



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms G Ellis

**Respondent:** Build Recruitment

## JUDGMENT

The complaint of unfair dismissal is struck out. Any complaint for breach of contract/unauthorised deductions from wages is unaffected by this judgment.

## REASONS

1. The claimant complains of unfair dismissal.
2. Section 108 of the Employment Rights Act 1996 requires a claimant to have not less than two years' service to make an unfair dismissal complaint.
3. The claimant's case as set out in her claim form is that her employment began on 3 September 2021 and was terminated on 25 August 2023. The respondent does not accept that those dates are correct. However, assuming for the purposes of this judgment that they are, the claimant's employment lasted for less than two years.
4. The effect of sections 92(7) and 97(2) of the Employment Rights Act 1996 is that the statutory minimum notice period is "added on" to the claimant's period of employment for the purpose of calculating whether they had completed the two years' service necessary to bring an unfair dismissal claim. Such notice was in the claimant's case seven days. If she successfully argued that she was entitled to (but did not) receive such notice, then the date on which her employment would be regarded as having ended for the purposes of the two years' service requirement would have been extended to 1 September 2023. She would have still not therefore been regarded as having completed the necessary two years' service.
5. In her response to the Tribunal's letter requiring her to show cause why her claim should not be struck out, the claimant has not identified any circumstances which would result in the two-year service requirement not

applying. A failure to follow what she refers to as “protocols” does not render the dismissal of an employee who has less than two years’ service unfair.

6. Therefore, the claimant has insufficient service to bring a complaint of unfair dismissal. Accordingly, her complaint of unfair dismissal has no reasonable prospect of success and is struck out on that basis under Rule 37 of the Employment Tribunal’s Rules of Procedure.

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Employment Judge Evans  
Date: 20 April 2024