



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: S/4104691/2018

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Held in Glasgow on 25 September 2018

Employment Judge: Robert Gall

10 **Mrs N McGonigal**

**Claimant
In Person**

15 **Renfrewshire Council**

**Respondent
Represented by:
Ms L Lilburn -
Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

20 The Judgment of the Tribunal is that the claimant has less than two years' service with the respondents. Accordingly in terms of section 108 of the Employment Rights Act 1996, the Tribunal does not have jurisdiction to hear the claim of unfair dismissal brought by her.

25 As stated at the Hearing, in terms of Rule 62 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, written reasons will not be provided unless they are asked for by any party at the hearing itself or by written request presented by any party within 14 days of the sending of the written record of the decision. No request for written reasons was made at the hearing. The
30 following sets out what was said, after adjournment, at the conclusion of the hearing. It is provided for the convenience of parties.

REASONS

1. This case called for hearing at Glasgow on 25 September 2018. I heard evidence from the claimant and from an HR advisor for the respondents, Miss Mullen. A Joint Bundle of Productions was lodged. On the morning, the claimant also lodged the Redundancy Payments (Continuity of Employment in Local Government etc) (Modification) Order 1999.
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2. There was a large amount of common ground in this case.
3. The claimant had some twenty years of service with a combination of different local authorities and the care inspectorate when she joined the respondents. She left the care inspectorate on 16 June 2017 and started with the respondents on 19 June 2017. Her employment with the respondents ended in February of 2018. The claimant had therefore less than two years' service with the respondents at time of termination of her employment with them.
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4. In terms of section 108 of the Employment Rights Act 1996, two years' service is necessary for someone to bring an unfair dismissal claim in circumstances where there is no allegation of discrimination, a public interest disclosure or a ground of automatically unfair dismissal. This is what might be referred to as a "*standard*" unfair dismissal claim.
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5. The claimant says that she has "*credit*" for earlier service by virtue of the (Redundancy Payments (Continuity of Employment in Local Government etc) (Modification) Order 1999. The respondents acknowledged that document and its effect. Their position is that from its terms, it is limited to the situations of redundancy, entitlement to annual leave, sick pay and maternity leave. The respondents have given credit to the claimant for annual leave entitlement which includes the service with previous employers.
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6. This is a strange situation in some ways. The Order does give credit for service with other bodies, including the care inspectorate with whom the claimant previously worked. The credit however is only given for the purposes of calculation of service for the matters specified in the Order. Those are redundancy, annual leave, sick pay and maternity leave. It does
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not give an employee credit for service in calculating continuity of service for the qualifying period necessary bringing an unfair dismissal claim.

7. I appreciate that the claimant assumed that the Order did give such credit. I
5 also appreciate that the situation was not assisted by the contract of
employment stating the starting date of 19 June 2017 for length of service
purposes not reaching the claimant due, it appears, to the claimant moving
house. The contract of employment was also issued late, being issued in
November after the claimant started work with the respondents in June. That
10 also is not ideal.
8. Those failings however do not mean that the start date for qualifying service
for an unfair dismissal claim is affected. It remains 19 June 2018.
9. That provision is underlined in the "*red book*" and in the conditions relative to
15 the claimant's employment.
10. I appreciate that the claimant sees the substance of the case she seeks to
bring as being of importance and wishes the elements she says led to her
20 resignation aired at Tribunal.
11. Unfortunately for her however, that is not possible in the context of an unfair
dismissal claim given she does not have two years qualifying service to bring
a claim of "*standard*" unfair dismissal.
- 25 12. This claim cannot therefore proceed as the Tribunal does not have jurisdiction
in terms of section 108 of the Employment Rights Act 1996.

30 Employment Judge: Robert Gall
Date of Judgment: 26 September 2018
Entered in register: 29 September 2018
and copied to parties