She had the option of being paid through Morgan Hunt or via an umbrella company which at that time was known as, "Six Cats". She was placed with Hounslow, starting work on 10 October 2019. She was paid by Six Cats, who in 2020 went out of business and were replaced by the Second Respondent, Umbrella-Company Limited. I note at this point as an aside, that the Second Respondent has been named on the claim form as, "Umbrella.co.uk"; the correct name of the Second Respondent is clearly Umbrella-Company Limited and the name of the Second Respondent should be amended accordingly.
16. I was provided with a copy of Mrs Yates' contract with the Second Respondent. It describes itself as a Contract of Employment incorporating particulars required by the Employment Rights Act 1996. Her duties are described as that of a Community Engagement Officer and she is required to perform such assignments as may from time to time be allocated to her, (clause 1.4.1). She is obliged to carry out work allocated to her, (clause 1.4.8). Her place of work may be such place throughout the United Kingdom as may be specified from time to time, (clause 1.5.1). She will be paid by the Second Respondent, (clause 3). She will be paid rolled up holiday pay by the Second Respondent, (clause 4). She would receive statutory sick pay from the Second Respondent, (clause 6). The Second Respondent is to provide the required auto-enrolment pension, (clause 8). Clause 13 provides that termination of an assignment to a client does not terminate the Contract of Employment. As far as I can see, these and all other provisions of the contract are consistent with this being a genuine Contract of Employment. There are provisions for notice to terminate by both parties, (clause 13.2).
17. Mrs Yates' employment relationship with the Second Respondent has never been terminated.
18. In respect of her complaint of automatic unfair dismissal for having protected disclosures, Mrs Yates clarified to me that she relies upon two disclosures:
 - 19.1 That at a meeting with a Christine Acock, which she think took place on 9 February 2022, she disclosed to Ms Acock that:
 - 19.1.1 Residents were scared to go to the dining hall because they were being bullied by other residents;

- 19.1.2 A resident I will identify as, "J" complained of not being able to walk properly and on investigation, it was discovered that he had toe nails that were inordinately long, causing him pain;
 - 19.1.3 That another resident had threatened suicide because they were depressed; and
 - 19.1.4 That before Ms Acock's employment had begun, an employee had behaved violently in front of residents, that person had been dismissed, but had subsequently been re-instated.
- 19.2 To the Care Quality Commission on 14 February 2022:
- 19.2.1 She repeated what she had told Ms Acock on 9 February 2022, and
 - 19.2.2 She said that Ms Acock was not treating her disclosures seriously.
19. Mrs Yates says that Hounslow were aware of her disclosures to the CQC because they were discussed with her by a member of Hounslow's Safeguarding Team called Vivienne.
20. Mrs Yates confirmed to me that she was not relying upon her Grievance of 8 March 2022 as a protected disclosure.
21. Mrs Yates says that she began a period of sickness absence due to severe IBS for which she was initially hospitalised. She was certified as unfit for work for a period of four weeks, to 21 March 2022.
22. On 9 March 2022, Mrs Yates says that she attempted to log in using her laptop and found that she was denied access. She was attempting to log in so as to complete a grievance form for Hounslow. Upon making enquiries, she was told by a Mohammed Patel, Interim Extra Care Specialist Manager with Hounslow, that IT had been informed that she had left because as she was not at work, the Respondent Hounslow needed somebody to perform her role and they did not want to pay two sets of wages. At that time, she says that she was in receipt of statutory sick pay.
23. Mrs Yates said to me that she thought that she had been dismissed because she was on sick leave.

Conclusions

24. On the documents before me, Mrs Yates' appears to be the employee of Umbrella-Company Limited, (the Second Respondent). That employment appears not to have been terminated. She does not appear to have been an employee of Hounslow.

25. Mrs Yates' own commentary to me this morning is consistent with that being the legal position.
26. An agency worker does not become an employee of the end user by reason of the mere passage of time. I did not find the "Scrutiny Review of Non-Permanent Staff" of January 2011 a helpful document. It pre-dates Mrs Yates' working relationship with Hounslow by nine plus years and merely sets out expressions of views on the Borough's reliance on non-permanent staff, (agency workers), as a source of concern. It does not help me at all with the nature of the relationship between Mrs Yates and Hounslow.
27. As for the reason behind the termination of the relationship, (the assignment of Mrs Yates to Hounslow) may be because of the protected disclosures, but it may also be because she was absent from work for a prolonged period of time.
28. Doing the best I can on the material available to me, I cannot say that Mrs Yates has a pretty good chance of:
 - 28.1 Showing that she was an employee of Hounslow, (to whom the disclosures were made and the only one of the three Respondents that has terminated their relationship); or even if she was
 - 28.2 The Tribunal finding that the reason for the termination of that relationship by Hounslow was because of the two disclosures and not because of her absence.
29. I have stressed to Mrs Yates that I am not making a finding that she will not succeed, I am merely making a finding that I cannot conclude that she has a pretty good chance of succeeding.

Employment Judge M Warren

Date: 11 April 2022

Sent to the parties on: 25/4/2022

N Gotecha

For the Tribunal Office