



# EMPLOYMENT TRIBUNALS

(England and Wales)  
London Central Region

Claimant: Mr A Oyejola  
Respondent: University College London Hospital

Heard by CVP on 20/4/2023  
Before: Employment Judge J S Burns

## Representation

Claimant: in person  
Respondent: (Solicitor/Counsel)

## JUDGMENT

1. The claim of unfair dismissal is struck out.
2. The FMH listed for 30 and 31 May 2023 is cancelled.

## REASONS

1. The above judgment followed an OPH to consider time points relating to the Claimant's unfair dismissal claim.
2. The Claimant gave evidence based on his undated 2 page written statement and a 100 page OPH bundle of correspondence regarding his dealings with the Home Office and the Respondent. I received Respondent's written submissions and OPH bundle of 80 pages.

## Findings

3. The Claimant, who is a Nigerian national, was suspended from his work for the Respondent on 10/12/21 because it was unclear whether his right to work in the UK was valid. The Respondent met with the Claimant on 13/1/22 to discuss the matter but the position remained unclear at best. The Respondent therefore dismissed the Claimant with immediate effect by letter dated 17 /1/22, which was received by the Claimant on or about that date.
4. The Claimant appealed the dismissal on 25/1/22. It is clear that by then the Claimant was aware of his right to bring an ET claim and also that he had access to professional legal advice. The hearing of the appeal was delayed.
5. The Respondent said it would get back to the Claimant within 8 weeks to arrange an appeal hearing but this did not happen.
6. The Claimant has provided no documentary evidence such as prescriptions or doctor's notes, but I accept that the Claimant suffered depression from 2021 and in April 22 he had a flare up and went onto medication and was better by July 22. He also had a problem with his right knee.

7. As a consequence of his ill-health he was unavailable for an appeal hearing which the Respondent tried to arrange in June 2022. There were further delays with the appeal caused by difficulties in assembling an appeal panel.
8. The appeal was dismissed by letter dated 13/12/22 following a hearing attended by the claimant on 25/11/22.
9. The Claimant then began the process of ACAS Early Conciliation on 22 December 2022, which ended on 4 January 2023. The Claimant's ET1 (for unfair dismissal only) was received by the Tribunal on 12 January 2023.

#### Legal Framework

10. The relevant statutory provision in respect of time limits for unfair dismissal claims is set out at section 111(2) of the Employment Rights Act 1996, and reads as follows:

*(2) Subject to the following provisions of this section, an employment tribunal shall not consider a complaint under this section 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 consider 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.*

11. The time limit of three months is further extended by the period of ACAS Early Conciliation.
12. Should a Claimant put forward a submission that he was unable to file a claim in time due to ill health or disability, the Tribunal must be able to make clear findings of fact as to the nature of the illness and the extent of its impact on the Claimant's ability to embark on litigation throughout the period of limitation.
13. Should a Claimant put forward a submission that a claim has not been filed due to a belief that an internal appeal process either held the limitation period in abeyance or would render the claim unnecessary, there must be some factor beyond the mere invocation of an internal appeal process which justifies the failure of the Claimant to meet the primary time limit.

#### Consideration and conclusions

14. I reject the Claimant's submission that he was not dismissed in January 2022 and was finally dismissed only on 13/12/22 when his internal appeal was dismissed. The dismissal letter was clear and his appeal against that on 25/1/22 shows that the Claimant himself recognised that at the time.
15. Given the above dates, primary limitation in this matter expired on 29 April 2022. The Claimant's claim is therefore approximately eight and a half months out of time.
16. The Claimant's depression flared up in April 2022, and purely as a matter of chronology, he has not shown that this factor made it not reasonably practicable for him to present his claim by 29/4/22 as over two and a half months had expired between the dismissal and the flare-up. In any event there is no proper evidence, and nor does the Claimant suggest, that his depression was so severe, even when it was flaring up, that he was thereby disabled from presenting his claim.

17. The Claimant's main submission is contained within paragraph 10 of his written statement, in which he writes that "*it will be unreasonable for me to proceed to court if I do not make use of the internal mechanism which is provided by the Trust policy before proceeding to the court*".
18. However, it is not sufficient to rely upon the operation of an internal appeal process when arguing that it was not 'reasonably practicable' to bring a claim within the time limit. Something more is required. There is nothing more in this case.
19. While the appeal process was delayed, at least partly by the Respondent, the delay does not provide "something more". The Claimant knew he had a right to present a claim for unfair dismissal and he had access to legal advice. If he felt that the appeal was not being brought on quickly enough, for whatever reason, he could and should have presented his claim within the primary limitation period i.e. by 29/4/22. There is no rule or requirement that an internal appeal must be exhausted before a Claimant resorts to the ET.
20. I therefore find that it was reasonably practicable to claim in time.
21. In any event the Claimant did not bring his claim within a reasonable period after 29/4/22.
22. The Claimant himself does not really rely on his depression as an excuse, but in any event his depression was better in July 22 but a further 6 months elapsed before his claim was presented.
23. The claim is therefore struck out for want of jurisdiction.

J S Burns Employment Judge  
London Central  
20/4/2023  
For Secretary of the Tribunals  
Date sent to parties: 20/04/2023

---