



# EMPLOYMENT TRIBUNALS

**SITTING AT:** LONDON CENTRAL

**BEFORE:** EMPLOYMENT JUDGE F SPENCER

**BETWEEN:** Mr D Smith CLAIMANT

AND

Motcomb Estates Limited RESPONDENT

**ON:** 9 December 2021

## **Appearances**

**For the Claimant: Did not attend**  
**For the Respondent: Ms T Barsam, counsel**

*This has been a remote hearing by video (CVP). The parties did not object to the case being heard remotely. A face-to-face hearing was not held because of the Covid-19 pandemic and a lack of suitably ventilated available hearing rooms at London Central.*

## **JUDGMENT**

The Judgment of the Tribunal is that it has no jurisdiction to consider the Claimant's claims, which were presented out of time. The claim is dismissed.

## **REASONS**

*Written reasons for the Judgment given orally today are given because the Claimant was not in attendance at the hearing.*

1. This was an Open Preliminary Hearing to consider the Respondent's application that the Claimant's claims be struck out on the basis that the

Tribunal had no jurisdiction to consider the Claimant's complaints, all of which were presented outside of the applicable time limits.

2. At the start of the hearing the Claimant was not logged in to the virtual hearing room. The clerk tried to telephone the Claimant but his phones were switched off. We adjourned until 10.30 while efforts were made to contact him. The Tribunal sent the Claimant an email at 10.20 and checked the inbox to see if we had received any correspondence from the Claimant asking to postpone the hearing or otherwise. I also understand that the Respondent tried to connect with the Claimant and also sent a further copy of the joining instructions in case his had gone to spam. We therefore adjourned again until 11 a.m. to allow further time for the Claimant to make contact.
3. No contact with the Claimant had been made by 11 a.m. Accordingly, pursuant to rule 47 of the Employment Tribunal's Rules of Procedure 2013, I decided to proceed in the absence of the Claimant, having considered the contents of his claim, his skeleton argument and the other documents submitted yesterday.
4. The Claimant was employed by the Respondent from 28<sup>th</sup> August 2012 until 4 September 2019. The Claimant contacted ACAS to engage in early conciliation on 18 June 2021 and a certificate was issued on 22 June 2021. The Claimant submitted his claim for unfair dismissal and unpaid wages to the Tribunal on 28 June 2021. (His claim to the Tribunal was against both the Respondent and a Mr S Reuben, but the claim against the latter was rejected and has not, as I understand it, been accepted to date. In any event, claims for unpaid wages and unfair dismissal can only be brought against an employer, and it does not appear that Mr Reuben was the Claimant's employer.")
5. Section 111(2) and section 13 of the Employment Rights Act 1996 provide that in relation to claims for unfair dismissal and unauthorised deductions from wages respectively, the employment tribunal shall not consider a complaint unless it is presented to the Tribunal "(a) before the end of the period of three months beginning with the effective date of termination, or (b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months."
6. The time limits for bringing a tribunal claim will be "stopped" at the point in time when ACAS receives the early conciliation request and will only resume when the prospective Claimant receives the early conciliation certificate. However, a Claimant does not get the benefit of any extension of time provided in section 207B of the Employment Rights Act 1996 if the limitation period has already expired before Claimant contacts ACAS.

7. A claim is therefore out of time unless the prospective claimant has contacted ACAS, or presented a claim, within the period of 3 months of his dismissal or, as the case may be, the date that the wages should have been paid.
8. The tribunal has a limited discretion to hear a claim which is presented out of time if (i) the tribunal is satisfied that it was not reasonably practicable for a complaint to be presented before the end of the relevant period of 3 months and (ii) the claim was presented within such further period as the Tribunal considers reasonable
9. The burden of proof for establishing that it was not reasonably practicable to present the claim in time is on the Claimant. The issue is whether it was reasonably practicable for the Claimant to have presented his claim (or contacted ACAS) within the three-month time frame. Reasonably practicable does not mean reasonable, nor does it mean simply physically possible. Individuals who have acted “reasonably” may fall foul of the time limit provisions.
10. As the Claimant’s employment ended on 4 September 2019 and his claim was presented on 28<sup>th</sup> June 2021 he is some 18 months out of time in relation to the primary time limit . The Claimant in his claim form sets out the reasons why his claim is late. Broadly he advances four reasons why he has been late with his claim. These are that he did not want to “rock the boat” in relation to a mortgage which he had obtained from Mr Reuben, that he thought that Mr Reuben/the Respondent might provide further business opportunities to him, that he was stranded in Israel from March 2020 for almost a year and that on his return to London he tried to arrange a meeting to achieve an amicable settlement and it was only in May 2021 that he realised that a settlement would not be forthcoming.
11. As Ms Barsam rightly submits none of those matters are matters which would make it not reasonably practicable for the Claimant to have presented his claim in time. I was referred to the case of *Birmingham Optical Group plc v Johnson 1994 ICR 459* in which the Employment Appeal Tribunal found that a delay occasioned by wishing to preserve or develop business opportunities is insufficient to make it “not reasonably practicable to bring the claim”. As in that case, none of the reasons advanced by the Claimant in this case meant that it was not feasible for him to bring his claim within the relevant 3 month time period, even if he had some reservations as to the wisdom of doing so. The Claimant’s argument that he was in Israel for a year from March 2020 and could not return does not assist, since, by the time the Claimant went to Israel he was already out of time.
12. In his skeleton submitted to this tribunal for the purposes of this hearing the Claimant makes a number of points which were not directly relevant to the issue of why he contended that it was not reasonably practicable for him to have submitted his claim in time. He does however refer to the fact

that after the termination of his employment he continued to be asked to perform tasks by Mr Reuben and said that he had travelled to Paris for that purpose. I am afraid that this does not assist him in seeking to show that it was not reasonably practicable for him to have presented his complaint in time. The fact that until May 2021 the Claimant was hoping for an amicable resolution also does not mean that it was not reasonably practicable to present his claim in time.

13. Time limits for bringing claims in the Employment Tribunal are short, and my discretion to extend them is limited. None of the arguments raised by the Claimant in the document submitted to the tribunal for this hearing identify a reason which meant that it was not reasonably practicable for the Claimant to submit his claim in time. The Claimant also suggests that *“because the termination came about as a result of complaints about inappropriate language that I had used in the office at a time when I was at an age (60) to collect my pension that this is a form of prohibited discrimination and is therefore not time-barred.”* However, there is no claim of discrimination set out in the claim and, in any event, claims of discrimination are also subject to a 3 month time limit, although the discretion to extend time is greater.
14. Finally I record that at 12.17, after the hearing had finished the Tribunal received an email from the Claimant to say that his phone had been stolen this morning, he had been asked to wait at the gym for the police to arrive, which they failed to do, and he had been unable to log in to the hearing at the gym. If the Claimant considers that his arguments have not been properly considered in his absence and seeks a reconsideration he should write to the tribunal within 14 days of receiving this judgment, providing evidence as to the events of this morning which prevented him from logging into this hearing, or from telephoning either the Tribunal or the Respondent to explain his circumstances.

Employment Judge Spencer  
9<sup>th</sup> December 2021

JUDGMENT SENT TO THE  
PARTIES ON

10/12/2021.

FOR THE TRIBUNAL OFFICE