

EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4102500/16

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Held in Edinburgh on 10 July 2017

Employment Judge: Susan Walker

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Mr D Wight

**Claimant
In Person**

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**Dunne Building and Civil Engineering Ltd
(in administration)**

**Respondent
No Appearance**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Tribunal is:-

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(1) That the claim for unfair dismissal is struck out under Rule 37(1) as it has no reasonable prospects of success.

(2) The claim for breach of contract (notice pay) will proceed.

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The respondent is ordered to confirm within 7 days whether the claim for notice pay is still contested. If so, a hearing will be listed to determine it. If not, a judgment under Rule 21 will be issued in favour of the claimant without the need for a hearing.

REASONS

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1. The claimant has made a complaint of unfair dismissal and also claims notice pay. The respondent defended the claim. This Preliminary Hearing was fixed some time ago to consider whether the claim should be struck out

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as having no reasonable prospects of success or alternatively a deposit imposed as a condition of the claim being allowed to proceed. The respondent then entered administration and it took some time for the consent of the administrator to be obtained and the Preliminary Hearing
5 relisted.

2. I explained to the claimant at the Hearing that 2 years service was a requirement to be eligible to claim unfair dismissal (Section 108 of the Employment Rights Act 1996). I explained that a claim can be brought
10 without that qualifying period but only if the reason for dismissal is one of a list of prohibited reasons, such as dismissal because of pregnancy or because you are a health and safety representative or a trade union member. The full list is set out in Section 108(3).

15 3. I asked the claimant to tell me why he believed he had been dismissed. The claimant explained that he considered he had been treated unfairly as he was paid less than others for doing the same or more difficult work. He felt it was unfair that others could refuse to do work but he was compelled to do it. On the day he was dismissed he said he had refused to do some task and
20 had been dismissed.

4. I do not consider that these circumstances would fall within one of the exceptions where 2 years service is not required. Unfortunately for the claimant, however unfairly he believes he was treated, he cannot claim
25 unfair dismissal as he does not have the qualifying service of 2 years.

5. The claim for notice pay is one of breach of contract and does not require 2 years service. It was clear that there are disputes of fact between the claimant's account (which is that he was willing to work the week's notice
30 but was prevented from doing so) and what is set out in the ET3. In these circumstances it would not be appropriate to strike out the claim or to order a deposit and the claim will proceed to a Hearing.

6. The administrator is asked to confirm whether this part of the claim is still contested. I note that he has said in his letter of 31 May 2017 that he would not be attending today's Hearing and he would not be "defending" the claim. It is unclear to me whether by this he means that the claim is uncontested (as required by Rule 21 before a default judgment can be issued).

7. If the respondent confirms that the claim for notice pay is uncontested then I will issue a judgment for £372 in favour of the claimant without the need for a Hearing. If the claim remains contested then a hearing will be listed to hear evidence and determine the claim.

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Employment Judge: Susan Walker
Date of Judgment: 12 July 2017
Entered in register: 14 July 2017
and copied to parties

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