



EMPLOYMENT TRIBUNALS

OPEN PRELIMINARY HEARING

Claimant Mr L Hennessy

Represented by Did not attend and was not represented

Respondent First Transpennine Express Ltd

Represented by Ms I Egan of Counsel

Employment Judge Ms A Stewart (sitting alone)

Held at: Manchester by CVP on: 17 April 2023

JUDGEMENT

The Claimant's complaint of unfair dismissal is dismissed because he has not presented it to the Tribunals within the three month time period required by section 111(2)(a) of the Employment Rights Act 1996 and has not satisfied the Tribunal that it was not reasonably practicable for him to have presented it within the time limit as required by section 111(2)(b) of the Act.

REASONS

Conduct of the Hearing:

1.1 The Claimant did not appear at today's hearing but sent an email to the Tribunal at 16.45 on Friday 14 April 2023 saying 'I will not be able to attend', but without offering any reason or explanation. This was not copied to the Respondent.

1.2 Notice of today's hearing was sent to the Claimant on 14 February 2023, explaining that its purpose was to decide whether or not it had been practicable for him to present his claim within the time limit, and if not, whether it had been presented within such further time as was reasonable. The Notice of hearing

went on to say that the Claimant should bring such evidence as he wished to rely on, including a statement, and that this should be sent to the Respondent and to the Tribunal 14 days before today's hearing. Nothing was received from the Claimant.

1.3 The Respondent sent the Bundle, Agenda and List of Issues to the Claimant, preparatory to today's hearing, on 6 April 2023. Nothing was heard in reply. The first and only communication from the Claimant was the email at 16.45 on 14 April 2023, set out in paragraph 1.1 above.

1.4 The Tribunal took all practicable steps to contact the Claimant this morning: the Tribunal Clerk emailed the Claimant at 09.46 asking him to provide the reason for his non-attendance and saying that the hearing may proceed in his absence. The Clerk also tried to telephone the Claimant, at 10 and 10.10 am today, but there was no answer to his calls. He left a voicemail during the first attempt restating that the hearing may well go ahead without the Claimant if he failed to communicate.

1.3 There has been no response from the Claimant to any of these communications. Accordingly, the Tribunal decided to go ahead with today's hearing in the Claimant's absence today, in exercise of its powers under **Rule 47 of Schedule 1 of the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013**, in furtherance of the Overriding Objective and in fairness to the Respondent.

Unfair Dismissal

2.1 The Claimant was orally summarily dismissed on 11 October 2022, confirmed by follow-up letter dated 14 October 2022. The primary time limit under **section 111 Employment Rights Act 1996** accordingly expired on 10 January 2023.

2.2 The Claimant first contacted ACAS on 18 January 2023, one week outside the primary time limit, so there can be no extension of time for the ACAS process.

2.3 The burden of satisfying the Tribunal that it was not reasonably practicable to have presented his claim within the primary time limit rests on the Claimant. He has not offered any explanation, reason or argument in this regard, despite having had ample warning and opportunity to do so.

2.4 Having regard to such evidence as was before the Tribunal: the disability box on the ET1 was not ticked; he has begun new employment on 27 November 2022 and he was capable of sending an email on 14 April 2023; there is no indication of an explanation or reason for the delay in presenting his complaint in time.

2.5 The Tribunal concluded that the Claimant has failed to show grounds for it having been not reasonably practicable for him to have presented his unfair

dismissal complaint to the Tribunal within the statutory time period and his complaint is accordingly out of time and is dismissed.

2.6 The Respondent today signalled an intent to put forward a costs application to the Tribunal, if so advised.

Employment Judge Stewart

Date 17 April 2023

Judgment sent to the parties on 18 April 2023

FOR THE TRIBUNAL OFFICE

NOTES

- (1) Any person who without reasonable excuse fails to comply with this Order shall be liable on summary conviction to a fine of £1,000.
- (2) Further, if this Order is not complied with, the Tribunal, may (a) make an Order for costs or preparation time against the defaulting party under Rule 76(1) or (2), or (b) strike out the whole or part of the claim, or, as the case may be, the response, and, where appropriate, direct that the Respondent be debarred from responding to the claim altogether.
- (3) You may make an application, upon notice to the other parties, for this Order to be varied or revoked.