

6. Section 108 of the Employment Rights Act 1996 (the Act) says an employee with less than two years continuous employment does not have the right not to be unfairly dismissed unless one of more of several exceptions set out in subsection 3 apply and none do in this case. I cannot decide whether what the respondent did was fair only whether it had the contractual right to do it. The statutory minimum period of notice in section 86 of the Act is, in this case, 1 week

7. The Employment Tribunals (Extension of Jurisdiction) Order 1994 provides proceedings may be brought before an employment tribunal in respect of most claims of an employee for the recovery of damages or any other sum if the claim arises or is outstanding on the termination of the employee's employment.

8. A contract of employment may be brought to an end only by reasonable notice unless the claimant is guilty of "gross misconduct" which it is not suggested the claimant was. . An employee is dismissed if he terminates the contract (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct if the employer has committed breach of contract of such gravity as to discharge the employee from the obligation to continue to perform the contract, Western Excavating (ECC) Ltd v Sharpe [1978] IRLR 27. This is called a constructive dismissal . Although the claimant has not put his case on that basis , because he is unrepresented, I have considered the possibility.

9. The better view is that the respondent terminated the contract giving the contractual notice it was obliged to give. That would mean there is no breach of contract. If I took the other view and held that the failure to give written notice of the change was a breach of contract entitling the claimant to resign the case of Addis-v- The Gramophone Company is authority for the proposition the only damages are net pay for the notice period, which is what the claimant received. Whichever way I view this case, the claim of unfair dismissal must fail because the claimant does not have the qualifying service and the claim breach of contract must also fail on the basis either there was no breach or in the alternative that there are no damages I can award over and above that which has already been paid to him. The result would be no different at the claimant brought a claim of unlawful deduction from wages under Part Two of the Act.

**T M Garnon EMPLOYMENT JUDGE
JUDGMENT SIGNED BY EMPLOYMENT JUDGE ON 31st May 2018**