



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8000648/2024

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Held in Glasgow via Cloud Video Platform (CVP) on 26 August 2024

Employment Judge McCluskey

10 **Mrs J F MacDonald**

**Claimant
In Person**

15 **Careplus**

**Respondent
Represented by:
Ms A Wright -
Consultant**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Tribunal is that:

1. The claimant's application to amend her claim to include a complaint of breach of contract (notice pay) is allowed. Case management orders will be issued separately in relation to this complaint, which will proceed to a final hearing on a date to be notified to parties.
2. The claimant does not have the necessary length of continuous service to insist upon a complaint of ordinary unfair dismissal and her dismissal does not fall within any of the automatic unfair dismissal exceptions. The complaint of unfair dismissal is therefore dismissed because the Tribunal does not have jurisdiction to determine it.
3. The claimant does not have the necessary length of continuous service to insist upon a complaint for payment of a statutory redundancy payment. The complaint for payment of a statutory redundancy payment is therefore dismissed because the Tribunal does not have jurisdiction to determine it.

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REASONS

Relevant law

1. Section 108(1) Employment Rights Act 1996 (ERA) states that an employee does not have a right to bring a complaint of ordinary unfair dismissal unless they have been continuously employed for a period of not less than two years ending with the effective date of termination. Section 108(3) ERA sets out some limited exceptions to this requirement. These are known as automatically unfair reasons.
2. Section 155 ERA states that an employee does not have any right to a redundancy payment unless they have been continuously employed for a period of not less than two years ending with the relevant date.

Discussion and decision

3. The claimant presented a claim to the Tribunal on 21 May 2024. She ticked the boxes on her ET1 form indicating that she was pursuing a complaint of unfair dismissal and a complaint about a failure to pay a redundancy payment. The complaints are resisted by the respondent. A public preliminary hearing was listed for today to consider whether the Tribunal has jurisdiction to determine these complaints.
4. At the hearing today, the claimant applied to amend her claim form to include a complaint of breach of contract (notice pay). Her application to amend was allowed. Case management orders and a note of reasons will be issued separately in relation to this complaint, which will proceed to a final hearing on a date to be notified to parties.
5. The claimant's dates of employment are agreed between the parties and are from 28 November 2022 until 26 April 2024.
6. The claimant wrote to the Tribunal on 31 July 2024 stating that she no longer wished to pursue a complaint about a redundancy payment. I asked the claimant about this today and she clarified that she is no longer insisting on her complaint for failure to make a redundancy payment. In any event the

claimant has not been continuously employed for a period of two years or more ending with the date of her dismissal. Accordingly, the Tribunal does not have jurisdiction to determine this complaint.

5 7. In order to qualify for the right to bring a complaint of unfair dismissal, an employee must have been continuously employed for two years ending with the date of termination of employment. This is for cases of what is generally referred to as 'ordinary' unfair dismissal. There are some exceptions to this where there is no such requirement, where the complaint is that the dismissal is 'automatically' unfair. The exceptions are set out in section 108(3) ERA.

10 8. The claimant was employed for less than two years and on the face of it does not qualify for the right to bring a complaint of ordinary unfair dismissal. She did not indicate on her claim form or accompanying paper apart that her complaint falls within one of the exceptions. From the information contained in the paper apart, her claim does not appear to be one which is within the
15 exceptions.

9. I asked the claimant today to explain on what basis, if any, she says that her dismissal falls within one of the exceptions to the two-year qualifying period rule. She considered the information produced by ACAS on the matter which was contained in the bundle of documents produced by the respondent for
20 this hearing. She was unable to identify any exception which applied to her dismissal, such that she asserted that her dismissal was for an automatically unfair reason.

Conclusion

25 10. As the claimant's application to amend to add a complaint of breach of contract (notice pay) was allowed, this complaint only will proceed to a final hearing. Separate case management orders will be issued.

11. As the Tribunal has no jurisdiction to consider the complaints for a redundancy payment and for unfair dismissal, these complaints are dismissed accordingly.

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Employment Judge: J McCluskey
Date of Judgment: 28 August 2024
Entered in register: 30 August 2024
and copied to parties

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