



# EMPLOYMENT TRIBUNALS

## Claimant

Mrs I. Kelly

## Respondent

Mega Resources Limited

v

**Before:** Employment Judge M. Hunt, considering the matter without a hearing

## JUDGMENT

1. The claim to have been unfairly dismissed is struck out.

## REASONS

2. The Claimant was employed by the Respondent between March and August 2024, when she was dismissed during her extended probation period. She brought a claim for unfair dismissal (amongst other complaints, which are not relevant for the purposes of this decision and are not affected by it).
3. Employment Judge Hutchings wrote to the Claimant on 24 March 2025 to say that the Tribunal believed it did not have jurisdiction to hear the claim as the Claimant does not have sufficient qualifying service in accordance with section 108 of the Employment Rights Act 1996 (2 years of continuous employment with the Respondent). The Judge invited representations from the Claimant by 7 April 2025 as to why the Tribunal should not strike out the claim.
4. The Claimant wrote to the Tribunal on 6 April 2025 to explain the basis of her claim. She did not address why her claim should be allowed to proceed regardless of her not having 2 years' qualifying service.
5. A preliminary hearing had been scheduled for today, but it was not listed specifically to determine the issue of striking out the unfair dismissal claim as raised by the Judge. In fact, it is clear that it was not listed for that purpose, as it was listed on 24 March 2024, the same date the Judge made her order.

It was therefore listed prior to reviewing the Claimant's submissions, who did not specifically request a hearing into the matter. The listing letter refers to the hearing today being for the purpose of determining the "strike out application". Although the Respondent did apply to strike out the unfair dismissal claim, its application related to the entire claim, not only that part. The Judge's order was not made further to that application, in fact it said that the Tribunal had told the Respondent it need take no action in respect of the unfair dismissal claim.

6. Accordingly, there was no reason to await a further hearing to determine the matter. Rule 38 of the Employment Tribunal Procedure Rules 2024 does not require a hearing, it requires only that a party be given "reasonable opportunity to make representations, either in writing or, if requested by the party, at a hearing". Representations were made in writing and no hearing was requested.
7. In any event, section 108 of the Employment Rights Act is clear and uncontroversial. The claim of unfair dismissal plainly cannot proceed as the Tribunal has no jurisdiction to hear it. It therefore has no reasonable prospects of success. It is not in accordance with the overriding objective to delay the proceedings further. The claim could have been rejected a long time ago in accordance with Rule 13.

Approved by  
Employment Judge M. Hunt

Date: 15 September 2025

Sent to the parties on: 26/09/2025

For the Tribunal Office