



EMPLOYMENT TRIBUNALS

Claimant: Mr KA Armstrong
Respondent: Cambria Automobiles Plc

Heard at: Ashford on: 14 December 2018

Before: EMPLOYMENT JUDGE CORRIGAN
Sitting Alone

Representation

Claimant: No appearance (written submissions)
Respondent: Mr R Wayman, Counsel

JUDGMENT

1. The Claimant did not have the requisite two year's service to claim unfair dismissal.
2. The Claimant's complaint of unfair dismissal is therefore dismissed.

REASONS

1. The Claimant commenced work on 1 February 2016. He was dismissed on 10 January 2018. This was confirmed in writing on 11 January 2018. His contract provided for three months' notice but contained the following clause:
"In circumstances where you are required to...receive contractual notice, we reserve the right to make a payment up in lieu of this, this would be subject to the normal Tax and NI deductions".
Pursuant to that clause the Respondent paid the Claimant in lieu of notice 5 days after his dismissal.
2. The Claimant's Legal Representative argued in written submissions that s97(1) (a) Employment Rights Act 1996 applies which would give the Claimant the requisite two years' service. This is misconceived. The correct clause is s97(1) (b) which states that where a contract is terminated without notice the effective date of termination is the date on which the termination takes effect. This is subject to section 97 (2) which provides that for the purpose of the two years' service for claiming unfair dismissal the statutory notice which should have

been received can be added on. Applying s97 the Claimant's effective date of termination was 17 January 2018, leaving him still far short of the two years' service requirement.

3. The Claimant's Representative relied on *Wedgewood v Minstergate Hull Ltd* UKEAT/0174/10/DA which related to a period of garden leave and therefore was not a case addressing the point in this case, where the Claimant has been paid in lieu of notice and not placed on garden leave. The Claimant's Representative also referred to *Harper v Virgin Net Limited* [2004] EWCA Civ 271. *Harper* makes clear that, even where an employee is wrongfully dismissed in circumstances where contractual notice would have given sufficient service to claim unfair dismissal, the employee does not have the right not to be unfairly dismissed. The employee does not have the length of service Parliament has prescribed as a gateway to that right, taking account of how Parliament has prescribed the effective date of termination should be calculated in s97 Employment Rights Act 1996.
4. In any event in this case the Respondent had the contractual right to pay in lieu of the contractual element of notice, which it did. Applying *Harper* it is clear the Claimant did not have the right not to be unfairly dismissed as he did not have two years' service.

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Employment Judge Corrigan
14 December 2018