



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr D New

**Respondent:** Jack Wills Limited

## JUDGMENT

The claim is struck out.

## REASONS

1. On 22 November 2017 the Respondent applied for the claim to be struck out on the ground that it has no reasonable prospect of success. The claim is of unfair dismissal. In order to be entitled to make such a claim, the Claimant must have been continuously employed for at least two years at the effective date of termination of his employment (see Section 108(1) of the Employment Rights Act 1996 - the ERA). The Claimant does not allege that the reason for his dismissal was one of those for which this length of service requirement does not apply.
2. In his response to the Respondent's application, the Claimant stated that he initially worked for the Respondent from November 2014 to February 2016. At that point he left the Respondent to focus on his examinations. In April 2016 he had an interview to rejoin the Respondent and had an official start date in May 2016. The Respondent granted him a period of compassionate leave because of the death of his father and so he did not actually begin work until July 2016.
3. In order for any week to count towards an employee's period of continuous employment, the employee's relations with his employer must be governed by a contract of employment for the whole or part of that week (Section 212 ERA). On the Claimant's own account, there was a period of at least two months in 2016 when he had no contract of employment with the Respondent. Further, from the Claimant's own account, none of the circumstances set out in Section 212(3) ERA (which provides for certain weeks to count towards an employee's period of continuous employment even where there is no contract of employment) applied during that period. The Claimant's period of

continuous employment running up to the date of his dismissal therefore began in either May or July 2016, when he rejoined the Respondent.

4. The Claimant was dismissed in July 2017. At that point he had not completed the qualifying two continuous years' employment with the Respondent. There is therefore no reasonable prospect of his claim of unfair dismissal succeeding, and the claim is dismissed.

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Employment Judge Cox

1<sup>st</sup> December 2017