



EMPLOYMENT TRIBUNALS

Claimant: Mr Livesey

Respondent: Asda Stores Limited

Heard at: Liverpool

On: 1 December 2022

Before: Employment Judge Aspinall

JUDGMENT

The claimant's complaint of unfair dismissal is dismissed as he does not have two years continuous employment prior to his resignation on 19 May 2022 to be able to bring the complaint.

Short Reasons

The claimant had worked for the respondent before, from 18 December 2019 until 12 May 2021 as a security guard. He resigned that role. He started work in a new role as a delivery driver on 26 July 2021 until he resigned on 19 May 2022. The gap in employment, between 13 May 2021 and 26 July 2021 was not a period during which, for the purposes of Section 212(1) Employment Rights Act 1996 any relations with the respondent were governed by a contract of employment. Section 212 (3) says that any week during which he is (a) off sick, or (b) on temporary cessation of work, or (c) absent by agreement that the employment continues., will count towards his continuous employment. None of those applied in this case. He had resigned and was not planning on coming back at all. He subsequently decided to try for a delivery driver job. It did not matter that when he was re-employed the employer described it as rehire or decided to pay him a bonus. The claimant brought his complaint for unfair dismissal on 6 June 2022 saying that had resigned on 19 May 2022 but been offered a cooling off period of a week until 27 May 2022. As at either 19 May or 27 May 2022 the claimant did not have the two years continuous employment he would have needed under Section 108 Employment Rights Act 1996 for the tribunal to have jurisdiction to hear his unfair dismissal complaint.

Employment Judge Aspinall

Date: 1 December 2022

JUDGMENT SENT TO THE PARTIES ON

9 December 2022

FOR THE TRIBUNAL OFFICE

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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