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## **EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 4110429/2021 (V)**

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**Preliminary Hearing Held by Cloud Video Platform (CVP) 19 January 2022**

**Employment Judge J Young**

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**Steven Whitelaw**

**Claimant:  
Represented by  
Mr C Scougal,  
Lay representative.**

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**Desmond Maguire Ltd**

**Respondent:  
Represented by  
Ms R Edwards,  
Solicitor**

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

The Judgment of the Employment Tribunal is that under s108 of the Employment Rights Act 1996 the Tribunal does not have jurisdiction to hear the claimant's complaint of unfair dismissal which is dismissed.

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### **REASONS**

1. The claimant presented a claim to the Employment Tribunal complaining that he had been unfairly dismissed and was due notice pay. In their response the respondent admitted dismissal but maintained it was fair and on the ground

of gross misconduct and so no notice was due; and in any event the claimant lacked the necessary qualifying period to bring his claim of unfair dismissal.

2. A Preliminary Hearing was ordered to consider the issue of whether the claimant had the requisite two year qualifying period of employment under s108 of the Employment Rights Act 1996 in respect of his claim for unfair dismissal to give the Tribunal jurisdiction to hear that claim.

3. At the hearing there was no dispute between the parties that at best the claimant's period of continuous employment with the respondent was in the period between 26 October 2020 to 24 May 2021. That was to be found within the ET1 claim form and ET3 response and confirmed by the claimant at the hearing. That period of continuous employment for this claim of unfair dismissal is short of the requisite qualifying period and so the Tribunal has no jurisdiction to hear the claim which requires to be dismissed.

4. That would leave to be resolved the claim for notice pay which has been made. The claimant's Contract of Employment which was produced for this hearing provides (Clause 4) that the claimant was entitled to notice of termination of one month. The attached disciplinary procedure which is stated to be "non contractual" provides that in the event of dismissal for "gross misconduct" then no notice or pay in lieu of notice will be due. The issues then on the claim for notice pay would appear to be (1) given the "non contractual" status of the disciplinary procedure is the contractual right to notice in the Contract of Employment overcome; and (2) if so would the evidence establish that the reason for dismissal was "gross misconduct" which would defeat the claim for notice pay. It would seem appropriate that a final hearing be fixed to determine those issues and parties should be sent date listing letters to advise on the likely length of hearing and suitable dates.

**Employment Judge: J Young**  
**Date of Judgment: 21 January 2022**  
**Entered in register: 08 March 2022**  
**and copied to parties**