



EMPLOYMENT TRIBUNALS

Claimant: Miss A Afzal

Respondent: Inspiralis Limited

Heard at: Norwich Employment Tribunal

On: 1 May 2025

Before: Employment Judge M Magee

Representation:

Claimant: Mr Maqbool (Lay representative)

Respondent: Ms Bush (Counsel)

JUDGMENT

JUDGMENT having been sent to the parties on 9 June 2025 and written reasons having been requested in accordance with Rule 60(4) of the Employment Tribunal Procedure Rules 2024, the following reasons are provided:

REASONS

Introduction

1. Miss Afzal ("The Claimant") brought claims for unfair dismissal and notice pay, against her former employer, Inspiralis Limited ("The Respondent").
2. There was a preliminary hearing on 1 May 2025 to determine whether Miss Afzal had sufficient continuity of employment to bring an Unfair Dismissal Claim.

The Hearing

3. The hearing was heard at Norwich Employment Tribunal on 1 May 2025. Miss Afzal was represented by Mr Maqbool, Lay Representative.
4. The Respondent was represented by Mr Bush. Dr Bush and Dr Burton directors and Ms Amiss HR attended on behalf of the company.
5. Both parties referred me to the bundle prepared by the Respondent, consisting of 64 pages.
6. No oral evidence was given. I heard submissions from the parties.

Issues

7. Did Miss Afzal have sufficient continuity of employment so as to entitle her to bring a claim of Unfair Dismissal?

Findings of Fact

8. The facts around the dates of Miss Afzal's employment are not in dispute.
9. Miss Afzal commenced her employment on 4 October 2022. Her contract provided for 1 months notice.
10. Clause 9.4 of her contract states: *"The company may terminate this agreement without cause upon one month's written notice to the employee. If the company requests the employee will continue to perform his/her duties and will then be paid his/her salary up to the date of termination...."*
11. On 4 September 2024 she was given verbal notification of termination. Given the letter of 5 September I conclude that this was notice of dismissal with immediate effect, with pay in lieu of notice("PILON").
12. On 5 September 2024 at Miss Afzal's request, she was given written notice of immediate termination including a PILON clause.
13. Miss Afzal rejected the PILON clause and on 6 Sep 2024 Dr Bush revoked the PILON clause and agreed to her working her notice.
14. On 8 September 2024, Miss Afzal requested garden leave and requested a revised termination letter.
15. The revised letter was issued by Dr Bush on 12 September [14].
16. Under that letter, Miss Afzal's last day of employment was 3 October 2024.

Law

17. Section 86 of the Employment Rights Act 1996 ("the Act") states:

(1) The notice required to be given by an employer to terminate the contract of employment of a person who has been continuously employed for one month or more—

(a) is not less than one week's notice if his period of continuous employment is less than two years,

18. Section 97 of the Act states:

(1) Subject to the following provisions of this section, in this Part 'the effective date of termination'—

(a) in relation to an employee whose contract of employment is terminated by notice, whether given by his employer or by the employee, means the date on which the notice expires,

(2) Where—

(a) the contract of employment is terminated by the employer, and

(b) the notice required by section 86 to be given by an employer would, if duly given on the material date, expire on a date later than the effective date of termination (as defined by subsection (1)),

for the purposes of sections 108(1), 119(1) and 227(3) the later date is the effective date of termination.

19. Section 108 of the Act states that the right to claim Unfair Dismissal is dependent upon the Claimant having the qualifying period of continuous employment:

(1) Section 94 does not apply to the dismissal of an employee unless he has been continuously employed for a period of not less than [two years] ending with the effective date of termination.

20. Section 210 of the Act defines how the qualifying period is to be calculated:

(1) References in any provision of this Act to a period of continuous employment are (unless provision is expressly made to the contrary) to a period computed in accordance with this Chapter.

(2) In any provision of this Act which refers to a period of continuous employment expressed in months or years—

(a) a month means a calendar month, and

(b) a year means a year of twelve calendar months.

21. **Cosmaceuticals v Parkin (UKEAT/0049/17/BA)**, a decision of the Employment Appeal Tribunal addresses the question of the effect of immediate termination upon subsequent actions. Paragraph 28 of that judgment states *"If there is an effective dismissal then there can be no subsequent placement on gardening leave or of giving notice, the employment contract has already come to an end."*

Conclusions

22. It was argued on behalf of Miss Afzal that the contract did not permit a PILON clause. In my opinion, the employment contract at 9.4 does permit a PILON clause to be used as it is only upon request the employee is required to work notice. The alternative is anticipated within the provision, namely that the employee is not required to work and will be paid in lieu.

23. In any event a breach of this provision by the employer would not prevent dismissal being effective but merely provide Miss Afzal with a right to claim damages for breach of contract. It cannot, and does not in my opinion, extend the effective date of termination to the end of the contractual notice period, when the dismissal was expressly immediate and without notice.

24. I find that there was an effective dismissal on 5 September with immediate effect. The employment contract was ended as of that date. Following the authority of **Cosmaceuticals v Parkin above**, the contract came to an immediate end as of that date. As such, the subsequent actions did not, and could not, change that position as the contract had already ended.

25. Whilst the contract came to an end on 5 September, for the purposes of section 108, by virtue of Sections 86(1) and 97(2) the effective date of termination is one week after 5 September 2024, namely 12 September 2024. Miss Afzal would have had to have been employed until 3 October 2024 in order to have accrued two years' continuity of employment.

26. Accordingly, I find that Miss Afzal had NOT been employed by the Respondent for at least two years when her employment ended.

27. In such circumstances, Miss Afzal has no right to bring a claim for unfair dismissal as she does not have two years' continuity of employment. Accordingly the tribunal does not have jurisdiction to hear her claim for Unfair Dismissal.

Approved:

Employment Judge **M Magee**

Date 13 October 2025

JUDGMENT SENT TO THE PARTIES ON

14 October 2025

FOR THE TRIBUNAL OFFICE

Notes

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