



# EMPLOYMENT TRIBUNALS

## At an Open Attended Preliminary Hearing

**Claimant:** Mr P Britton

**Respondent:** Harry Dalby Engineering Ltd

**Heard at:** Leicester

**On:** Thursday 21 February 2019

**Before:** Employment Judge Brewer (sitting alone)

### Representation

**Claimant:** No appearance

**Respondent:** Mr R Lowe (Managing Director) and Mr D Carr (Finance Director)

## JUDGMENT

The Claimant's claim under case number: 2600203/18 is struck out.

## REASONS

1. This case was listed for a preliminary hearing by Judge Ahmed following a closed telephone preliminary hearing on 19 November 2018. On the face of the facts known to Judge Ahmed at that preliminary hearing, the claim was issued out of time (although I note that in the case management summary Judge Ahmed said the parties agreed that the termination date was 7 October 2017, but that is clearly an error, the parties in fact agree that the effective date of termination was 7 August 2017).
2. In sequence, the Claimant was dismissed for gross misconduct on 7 August 2017. He appealed, and his appeal was heard and dealt with on 18 August 2017. The Claimant began early conciliation on 13 November 2017 and the early conciliation certificate was issued on 27 November 2017. The claim was presented on 30 January 2018.
3. It follows from the above that the normal 3 month time limit expired on 6 November 2017, which was 7 days before the Claimant commenced early conciliation. Given the date of presentation of the ET1, the Claimant's claim is 2 months' out of time.

4. On that basis, Judge Ahmed ordered that there be a preliminary hearing in person to consider whether the claim was presented out of time and whether it was not reasonably practicable for the claim to have been presented in time. If those two questions are answered in the affirmative, the preliminary hearing should then consider whether the further period taken to submit the claim was reasonable.
5. The Claimant failed to attend the preliminary hearing at the appointed time, 10:00 am. He was telephoned by the administration and we were informed that he was on his way to tribunal. The Claimant had not arrived by 10:30 and he was telephoned again. This time, his mobile phone went straight to voicemail. I waited until 10:45. We had no further contact from the Claimant and I decided that the hearing should commence in his absence.
6. I had a bundle of documents and I note also on file a letter from the Claimant explaining why he could not submit his claim in time. I have taken account of all of the documents, including the Claimant's explanation, in reaching my decision.
7. The first point to note is that the Claimant does not suggest that his claim was submitted in time. The Claimant also does not say why the extra time taken was reasonable. His explanation for not presenting the claim in time is as follows.
8. After he was dismissed on 7 August 2017, he spoke to the Citizens Advice Bureau (CAB). He says he was told by the CAB to see what would happen at the appeal on 18 August 2017. Subsequent to that he made an appointment to see the CAB and he says he was given an appointment in September 2017. He said that at that appointment he was "*given all information and was told I had 3 months to apply to ACAS*". The Claimant does not say expressly but it is implied that he thought he had 3 months from the date of the meeting. He says that this would have taken him until December.
9. However, I note that the Claimant also says that he thought he had 3 months from the date of his appeal hearing and not from the dismissal. He says: "*I believed with the 3 months and extra month it would have took (sic) me to January 2018*". This of course is simply arithmetically incorrect. If the Claimant thought he had 3 months and an extra month from 18 August, the date of the appeal, to present his claim, that would have taken him until 17 December and not 30 January 2018, which is when in fact he presented his claim.
10. I note the case law in relation to time limits and in particular that section 111(2)(b) of the Employment Rights Act 1996 should be given a liberal construction in favour of the employee (see ***Dedman v British Building and Engineering Appliances Ltd [1974] ICR 53***). I also note that in order for ignorance of rights to justify a late claim, that is to say in order for the submission of a claim in time to be not reasonably practicable because of ignorance of time limits, that the ignorance must itself be reasonable. In this case, the Claimant did take advice, he says, from the CAB. I note the case of ***Riley v Tesco Stores Ltd & another [1980] ICR 323*** in which the Court of

Appeal upheld the employment tribunal and EAT decisions that it had been reasonably practicable for the Claimant to have presented the claim in time because she had engaged skilled advisers. The Court of Appeal made the point that the issue of whether the CAB advisers were skilled was not really the issue, rather the key factor was that the Claimant had taken advice which was relevant as part of the overall general circumstances. In this case, I think it highly unlikely that the CAB would have said that the Claimant had 3 months from the date of their meeting because given that meetings can take place at any time that would make the time limit an entirely moveable feast. The time limit would be different for everyone depending on how quickly they could get a meeting with the CAB. Further, the Claimant contradicts himself in his own letter to the tribunal in which he also says, as I have set out above, that he thought he had 3 months from the date of the appeal rather than the date of dismissal. In my judgement, that does not assist him because whether the time limit is taken from the date of dismissal or the date of the appeal, the claim was still presented significantly out of time.

11. For those reasons, I conclude that it was reasonably practicable for the Claimant to have presented his claim in time and his claim should be struck out on the basis that the tribunal does not have jurisdiction to hear his claim. I should add that even if I was wrong about that, the extra time taken to submit the claim was not reasonable given all the circumstances and the Claimant's own written evidence.
12. For all those reasons, the tribunal does not have jurisdiction to hear the Claimant's claim which accordingly is struck out.

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Employment Judge Brewer

Date: 12 March 2019

JUDGMENT SENT TO THE PARTIES ON

23 March 2019

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FOR THE TRIBUNAL OFFICE

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