



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs G Ansa-Asamoah

**Respondent:** Bestway Panacea Holdings Limited

## RECORD OF A PRELIMINARY HEARING JUDGEMENT

**Heard at:** Manchester by CVP

**On:** 8 May 2026

**Before:** Employment Judge

### Appearances

For the claimant: Mrs G Ansa-Asamoah with her daughter Ms T Asamoah

For the respondent: Mr Nacif, Counsel

### JUDGMENT

1. The Claimant did not have two years' service as an employee with the Respondent at the date her employment was terminated. The complaint of unfair dismissal is dismissed because the claimant had not been continuously employed for a continuous period of two years and the Tribunal does not have jurisdiction to hear it in accordance with section 108 of the Employment Rights Act 1996
2. The unfair dismissal claim is dismissed.

### REASONS

1. The above judgment followed an case management hearing at which Judge Cookson on 20 November 2025 directed that the case be listed for a preliminary

hearing to decide whether the Claimant had sufficient continuity of service to bring an unfair dismissal claim.

2. I heard evidence on oath from the Claimant. I was referred a 143 page bundle of documents. The Respondent had produced a skeleton argument for today's hearing.

## THE LAW

3. Section 108 of the ERA provides that Section 94 (the right to claim unfair dismissal) 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.
4. Section 210(5) of the ERA provides that "[a] person's employment during any period shall, unless the contrary is shown, be presumed to have been continuous". The burden of rebuttal lies on the employer.
5. Section 212 of the ERA provides (as relevant):
6. "(1) Any week during the whole or part of which an employee's relations with his employer are governed by a contract of employment counts in computing the employee's period of employment. [...]"
7. (3) Subject to subsection (4), any week (not within subsection (1)) during the whole or part of which an employee is—
  - (a) incapable of work in consequence of sickness or injury,
  - (b) absent from work on account of a temporary cessation of work,[ or]
  - (c) absent from work in circumstances such that, by arrangement or custom, he is regarded as continuing in the employment of his employer for any purpose, [...] [...] counts in computing the employee's period of employment."
8. In [\*Pearson v Kent County Council 1993 IRLR 165, CA\*](#) The Court of Appeal affirmed that [S.212\(3\)\(a\)](#) requires a causal link between the absence from work and the incapacity resulting from sickness or injury. In determining whether a gap in employment comes within the provision, it is necessary to look backwards and decide what the reason for the employee's absence was.
9. in [\*Scarlett v Godfrey Abbott Group Ltd 1978 ICR 1106, EAT\*](#), the EAT held that the proper approach was to consider the reason for the employee's dismissal in circumstances where a dismissal leads to a period of absence during which the employee is sick or injured before being re-employed by the same employer. In that case, S had been taken ill at work and went home. He stayed away from work and did not let his employer know what was happening, and as a result he was dismissed for absenteeism. He was re-employed four weeks later. The EAT considered that, when determining whether [S.212\(3\)\(a\)](#) applied to preserve continuity between dismissal and re-employment, it was putting the test too high to suggest that the employee's dismissal had to be expressly on account of incapacity to work because of sickness or injury. It held that continuity was

preserved during the four-week period because the reason for the dismissal was connected with the employee's illness — i.e. the reason for his absenteeism (for which he was dismissed) was his sickness. Continuity would not have been preserved, however, if S had been dismissed while ill for a reason unconnected with his illness, for example, misconduct.

#### FINDINGS OF FACT

10. The Claimant worked for the Respondent on a zero hours basis on 26,27, 28 October 2022 and 1, 2, 3 November 2022 as a Pharmacy Assistant. The Claimant says her employment ended as she was not well enough to work.
11. There were a series of emails between the Claimant and the Respondent about her restarting work for the Respondent. There was a delay in the Claimant being paid for the hours she had worked as the Respondent needed to have documents from the Claimant regarding her right to work in the UK.
12. The email exchange about the Claimant returning to work was as follows:

*From: GA  
Sent: 27 December 2022 10:22  
To: SP  
Subject: Papers  
Hi Sheena  
Hope you've enjoyed your Christmas Break  
Here is my indefinite leave to remain documentation. My pay should be okay to be processed and would like to re-apply for the roll as discussed*

*From: SP  
Sent: Wednesday, December 28, 2022 7:55:14 AM  
To: GA  
Subject: RE: Papers  
Hi Trudy,  
You will need to reapply as a 0 hour colleague and upload these documents, if they are suitable then you will be added to payroll and you will be paid for the shifts you have already worked, you will not be able to work until this is signed off. I will get in touch with Cedric to raise a 0 hour vacancy for you to apply this may not happen until after the new year.*

*From: GA  
Sent: 27 January 2023 11:06  
To: SP  
Subject: Re: Papers  
Hi Sheena,  
Thank you so much  
How do I view the vacancy, if it has been uploaded?*

*From: SP  
Sent: Friday, January 27, 2023 11:18:00 AM  
To: GA  
Cc: DA*

Subject: RE: Papers

Hi,

Please can you let me know the times and dates that you worked? As you are aware these issues were due to the right to work issues. We are going to raise a 0-hour vacancy out which you can apply and we will then put all the hours you have worked so you are paid for the shifts you worked. Unfortunately we will not be able to keep you as a 0-hour colleague as an unqualified colleague however you will be able to apply for any other role within the business.

I have copied David Apata into this email as he will be raising the 0-hour vacancy and uploading your hours.

Thanks

Sheena

From: GA

Sent: 27 January 2023 11:43

To: SP

Cc: DA

Subject: Re: Papers

Hi, From my understanding, the conclusion of our last conversation requested that my medical issues and papers be resolved to gain a 0-hour contract and my pay for worked I was not employed as a qualified assistant, I was employed under the role of "TRAINEE or qualified pharmacy assistant", the employment was based on the premise that I would be trained I'm confused by this response so if you can please clarify that would be helpful I've been checking but the 0-hour role hasn't been published or any other role do. Just wanted to check when that would be up

Kind regards

Trudy

From: GA

Sent: 10 March 2023 09:18

To: DA

Subject: Right to Work Documentation

Hi David, Shelly asked if I had sent in my right to work documentation.

In case you need again please find them attached to this email.

Kind Regards

Trudy

From: DA

Sent: Monday, March 13, 2023 11:48 AM

To: Div2People

Subject: FW: Right to Work Documentation

Good Morning,

We have a candidate who has been offered a role with us and is awaiting her contract. Her initial right to work was deemed insufficient and she has added the attached documents to ATS, can you advise if these are now sufficient and we are able to proceed with her application please? The ref number for the application is TP/665/780

Regards

David

From: Ask Recruitment

Sent: 13 March 2023 15:23

To: DA

Cc: Div2People

Subject: RE: Right to Work Documentation

Hi David,

Thank you for your email.

Unfortunately, the documents provided are not a valid form of Right to Work in the UK. The candidate should have access to a share code from the government. This is a 9 digit code we need to verify their RTW on the government website.

We will also require confirmation of their date of birth.

If you could please redirect the candidate to the below website, they will be able to get their 9 digit share code. If you could then forward this to us, we can upload it on their behalf.

Kind Regards,

Helena

Resourcer

From: DA

Sent: Tuesday, March 14, 2023 9:25:34 AM

To: GA

Cc: SS

Subject: FW: Right to Work Documentation

Good Morning,

I just received some update regarding the right to work document you uploaded, you should have access to a share code as stated below, send the share code to me ASAP so we can upload it for you. That is what is delaying the contract coming out.

Regards

David

From: GA

Sent: 16 March 2023 13:52

To: DA

Cc: SS

Subject: Re: Right to Work Documentation

Good afternoon David,

Where can I access this share code, is it on my portal or email?

Kind regards

Trudy

13. The Claimant agreed in evidence today that there was no temporary cessation of work during the period she did not work for the Respondent from 4 November 2022 to 13 March 2023. The pharmacies were very short staffed with a busy caseload and the Respondent continued to operate throughout her absence running a number of pharmacies.

14. The Claimant says she could not restart work with the Respondent as there was a problem with the Respondent uploading her right to work documentation. She said this was despite the fact that she used the same documents before she started work on 26 October 2022.

15. The Claimant signed a contract of employment which states as follows:

**EMPLOYMENT**

a. Your role is Trainee Pharmacy Assistant

b. Your start date in this role is 13/03/2023 and your continuous employment date is 13/03/2023.

*This Statement shall be in substitution for any previous contracts, whether by way of letters of appointment, agreements or arrangements, whether written, oral or implied, relating to your employment, which shall be deemed to have been terminated by mutual consent as from the date of this Statement and you acknowledge that you have no outstanding claims of any kind against Well or any Associate in respect of any such contract.*

**FINDINGS**

16. I find that the Claimant cannot rely on any of the statutory exceptions set out in Section 212(3) ERA 1996 when considering the break in her employment relationship with the Respondent from 4 November 2022 to 13 March 2023. It is apparent from the emails above that the Claimant was requesting to return to work with the Respondent on 28 December 2022. The delay in her restarting was due to problems with her right to work documentation, rather than due to any ill health or sickness on her part. It is also clear from the emails that both parties were discussing the Claimant entering into a new permanent contract which was different from the hours she had worked previously which were under a zero hours verbal arrangement.

17. I find the Claimant's contract ended when she finished working on a zero hours verbal arrangement in November 2022. It did not restart until she entered into a new permanent contract on 13 March 2023. The Claimant's continuous service did not continue during the intervening period.

18. I find the Claimant did not satisfy Section 212(3) (a) as she was not incapable of work in consequence of sickness. The delay in her restarting work with the Respondent was due to immigration documentation queries, and this was the reason her employment could not restart and a new permanent contract put in place. The delay was not due to the fact the Claimant was incapable of work due to sickness. She was asking to return to work on 27 December 2022.

19. The Claimant was not absent from work on account of a temporary cessation of work. The Claimant agreed with this today at the hearing.

20. The Claimant herself referred to the fact that her previous contractual arrangement had ended, and she had entered into a new contract in an email to the Respondent on 27 April 2023 (pages 94-95).

21. The contract of employment confirmed that the start date for the new contract was 13 March 2023. That statement is not decisive. The Tribunal must look at the reality of the situation. I accept that it accurately describes the Claimant's new start date and the date her continuous employment began.

22. The Claimant's period of continuous employment started on 13 March 2023 and this was confirmed in the new permanent contract she signed (pages 40-62). The Claimant's employment continued until her dismissal on 20 November 2023. She had not reached two years' continuous service as an employee, and so the Tribunal does not have jurisdiction to hear her unfair dismissal claim as identified in the previous case management order.

Employment Judge Lloyd

Date: 8 May 2026

REASONS SENT TO THE PARTIES ON  
17 June 2026

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