



## **EMPLOYMENT TRIBUNALS (SCOTLAND)**

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**Case No: 4110140/2019 (A)**

**Preliminary Hearing held by telephone on 15 December 2020**

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**Employment Judge A Kemp**

**Mrs M Cation**

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**Claimant  
Represented by:  
Mr D Cation,  
Husband**

**Midlothian Council**

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**Respondent  
Represented by:  
Mr W Venters,  
Solicitor**

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### **JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

**The decision of the Tribunal is that the Tribunal does not have jurisdiction for the claim of unfair dismissal and that claim is dismissed.**

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### **REASONS**

#### **Introduction**

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1. This was a further Preliminary Hearing to address case management following the earlier Preliminary Hearing and Judgment on the effective date of termination of the claimant's employment with the former employer Fife Council. The claimant pursues claims of unfair dismissal and for a statutory redundancy payment. The case management of the latter case is addressed separately.

2. The claimant intimated an application to amend her unfair dismissal claim, and in its response to the same the respondent set out its argument that the claimant did not have the necessary two years' continuous service in order to do so. I raised with the parties whether they were content for me to decide matters on the basis of the written and oral submissions made at the hearing before me, and they were. The issue is one of law, the facts on which that is based were set out in the previous Judgment, and I was satisfied that it was in keeping with the overriding objective in Rule 2 to address matters in that manner.

10 **Facts**

3. The facts are as agreed or as found from the previous Judgment. They are:
4. The claimant was employed by Fife Council on 13 January 1996.
5. Her employment with Fife Council terminated on 1 July 2018.
- 15 6. The claimant commenced employment with the respondent on 2 July 2018.
7. Her employment with the respondent was terminated on 9 June 2019.
8. Both Fife Council and the respondent are local authorities.

**Respondent's submission**

20 9. Mr Venters referred to sections 218 and 231 of the Employment Rights Act 1996 ("the Act"). The claimant could not transfer her service with Fife Council to the respondent. Her employment with the respondent started on the first date of that employment, and she did not have the necessary service to make the unfair dismissal claim. That claim should therefore be dismissed.

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**Claimant's submission**

10. Mr Cation referred to the terms of the Redundancy Payments (Continuity of Employment in Local Government etc) (Modification) Order 1999 ("the Order"), and argued that the effect was to preserve continuity from the

former employment to that with the respondent for unfair dismissal purposes as well as those for redundancy such that she did have adequate service.

### Law

5 11. To be able to claim unfair dismissal the claimant must have two years' continuous service with the employer at the effective date of termination under section 108 of the Act.

12. The concept of continuous service is addressed in Section 218 which commences

10 "Subject to the provisions of this section, this Chapter relates only to employment by the one employer."

13. The section then has a series of provisions including at subsection 5(b) where there is reference to an associated employer.

14. Associated employer is defined at section 231 as being where one  
15 company is under the control of another, or both are under the control of a third person.

15. The 1999 Order applies only to redundancy payments, as made clear in Regulation 3. It does not therefore have effect in relation to the terms of section 108.

20 16. That conclusion is confirmed by the decision of the Court of Appeal in ***Gardiner v London Borough of Merton [1980] IRLR 472***. There the Court of Appeal held that the claimant, who had been employed by four local authorities in succession, only had service with the last of those employers, and could not rely on what were the predecessor terms to  
25 sections 218 and 231. The definition of an associated employer was exhaustive, required the employer to be a company, and a local authority was not that.

### Conclusion

17. In light of the foregoing, I consider that the claimant has not demonstrated  
30 that she has the necessary continuity of service to make a claim of unfair

dismissal, and I require to dismiss the claim for unfair dismissal for lack of jurisdiction.

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**Employment Judge:**  
**Date of Judgment:**  
**Date sent to parties:**

**Alexander Kemp**  
**17 December 2020**  
**17 December 2020**