



EMPLOYMENT TRIBUNALS

Claimants

Ms N Visockyte-Kisliene

AND

Respondent

Safe Events
Security Company
Limited

Heard at: London Central

On: 9 January 2018

Before: Employment Judge Norris

Representation

For the Claimant: Did not appear and was not represented

For the Respondent: Mr A P Hayes, Managing Director

JUDGMENT

The Claimant's claim is dismissed.

REASONS

Background

- 1 The Claimant submitted a claim form on 9 August 2017. After initial issues regarding the absence of an Early Conciliation certificate number, the Regional Employment Judge deemed that the claim was accepted with effect from 12 October 2017. The Claimant had ticked that her complaints were for discrimination because of gender reassignment, notice pay and other payments. However, the body of her claim indicated that she was seeking £100 or similar amount for work carried out as a security guard at a festival on 26 May 2017.
- 2 The Respondent defended the claim and through its MD Mr Hayes, supplied a timesheet for the date in question which did not feature the Claimant.
- 3 **The Hearing**
The Respondent attended the hearing represented by Mr Hughes. There was no attendance or representation by the Claimant, nor any written

communication to explain this non-attendance or to make submissions. Attempts were made to phone her using the mobile number on the claim form but this rang without answer or any facility to leave a message. Accordingly, the Hearing proceeded in her absence to deal with the claim for unpaid wages.

4 The Issues/law

- 4.1 The claim form indicated that the Claimant was claiming gender reassignment discrimination. The Respondent was unaware of this, and there were no particulars on the form which supported this as a complaint.
- 4.2 The form also included a complaint of notice pay. The Claimant was not, on any analysis, conducting work for the Respondent for a sufficient period to warrant a notice payment.
- 4.3 Finally, there was a claim for wages. Section 13 Employment Rights Act (ERA) 1996 states that an employer must not make a deduction from wages of a worker employed by him, save in particular circumstances. A deduction arises when an employer pays less than the amount properly payable by him to the worker.
- 4.4 A claim for wages must be initiated within three months of the deduction, under section 23 ERA 1996. A claim is initiated by the worker contacting ACAS regarding Early Conciliation. Depending on the proximity to the expiry of the time limit that that contact is made, either the “clock is stopped” during Early Conciliation or the Claimant is given a month from the ending of Early Conciliation to proceed with the claim.

Findings of fact and conclusions

- 5.1 The Claimant claims to have worked at the Upminster Festival on 26 May 2017. She says she did so with her son, aged 17.
- 5.2 Mr Hayes says that the Respondent provides security services for events to its client, Network Global Security Services Limited. A Mr Alhassan Barrie is a contact of a friend of Mr Hayes, who offered to provide staff if the Respondent ever needed them. The Respondent is not ACS-approved, so any staff working for the Respondent must have an SIA licence. An SIA licence can only be obtained over the age of 18.
- 5.3 Mr Hayes accepts that Mr Barrie gave his phone number to a worker who was to provide security services at the Festival, and says that Mr Barrie assured him he had seen her right to work documents and SIA licence. The Respondent and four other subcontractors of Network Global Security were operating at the Festival. Mr Hayes received a call from a woman and gave her clear instructions as to where she should go to sign in as he was not at the venue himself.
- 5.4 The Respondent subsequently received an invoice from Mr Barrie, which I have seen, for a total of £235 plus VAT for three events, the first of which

was the Upminster Festival on 26 May. There is no timesheet accompanying the invoice for this event, unlike the two other events appearing on the invoice, and the Claimant's name does not appear on the invoice; nor does her SIA licence number.

- 5.5 I have no reason to doubt that the Claimant worked at the Festival on 26 May 2017, although I note that while she has said in her correspondence with the Tribunal that she has photographic evidence of that work, she has not produced it for the Hearing. However, I am satisfied, looking at the documents, that the Claimant's wages for any time she worked were not "properly payable" by the Respondent, but by Mr Barrie. I am also satisfied that her son has no claim against the Respondent (if indeed one was being intimated in this claim) because the Respondent could not lawfully have engaged him in any capacity to provide security services; he could not lawfully have held an SIA licence.
- 5.6 In any event, the Claimant says that she expected to be paid on the Friday after she worked. 26 May 2017 was a Friday; she would have expected payment for that work on the following Friday, 2 June. This gave her until 1 September 2017 to contact ACAS to initiate Early Conciliation. According to the certificate issued by ACAS however, the Claimant did not make contact until 15 September, 14 days after the date for doing so had passed. Accordingly, unless the Claimant had been able to show that it was not reasonably practicable to bring her claim in time, I would have struck the claim out in any case, regardless of the merits, because the Tribunal did not have jurisdiction to hear it.
- 5.7 In the circumstances, the Claimant's claim for unlawful deduction from wages is not well-founded and is dismissed.

Employment Judge Norris 9 January 2018