



# EMPLOYMENT TRIBUNALS

**Claimant**  
**Mr N Sathasivam**

**v**

**Respondent**  
**Mrs Minal Patel – 1<sup>st</sup>**  
**Mr Munish Kumar Kalia – 2<sup>nd</sup>**

**Heard at:** Watford by Cloud Video Platform

**On:** 1 June and 19 October 2021

**Before:** Employment Judge Bedeau

## **Representation**

**For the Claimant:** In Person  
**For the 1<sup>st</sup> Respondent:** Mr L Godfrey, Counsel  
**For the 2<sup>nd</sup> Respondent:** Mr K Patel, Solicitor  
**Interpreter:** Mrs J Selvarajah

## **RESERVED JUDGMENT**

1. The claims were presented out of time and the tribunal do not extend time as it was reasonably practicable for the claims to have been presented in time. Accordingly, the tribunal does not have jurisdiction to hear, and the claims and they are struck out.
2. The claimant was employed by M Hati Ltd for 7 hours a week at all material times.
3. The first respondent is dismissed from these proceedings.
4. The second respondent is dismissed from these proceedings.

## **REASONS**

1. By a claim form presented to the tribunal on 27 July 2020, the claimant who said he worked for the respondents as a Chief Projectionist, claims notice pay; accrued unpaid holiday; unauthorised deductions from wages; and other unspecified payments. He states that he worked 12 hours a day, seven days

a week, a total of 84 hours each week since he commenced employment in October 2013. He was on grounds of redundancy on 16 March 2020.

2. In the response presented by the first respondent, Mrs Minal Patel, on 18 September 2020, it is averred that the claimant was not employed by either the first or second respondent's but by a company called M Hati Ltd, trading as Safari Cinema. Mrs Patel, as a director of the company, gave notice of termination to the claimant and other members of staff, by letter dated 19 March 2020, stating that they would be made redundant effectively on 31 March 2020. The claimant worked as a part-time helper with limited duties. All claims are denied.
3. In the response by the second respondent, Mr Munish Kumar Kalia, it is denied that he employed the claimant and supports that statement by referring to the content of the claim form in which the claimant wrote that he, Mr Kalia, was employed as a Manager and not that he was his employer. Mr Kalia asks that the claims against him be struck out.
4. I shall refer to the respondents by their surnames
5. On 17 March 2021, the case was listed for a preliminary hearing on 1 June 2021, at 2.00pm, for two hours, to consider the claims and any preliminary matters.
6. On 17 May 2021, Mrs Patel's legal representatives wrote to the tribunal applying for the claims against her be struck out as she is not the correct respondent, and the claims were presented out of time. (page 64 of the bundle)

### **The issues**

7. The issues the parties agreed I had to hear and determine are:
  - 5.1. Whether the claims were presented in time?
  - 5.2. If not, was it reasonably practicable for the claims to have been presented in time?
  - 5.3. If not, were the claims presented within a reasonable time thereafter?
  - 5.4. Who is the correct respondent?

### **The evidence**

8. I heard evidence from the claimant at the hearing on 1 June and adjourned it to 19 October to hear evidence from Mrs Patel and Mr Kalia as well as to hear submissions.
9. In addition to the evidence, the parties referred to a joint bundle of documents comprising of 69 pages. Further documents were produced during the hearing.

### **Findings of fact**

10. M Hati Ltd used to own a cinema called Safari Cinema, on Station Road, Harrow, that specialised in showing Indian films, one show was on Thursday,

one on Friday, and one on Saturday. The company was owned by Mr Jayvantrai Patel, Mrs Patel's father. It was incorporated on 3 January 1995.

11. Mr Kalia, the second respondent, was a long-serving employee of M Hati Ltd.
12. On 1 May 2012, M Hati Ltd entered into a licence to occupy agreement with Mr Kalia in respect of the use of the cinema kiosk and projection room. It stated the following:

“Witnesseth as follows:

Subject to the Terms and Conditions contained hereinafter the Licensor hereby grants the exclusive Licence and authorises the Licensees to occupy and use the property known as Safari Kinema and Kiosk and projection room within the cinema (hereinafter referred to as (“the Property”) as commercial business premises for the Licensee from the 1st day of May 2012 for a period of 12 months expiring at midnight on 30th April 2013 (“the Licence Period”) at a licence fee of £1,200 (one thousand two hundred pounds only) payable arrears in equal quarterly instalments with one month's notice licence fee payable upon the execution of this licence. Thereafter one quarter's advance licence fee of £1,200 (one thousand two hundred pounds) only shall be due on 1 May 2012 and 1st August respectively.”

13. There were additional terms on Mr Kalia keeping the property in a good state of repair and allowing access to it upon receiving 24 hours' notice.
14. He used the projection room for storage. In accordance with the licence agreement, he ran the kiosk which sold snacks and Indian foods. He was assisted by his wife.
15. He and another employee, Mr Tariq Mohammed, Duty Manager, prior to the claimant's employment, ran the projection room. It was unclear to me whether Mr Mohammed was able to engage in the work of a Projectionist.
16. With Mr Patel senior's approval, the claimant was approached by Mr Kalia and offered employment with M Hati Ltd on or around 1 October 2013. Mr Kalia was also employed by the company as a Manager.
17. The claimant had previously worked for other companies as a Projectionist for 39 years. Safari Cinema had two screens. Screen one was on the third floor and screen 2 was on the ground floor. There were viewings on Thursdays for 3 hours; Friday for 2 hours; and Saturday for 2 hours. The claimant said that he worked from 12.00 noon to 12.00 midnight, 12 hours a day, 7 days a week. A total of 84 weekly hours but there was no supporting evidence of this. I did not see documentary evidence of him having been paid by M Hati Ltd, Mr Kalia or evidence of Mr Kalia having engaged him as his employee outside of working 7 hours for M Hati Ltd. In fact, the picture appeared to be somewhat confusing with Mr Kalia saying that the claimant would use the cinema as a place to meet his friends and work colleagues in order to socialise, as he had a set of keys to the premises and was not restricted in his movements. According to Mr Kalia, the claimant would turn up at the cinema because there was nothing else for him to do outside of it.
18. Apart from Mr Kalia, Mr Mohammed, and the claimant, there were also two other employees who worked at the cinema. I find that Mr Kalia, Mr

Mohammed, the claimant, as well as the cleaner, had each a set keys to the premises.

19. Mr Kalia was on site every day. He paid the claimant in cash every week as well as the other members of staff. Every month staff would sign for their pay slips. Occasionally, the claimant would work up to 12 hours a week for which he would be paid. His normal pay was £70 each week, in cash.
20. I was told and do find as fact, that with the advent of new technology, the requirement to load a projector with a film had been superseded by accessing the film digitally online, and by pressing a button to show it on the screen. It is similar to accessing music on the internet by streaming online rather than by buying a computer disk.
21. The claimant produced a long schedule of the alleged dates and times he worked at the cinema. This showed that he worked 7 days a week, 12 hours a day since the commencement of his employment. If that be right, he did not complain either to Mr Patel senior with whom he had a good relationship, or to Mr Kalia, that he had been consistently and grossly underpaid. Further, he did not lodge a formal grievance or an earlier Employment Tribunal claim. Other than what is stated on the face of the schedule, there was no corroborative evidence that he worked 84 hours a week since October 2013.
22. Mr Patel died in 2017 from cancer, thereafter, control of M Hati Ltd was vested in Mrs Patel who has been living and working in the United States for about 27 years. In 2018, she decided to sell the company to a property developer. The process took some time. The sale was on 17 November 2020. Whatever price she sold it for she became aware that the developer had sold it on shortly after the sale for considerably more.
23. Mr Kalia reported daily to Mr Patel and after his death, to Mrs Patel.
24. In the evidence the claimant said that he only knew Mr Kalia as his Manager, and who appeared to be “running everything”, he said.
25. M Hati Ltd ceased trading for two reasons, firstly, because of the Covid-19 restrictions due to come into effect on 20 May 2020, and secondly, the buyer of the premises had received planning permission to redevelop the site.
26. I was satisfied that staff were aware that in 2018, the premises had been sold to a developer. The claimant acknowledged that on 28 January 2020, Mrs Patel was on site and communicated with him and other staff informing them that the cinema and premises would be closed on 31 March 2020. (22)
27. I further find that the claimant was surprised and upset as to the date because he was of the view that the process was likely to take longer than the end of March 2020. He would be losing an income and well as his friends.
28. On 16 March 2020, Mrs Patel spoke to Mr Kalia informing him that the premises would close down on 31 March 2020 and would no longer be trading. On 18 March 2020, she sent him letters addressed to staff, including the claimant, dated 19 March 2020, to be handed to them, in which she wrote:

“Dear Mr Sathasivam,

**Notice of termination of employment**

I am writing to confirm that M Hati Ltd, trading as, Safari Cinema (the Company) has decided to make you redundant.

As you know, there was a meeting with all of the employees on 28<sup>th</sup> January, at which I explained why the company was considering making redundancies. Namely that the company was selling the Safari Cinema to a developer which meant that the company's business has to be closed by latest 31<sup>st</sup> March.

Unfortunately there is no suitable alternative employment for you or any way in which your redundancy could be avoided due to the business closing.

The company is therefore terminating your employment on 31<sup>st</sup> March by reason of redundancy. You are not required to come into the cinema after 30<sup>th</sup> March. You will receive your pay and benefits up to 31<sup>st</sup> March in the normal way.

Following termination of your employment, you will receive (less any required deductions for tax and National Insurance contributions):

- a statutory redundancy payment, which is calculated on the basis of your age, weekly salary (subject to a maximum, currently £969.30) and length of service in accordance with the attached schedule.
- Pay in lieu of your contractual notice period of 10 weeks (PILON).
- An ex-gratia payment of £970.

It is our understanding that, under current tax rules, the following tax arrangements will apply:

- The statutory redundancy payment will be tax-free.
- All of the PILON will be subject to any required income tax and National Insurance contributions.
- The ex-gratia payment will be tax-free to the extent that the aggregate of the payment and the statutory redundancy payment does not exceed £30,000.

You have the right to appeal against the Company's decision to make you redundant. Please submit any appeal to Minal Patel in writing by 26 March, specifying the grounds on which you are appealing.

The company very much regrets that it has become necessary to make redundancies and that you have been affected. I would like to thank you for your hard work for the company over the last years and wish you all the best for your future career.

Yours sincerely

Minal Patel" (52-53)

29. Accompanying the letter was a breakdown of his redundancy pay. (54)
30. Mr Kalia gave him the letter on 20 March 2020.
31. Mr Kalia also owns a grocery shop which is not that far away from the cinema. On or around 11 May 2020, the claimant called at the shop saying that he had lost the letter from Mrs Patel as well as other documents. He requested that they be emailed to him which Mr Kalia agreed to do.

32. The claimant's P60 and P45 were sent to him, on or around the 14 May 2020, giving his leave date as 31 March 2020. His final gross pay was £3129.30, netted down it was £2779.30. These were prepared by Safari Cinema but in reality came from M Hati Ltd. (24, 61-62)
33. The claimant did not appeal the decision to dismiss him. He acknowledged in evidence that the last day he worked was on 16 March 2020 when the cinema closed.
34. He told me, initially, that he sought advice from a solicitor and friends about his employment rights. On the tribunal's time limits, he said he thought he had 3 months from the 30 March 2020, during which he was required to contact ACAS. He contacted ACAS on 20 July, and a certificate was issued on 20 August 2020, in respect of Mr Kalia as a respondent. (33)
35. In respect of Mrs Patel, ACAS was notified on 20 July with a certificate issued on 11 August 2020. These dates were the same for Safari Cinema as a prospective respondent. (65-66)
36. He presented a claim form with a handwritten statement on 16 June 2020, but it was rejected as he did not provide an ACAS early conciliation certificate. He said that he sent a letter to ACAS on the same day but was likely to have been received the following day, 16 June. He then presented another claim form on 27 July 2020, which was accepted. (1-23)
37. In it, he stated that his employment ended on 16 March 2020, and that he was paid £70 a week but should have been paid for 84 hours each week from commencement of his employment. In cross-examination he acknowledged that if the premises and cinema were closed on 16 March, the primary 3 months limitation period ended on 15 June 2020.
38. Mrs Patel told me that M Hati Ltd was placed in voluntary liquidation.

### **Submissions**

39. I heard submissions from the claimant, Mr Godfrey, counsel on behalf of Mrs Patel, and from Mr Patel, solicitor on behalf of Mr Kalia. Mr Godfrey prepared written skeleton arguments and spoke to those. I have considered the authorities they have referred me to.
40. I do not propose to repeat their submissions herein having regard to rule 62(5) Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.

### **The law**

41. Section 23(2) Employment Rights Act 1996 provides for an unauthorised deduction from wages claim to be presented to an Employment Tribunal within 3 months from the date payment was due, or when there is a series of deductions, the date of the last deduction or payment.
42. Time may be extended if it was not reasonably practicable to present the claim within the primary limitation period of 3 months, and may be presented within a further reasonable period, section 23(4)

43. Section 207B ERA 1996, extends time following conciliation and applies to an unauthorised deduction from wages claim as it is “relevant proceedings”, Employment Tribunals Act 1996, sections 18-18C.
44. Similar time limits extension provisions apply in relation to breach of contract claims, Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994. Articles 7 states:

**“7 Time within which proceedings may be brought**

Subject to articles 8A and 8B, an employment tribunal shall not entertain a complaint in respect of an employee’s contract claim unless it is presented –

(a) within the period of three months beginning with the effective date of termination of the contract giving rise to the claim, or

(b) where there is no effective date of termination, within the period of three months beginning with the last day upon which the employee worked in the employment which has been terminated, or

(ba) where the period within which a complaint must be presented in accordance with paragraph (a) r (b) is extended by regulation 15 of the Employment Act 2002 (Dispute Resolution) Regulations 2004, the period within which the complaint must be presented shall be the extended period rather than the period in paragraph (a) or (b).

(c) Where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented within whichever of those periods is applicable, within such further period as the tribunal considers reasonable.

(d)  
.....”

**8B Extension of time limit to facilitate conciliation before institution of proceedings:**

“(1) This article applies where this Order provides for it to apply for the purposes of a provision of this Order (“a relevant provision”).

(2) In this article –

(a) Day A is the day on which the worker concerned complies with the requirement in subsection (1) of section 18A of the Employment Tribunals Act 1996 (requirement to contact ACAS before instituting proceedings) in relation to the matter in respect of which the proceedings are brought, and

(b) Day B is the day on which the worker concerned received or, if earlier, is treated as receiving (by virtue of regulations made under subsection (11) of that section) the certificate issued under subsection (4) of that section.

(1) In working out when the time limit set by a relevant provision expires the period beginning with the day after Day A and ending with Day B is not to be counted.

(2) If the time limit set by a relevant provision would (if not extended by this paragraph) expire during the period beginning with Day A and ending one month after Day B, the time limit expires instead at the end of that period.

(3) Where an employment tribunal has power under this Order to extend the time limit set by a relevant provision, the power is exercisable in relation to that time limit as extended by this regulation.”

45. As regards the issue of whether there was an employment relationship, I considered section 230(1) ERA 1996, and the issues of control; mutuality of obligation; the provision of equipment to carry out the work; whether the person was part of the organisation; was there a share in profit or risks; whether they were in business on their own account; and whether they could substitute others to carry out their work. I also took into account that section 13 ERA applies to a worker, section 230(3).

## **Conclusion**

### Were the claims presented out of time?

46. At one point during the claimant’s evidence, he told me that he got advice from a solicitor and friends on his employment rights, but later he said that he did not have the benefit of legal advice when he presented his claims. I was satisfied, on balance of probabilities, that he was aware of the time limits because he wrote in this claim form that his employment ended on 16 March 2020 and sought to present his claims on 15 June 2020, by post, the expiry of the 3 months’ primary time limit. It was rejected because there was no ACAS conciliation number. He, however, knew that by posting the initial form on 15 June 2020, it would arrive the following day, one day out of time. I accepted his first response to the question of whether he had the benefit of legal advice, and he did.
47. He re-presented the claim form on the 27 July 2020. I was satisfied that he knew that on 16 March 2020, was his last day at work. He was told that the building and the business would close on 31 March 2020, by Mrs Patel on 28 January 2020 when she visited the premises. He did not go in to work after 16 March 2020.
48. Mrs Patel gave him notice of the closure and redundancy in her letter dated 19 March 2020. He understood that he would be paid in lieu of his notice. That being the case, it is the last day when he worked that is of relevance. Even if I accept that he was given the termination letter from Mrs Patel by Mr Kalia, on 20 March 2020, the 3 months primary limitation period expired on 19 June 2020. He cannot avail himself of the ACAS extension provisions as they were not notified until the 20 July 2020.
49. I was not given an explanation for the delay. What is reasonably practicable is what is reasonably feasible. I am satisfied that it was reasonably practicable for the claims to have been presented in time, that is, within 3 months from



either 16 or 20 March 2020. Accordingly, the claimant's claims are struck out because the tribunal does not have jurisdiction to hear and determine them.

Who is the correct respondent?

50. There is no dispute that the claimant was employed, the question is, who by. I accepted Mrs Patel's evidence that he worked for M Hati Ltd. He too acknowledged that this was the case. With the approval of Mr Patel senior, he was taken on by Mr Kalia, acting in his role as a Manager. I accepted that the claimant was employed as a Projectionist as he was taken on at the time when the previous Projectionist had left or was leaving. I do not accept that the role any longer required him to prepare rolls of films taking 3 hours. Quite the contrary, the film was accessed digitally and by pressing a button, it would be on view on a screen. The claimant's role was limited to working 7 hours a week, for which he was paid by M Hati Ltd, £70 in cash each week. The viewings were on Thursdays for 3 hours; Fridays for 2 hours and on Saturdays for 2 hours.
51. Control over his work was exercised by Mr Kalia as Manager. There is no dispute that the claimant carried out his work over the 7 hours.
52. M Hati Ltd made him redundant and paid him his final salary.
53. I have come to the conclusion that M Hati Ltd entered into a contract of employment with the claimant to employ him as a part-time Projectionist working 7 hours a week. It was not a contract of employment with Mrs Patel. She is not the correct respondent and is dismissed from these proceedings. All claims against her are also dismissed.
54. I considered whether there was an employment contract with Mr Kalia. If the claimant worked for M Hati Ltd for 7 hours, was it possible that he worked for Mr Kalia 77 hours a week making it 84 hours? If the claimant did work, in total, 84 hours a week for several years, he did not raise the issue of not being paid his full wages either with Mr Kalia or with Mr Patel senior. There was no corroborative evidence in support of him working 12 hours a day, 7 days a week. He called none of the other employees at then time to give evidence in support. By all accounts he had a good working relationship with Mr Kalia and could have complained to him about not being paid such a considerable sum of money each week. There was no documentary evidence produced that he was working on the premises 12 hours a day, 7 days a week.
55. I agree with Mr Kalia when he told me in evidence that the claimant used the premises outside of this normal 7 hours a week work, to socialise. He had his own set of keys to the premises and would be seen in the company of people not engaged in work. When he was told on 28 January 2020, that the premises would close on 31 March 2020, he was visibly upset, not only

because it meant a loss of an income, but also the opportunity to meet and talk to friends and work colleagues.

56. I have concluded that Mr Kalia did not employ the claimant and is, therefore, not the correct respondent. He too is dismissed from these proceedings.

.....  
Employment Judge Bedeau

Date: 23 November 2021

.....  
Sent to the parties on:

29 November 2021

For the Secretary to the Tribunals