



## **EMPLOYMENT TRIBUNALS (SCOTLAND)**

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**Case No: 4111036/2021 (V)**

**Hearing Held by Cloud Video Platform (CVP) on 14 December 2021**

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**Employment Judge Murphy**

**Ms S Wardlaw**

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**Claimant  
In Person**

**TSLC (No 1) Ltd**

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**Respondent  
represented by  
Mr Anderson,  
Director**

## **JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The Judgment of the Tribunal is that the claimant's claim for breach of contract in  
25 respect of her notice pay does not succeed and is dismissed.

## **REASONS**

### **Introduction**

1. This final hearing took place via Cloud Video Platform (CVP), there being no  
30 objection to that format. The respondent's Mr Anderson experienced some  
technical problems and had to reconnect on two occasions but ultimately was  
able to participate sufficiently well.

2. The claimant began employment on 23 October 2020 and was dismissed by the respondent on 23 June 2021. She initially brought complaints of unfair dismissal and breach of contract in respect of her notice pay.
3. Her complaint of unfair dismissal was dismissed on 16 October 2021 pursuant to the Order of Employment Judge I McPherson dated 7 October 2021 on the basis that the Tribunal lacked jurisdiction to hear that complaint, given claimant did not have the necessary qualifying service.
4. Only the complaint of breach of contract in respect of notice pay remained to be determined at the hearing.
5. I held a preliminary discussion with the parties to clarify the issues in relation to that complaint. Through this discussion, I ascertained that the following facts were not in dispute between the parties:-
  - i. the claimant began employment with the respondent in October 2020;
  - ii. the claimant was not issued with a written employment contract or statement of employment particulars by the respondent;
  - iii. the parties did not make any agreement orally or in writing regarding the period of notice to which the claimant would be entitled if the respondent were to terminate her employment;
  - iv. the respondent terminated the claimant's employment on 23 June 2021; and
  - v. the respondent paid the claimant one week's notice. The monies were received by the claimant into her bank account.
6. Given these matters were undisputed, I did not consider it necessary to hear evidence and I make findings of fact as set out in paragraph 5(i) to (v), based on the parties' confirmation of their respective positions at the outset of the hearing.

## Relevant Law

### *Breach of contract (notice)*

- 5 7. Under section 86(4) of the Employment Rights Act 1996 (“ERA”), a statutory minimum notice period linked to the employee’s period of continuous employment is incorporated into the contract of employment. The remedy in the event of failure to give due notice is a claim for breach of contract **Westwood v Secretary of State for Employment** [1984] IRLR 209, HL and **Secretary of State for Employment v Wilson** [1977] IRLR, 483, 10 EAT.
- 15 8. Under section 86(1)(a) of ERA, the notice required to be given by an employer to terminate the contract of employment of a person who has continuously been employed for one month or more, but less than two years is not less than one week’s notice.

## Discussion and Decision

- 20 9. In the absence of any agreed contractual right to notice which was more generous than the statutory minimum conferred by section 86(1)(a) of ERA, the claimant was entitled to one week’s notice of the termination of her employment.
10. The claimant did not dispute that she had received one week’s notice pay.
- 25 11. Although the claimant was unhappy about her treatment by the respondent and about the manner of and reasons for her dismissal, these concerns did not bear upon her complaint of breach of contract in relation to notice pay. I did not have jurisdiction to consider whether the respondent acted fairly or unfairly in dismissing the claimant as it did, the claimant’s unfair dismissal complaint having been dismissed.

12. The undisputed facts are that the claimant was paid and received a week's notice pay. I, therefore, find that the respondent did not breach the claimant's contract by failing to pay her the notice to which she was entitled. The claimant's breach of contract claim does not succeed and is dismissed.

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Employment Judge: Lesley Murphy  
Date of Judgment: 14 December 2021  
Entered in register: 07 January 2022

10 and copied to parties