



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs T Williams

**Respondent:** Priory School (Isle of Wight)

**Heard at: remotely** Bristol Tribunal On 14 December 2020 and 4 February 2021.

**Before:** Employment Judge Hargrove

**Representation**

**Claimant:** Mr M Rose, NASUWT.

**Respondents:** Mr E Matyjaszek, Principal.

## JUDGMENT AND REASONS.

The Judgment of the Tribunal is as follows:

The claimant does not have sufficient length of service under Section 108(1) Of Employment Rights Act 1996 to bring a claim of unfair dismissal and such claim is dismissed,.

## REASONS.

1. A public preliminary hearing was originally listed on the 14th of December 2020 to consider only whether the claimant had sufficient length of service under section 108 (1) of ERA to bring her claim of unfair dismissal against the respondent. As set out in paragraph 5 of the explanatory note in respect of that Hearing, the bundle of documents sent to the tribunal was incomplete; there was no witness statement from the claimant; and the claimant's representative had difficulties accessing the hearing by CVP. I accordingly made further case management Orders, identified specifically the issues which arose, and adjourned the Hearing for proper preparation to be completed. In the explanatory notes paragraphs 2 to 5 I set out the background facts not in dispute, the relevant statutory provisions and the factual and legal issues which arose, as well as the history of the tribunal proceedings. Subsequently the parties provided and elected to rely upon

their further written statements and submissions and additional documents, and did not ask for the hearing to be resumed in person.

2. The tribunal relies upon and does not repeat here the factual history set out in the explanatory note, which I adopt as part of these reasons.
3. The essential issues which arise are: –
  - (1) On what date did the period of the claimant's continuous employment by the respondent as a teacher start under section 211 (1)(A) which provides "An employee's period of continuous employment for the purposes of any provision of this Act... begins with the day on which the employee starts work".
  - (2) On what date did the claimant's employment end – what was the effective date of termination under section 97 (1) (A)? "... The effective date of termination in relation to an employee whose contract of employment is terminated by notice, whether given by the employer or by the employee, means the date on which the notice expires".
4. As to the date of commencement, I am satisfied that the claimant's employment as a language teacher to GCSE Teacher commenced on Friday, the 1st of September 2017 as identified in the letter of appointment dated the 30th of July 2017. In *General of the Salvation Army v Dewsbury* 1984 ICR page 498 the EAT held that this refers to the beginning of the employee's employment under the relevant contract of employment, and not when the employee first turns up physically to start work. Thus in that case the claimant accepted a post as a teacher expressed as starting on 1 May, which turned out to be a Saturday and nonworking day. Monday 3 May was a bank holiday and the claimant did not actually start her duties until 4 May. The EAT held that she was to be treated as starting work on the 1st of May. That applies also to the facts of the present case where the claimant did not physically turn up for work until the 4th of September . The appointment letter dated the 30th of July 2017, which effectively set out the material terms of the contract, stated "this is a part-time post... to commence on September 1 2017"..
5. As to the date of termination of her employment, as defined in section 97 (1) (A), the claimant's P 45 Details of the employee leaving work, submitted by the school dated 22nd of August 2019, expressly identified the leaving date as being 31st of August 2019. It is common ground, however, that the last day of the summer term in which she worked was 10th of July 2019, but the claimant claims that her employment continued after that date when she was on holiday pay up to and including 31st of August. The respondent's case is that it was entitled under the terms of her engagement in the letter of the 30th of July 2017 to terminate her contract (after one years service) on one terms notice, which it claims the principal gave by letter of 27th March 2019 in advance of the start of the summer term, and that her employment as a teacher ended at the end of the summer term on 10th of July 2019.
6. I am satisfied that the respondent's analysis is correct; and that the claimant's employment ended on 10th of July 2019, albeit that she continued to be paid holiday pay to which she was entitled in the period up to 31st of August. The fact of payment of wages or holiday pay after the date of termination does not itself prove that the Employment is continuing. An example would be if an employee is paid one months pay in arrears and receives pay accruing prior to, but received after the termination. In this case the claimant's right to holiday pay accrued prior to the termination but was received after it. This does not alter the date when the dismissal takes effect. See *TB Turbos v Davies* EAT 0231/04. 10 July remained her effective

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date of termination , as provided for in the respondent's letters of 27 April which, before the start of the summer term, gave notice of termination expiring at the end of that term, as provided for in the letter of appointment, after one year's service. See *TB Turbos v Davies* EAT 0231/04. I do not regard the date of 31 August as the termination date in the P45 as being indicative that she was employed up to that date. It is merely a record of taxable income received by the employee, including holiday pay after the date of dismissal. The claimant's representative mentioned some provisions in the Burgundy book, but they have not been copied to me and any event do not appear to apply to the claimant's employment as a teacher in a private school and they were not mentioned in the appointment letter. The fact that the claimant was interviewed, unsuccessfully, for the enhanced post which she had previously held, in June 2019, does not alter the position.

Employment Judge Hargrove  
Date: 5 February 2021.

Judgment and reasons sent to parties: 12 February 2021

FOR THE TRIBUNAL OFFICE