



# EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

**Mr S Jasicki**

**v**

**DPD Group UK Limited**

**Heard at:** Birmingham

**On:** 6 March 2017

**Before:** Employment Judge Broughton

**Appearances:**

For Claimant: no appearance

Respondent: Mrs R Magdani, solicitor

## JUDGMENT

The Claimant's claims were all presented out of time and are dismissed.

Costs reserved.

\_\_\_\_\_  
Employment Judge Broughton

Date: 6 March 2017

Sent to the parties on: .....

.....  
For the Tribunal Office

**Note:**

Reasons for the judgment were given orally at the hearing and are summarised below

**Reasons**

1. This claim was listed on 11 January 2017 to be heard today to consider whether the unfair dismissal complaint was presented out of time.
2. Following receipt of the ET3 the scope of the hearing was widened to include consideration of out of time points in relation to the claimant's other claims of wrongful dismissal, alleged breach of s10 Employment Relations Act 1999 and race discrimination.
3. The wider scope of the hearing was confirmed to the parties by notice from the tribunal dated 10 February 2017.
4. On 20 February 2017 the claimant's representative emailed the tribunal withdrawing claims of unfair dismissal and unauthorised deduction from wages.
5. Those claims were, therefore, dismissed by EJ Harding on 24 February 2017. Her order expressly confirmed that the hearing would proceed today regarding the other claims.
6. Neither the claimant nor his representative attended the hearing.
7. A member of the tribunal staff called the claimant's representative who said he would revert to the tribunal to confirm whether all claims were withdrawn or, if not, why there was no attendance and what we should do going forward.
8. Nothing further was heard from the claimant's representative despite further attempts to contact him.
9. Accordingly at 11.30 a.m the respondent's representative was invited into the hearing and made an application for the case to proceed.

10. I considered her written and oral representations and determined that the case could proceed and that the claims should be struck out as a result of having been presented out of time.
11. The claimant was dismissed for gross misconduct on 16 June 2016. Accordingly, he would have needed to have entered early conciliation by 15 September 2016. He did not actually enter early conciliation until 15 November 2016. Early conciliation ended on 15 December 2016 but the claim was not presented until 6 January 2017.
12. I heard that the claimant was represented by a union representative in the internal proceedings and, by the time his claim was presented he was represented by solicitors.
13. The claim form acknowledged that the claim was presented late but argued that it would be just and equitable to extend time. No argument was advanced that it was not reasonably practicable for the claim to have been presented in time and the unfair dismissal claim was subsequently withdrawn.
14. On the evidence before me there was nothing to suggest that it was not reasonably practicable for the claims to have been presented in time. I find that it would have been reasonably practicable for the claimant to submit the claims for wrongful dismissal and for breach of s10 Employment Relations Act 1999 in time. In any event, they were not presented within such further time as was reasonable. They were presented over 3 months later.
15. Accordingly the claims for wrongful dismissal and for breach of s10 Employment Relations Act 1999 were presented out of time and this tribunal has no jurisdiction to hear them.

16. If the claimant had an argument to the contrary he could have advanced the same in the ET1, in writing prior to the hearing or by attending the hearing. He did none of those.
17. In relation to the complaints of race discrimination I am concerned with a different test being that set out in s123 Equality Act 2010. Specifically, I can extend time to hear such a claim when it is “just and equitable” to do so.
18. The claim form appeared to suggest that the claimant only learnt of facts that suggested that his dismissal was discriminatory after the event. Specifically, he suggested that he learnt of English comparators who had been treated more favourably on 10 September 2016 and 17 December 2016.
19. In relation to the latter, however, that was after early conciliation had ended and cannot, therefore, be said to have caused the delay in entering early conciliation, nor does it explain the further delay of almost 3 weeks before the claim was issued.
20. In relation to the information allegedly learnt in September the claimant was still within time to enter early conciliation at that stage but did not do so for 2 more months. No explanation was offered for that further delay.
21. The claimant clearly had access to advice throughout.
22. The delays would inevitably affect the cogency of the evidence. If I were to have adjourned proceedings there would be a further delay before any preliminary hearing and a further delay before any final hearing. It would be unlikely for there to be such a hearing within 12 months of the dismissal.
23. There would be prejudice to the respondent who had attended the hearing today if I were to have adjourned or allowed the claims to proceed.

24. Ultimately there was no good reason presented to me for me to exercise the discretion to extend time. Time limits are there for a reason and need to be enforced unless there is a good reason to exercise my discretion. There was no such reason in this case. The failure on the part of the claimant and his representative to attend today or offer any explanation for their absence merely further confirms this view.
  
25. Accordingly the claims of race discrimination are also dismissed as having been presented out of time.
  
26. The respondent sought to make an application for costs and/or wasted costs. If they wish to pursue the same they should put a detailed application in writing and send it to the tribunal and the claimant's representative within 21 days.