



# EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

Mr D Salmon

v

Freightnet Handling

**Heard at:** Norwich

**On:** 8 April 2020

**Before:** Employment Judge S Moore

**Appearances**

**For the Claimant:** In person

**For the Respondent:** Ms J Moore

## JUDGMENT ON PRELIMINARY ISSUE

This was a remote hearing, consented to by the parties. The form of remote hearing was audio (A). A face to face hearing was not held because it was not practicable and all the issues could be determined in a remote hearing. The documents to which I refer were compiled in an electronic bundle of 46 pages, which was produced by the respondent and sent to the claimant and the tribunal.

The judgment is that this claim for unfair dismissal was presented out of time and the Tribunal has no jurisdiction to hear it. The claim is therefore dismissed.

## REASONS

**The Facts**

1. This was a preliminary hearing to determine whether this claim for unfair dismissal had been presented in time.
2. The following facts were not in dispute:

3. The respondent is a handling agent based at Heathrow Airport specialising in the handling and security screening of air cargo. The claimant was employed from 10 January 2013, initially as a Compliance Consultant and then as Compliance Director.
4. On 7 January 2019 the claimant attended an investigation meeting into supposed deficient training records and was told he would be placed on garden leave pending further investigations.
5. On 11 January 2019 the claimant informed the respondent he wished to resign with effect from 7 January 2019. In the course of further communications, the respondent agreed the claimant could remain on garden leave, and be paid, for 3 months until 6 April 2019.
6. On 15 March 2019 the respondent wrote to the claimant stating that in view of the results of further investigations, it was dismissing the claimant for gross misconduct. The letter stated that the claimant's final employment would be recorded as 29 March 2019 and he would be paid up until 30 March 2019.
7. On 10 July 2019 the claimant lodged a claim for unfair dismissal at the Employment Tribunal. Also on 10 July 2019, ACAS issued an Early Conciliation Certificate which states that the date of receipt of the Early Conciliation Notification was 5 July 2019.

### **Submissions**

8. Ms Moore submitted that the Claim Form had been submitted out of time. The respondent contended that the date of termination of the claimant's employment was 30 March 2019. The claimant had stated on his Claim Form that his date of termination was 31 March 2019. In either case the time limit of 3 months for presenting a claim for unfair dismissal pursuant to section 111 of the Employment Rights Act 1996 (ERA) had expired (on either 29 or 30 June 2019) before the claimant had complied with the requirement to contact ACAS in accordance with section 18A of the Employment Tribunals Act 1996 (ETA) and section 207B ERA.
9. As regards whether it was not reasonably practicable, within the meaning of section 111(2)(b) ERA, for the claimant to comply with the 3-month time limit, she made the following points:
  10. First, the burden of proof was on the claimant to show that it was not reasonably practicable for him to have presented the claim in time.
  11. Secondly, although the respondent had stated the claim was out of time in its Grounds of Resistance dated August 2019 the claimant had not submitted any evidence in support of any contention that it was not reasonably practicable for him to have presented the claim in time.
  12. Thirdly, in view of the meeting on 7 January 2019 and the response to his email on 11 January 2019, the claimant knew about the problems in question.

Further the letter of 15 March 2019 dismissed him on two weeks' notice. Accordingly, the claimant had had a "head start" in terms of preparing himself to make a tribunal claim.

13. Fourthly, the claimant clearly had knowledge of the process and was receiving legal advice. His response to the letter of 15 March 2019, by email dated 29 March 2019, refers to him receiving advice from ACAS and his legal representative. In particular he states, "I have been advised that early conciliation will be my next step, and if that is not possible because of the views of the company I will go to full tribunal."
14. Finally, his Claim Form was very brief and therefore it could not be said that it took the claimant more than 3 months to get his case together.
15. The claimant did not contest the termination date of his employment. As regards the issue of "reasonably practicable", he said that he wasn't aware of the further investigations which led to his dismissal until 14 March 2019. He then contacted the Civil Aviation Authority (CAA) so that they could conduct their own investigations. This was necessary because he had made an application for Counter Terrorism Check ("CTC") clearance which, due to a change in the legislation, he needed to have in order to seek employment elsewhere or act in a self-employed capacity. Having conducted its investigations, the CAA granted his CTC clearance on 16 June 2019.
16. I asked the claimant why he needed a decision on his CTC clearance from the CAA before starting the process of bringing proceedings and early conciliation. The claimant said he did not want to go down the route of bringing Employment Tribunal proceedings if, as a result of its investigation, the CAA refused his CTC clearance, because in that case he would "have to put his hands up" and accept the respondent didn't have a case to answer. I also asked the claimant why, having received CTC clearance on 16 June 2019, the claimant could not have instigated early conciliation with ACAS prior to the expiry of the time limit on 29/30 June, and the claimant said he had telephoned ACAS and had had to wait for them to return his call.

## **Conclusions**

17. I find the claimant's employment terminated on 30 March 2019. Accordingly, the three-month time limit for presenting his claim of unfair dismissal expired on 29 June 2019 and it is common ground that the Claim Form was not presented until 10 July 2019. Section 207B ERA provides that a time limit is effectively paused if it expires during the period of early conciliation. In this case, however, the time limit expired before the date ACAS received the Early Conciliation notification, which was 5 July 2019.
18. The issue is therefore whether the claimant has established that it was not reasonably practicable for him to comply with the three-month time limit within the meaning of section 111(2)(b) ERA. I find that he has not so established.
19. First, the investigation by the CAA did not prevent the claimant from starting a claim of unfair dismissal. If the CAA had subsequently refused his

CTC clearance, and the claimant had come to the view his dismissal was not unfair and/or he did not want to pursue his claim, he could have withdrawn his claim.

20. Secondly, and in any event, the claimant stated that the CAA granted his CTC clearance on 16 June 2019, which was 13 days before the time limit expired. The claimant could therefore have contacted ACAS, within the meaning of section 18A ETA, prior to the expiry of the time limit, having received that clearance. I note the claimant says he telephoned ACAS and had to wait for a reply, however I am not satisfied that it was not reasonably practicable for the claimant to have ensured he made contact with ACAS by telephone, or to have submitted an early conciliation form, by 29 June 2019.
21. Accordingly, the claim for unfair dismissal has been presented out of time. It follows that the claim must be dismissed because the Tribunal has no jurisdiction to hear it.
22. I would add, for the avoidance of doubt, that although I share the same surname as the Respondent's Counsel, we are not related.

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Employment Judge S Moore

Date: 09/07/2020

Sent to the parties on: 09/07/2020

Jon Marlowe  
For the Tribunal Office