



# EMPLOYMENT TRIBUNALS

London South Employment Tribunal on 17th May 2022

*Claimant*

**Between**

*Respondent*

**Philip Dwumfour**

**&**

**EQUANS Services Limited**

**Before**

**Appearances**

Judge M Aspinall (Sitting as an Employment Judge)

Mr Dwumfour in person  
Mr J Green (counsel for the Respondent)

## OPEN PRELIMINARY HEARING Judgment

1. This was a claim brought on the basis that the Claimant had been unfairly dismissed from his employment with the Respondent because he had applied for study leave.
2. The Respondent raised a preliminary issue over the timeliness of the claim; they averred that the Claimant had been dismissed for gross misconduct on 16 December 2020 and that he had, therefore, to file this claim with the Tribunal by 16 March 2021. In fact, the Claimant had applied to ACAS on 26 March 2021 and filed his claim with the ET only on 29 March 2021. In summary, the Respondent argued that the Claimant had applied to ACAS 10 days after the primary deadline for making a claim and then, 13 days after that same deadline, had lodged his claim with the Tribunal. My attention was also drawn to the fact that the Claimant had previously used the services of ACAS in a pay dispute - this, they said, indicated that the Claimant had sufficient knowledge of the process and his rights, or, sufficient ability to enquire into and make himself aware of those rights and how to enforce them that I should find that the claim was out of time.
3. The Claimant said that he had believed that his employment ended on 29 January 2021 and that, therefore, he was in time. He explained that the pressure of studying remotely (via Microsoft Teams and online learning) for his PCCE and qualified teacher status at City of Birmingham University during the pandemic had been considerable. His explanation for believing that he was employed until 29 January 2021 was that this was the last day upon which the Respondent paid him.
4. I asked the Claimant about the letter dismissing him. He confirmed that he understood that he had been dismissed with immediate effect from 16 December 2020 but that he remained employed, regardless of that fact, until his final pay in January 2021.
5. I am satisfied that the Claimant was dismissed without notice, for gross misconduct, by the Respondent on 16 December 2020. I am also satisfied that the Claimant knew that to be the case and that any confusion about when he was last paid (i.e., in January 2021) is immaterial and cannot assist the Claimant. The express terms of the dismissal letter are, I find, clear and concise.

6. Briefly considering the merits of the claim, it is agreed that the Claimant stopped attending for work with the Respondent in September 2020 and that despite repeated attempts to contact him, he did not engage with the Respondent in the period up to - and including - the disciplinary hearing on 16 December 2020. He did not engage with the Respondent after he was dismissed either in that he opted not to exercise his right to appeal the decision (as set out in the dismissal letter). The Claimant has it that he was dismissed because he had applied for study leave and that he had a statutory right to do so. To the contrary, the Respondent says that he was dismissed because he failed to attend for work and did not engage with his employer after mid-September 2020.
7. I find that the Claimant was not dismissed because he exercised a statutory right to ask for study leave:
  1. The Claimant did not, in fact, in the circumstances have that right. He was employed by a business services company as a security officer. The course of study that he wished to (and did) take was to requalify as a teacher. Whilst that is a laudable aim and one to which the Claimant aspired, it could not be said to meet either of the tests under s.63D(4)(a) and (b) Employment Rights Act 1996 (that the purpose of studying was to improve the Claimant's effectiveness in the Respondent's business, or that it would improve the performance of the Respondent's business).
  2. On any reading of the papers and the dismissal letter, the Claimant was dismissed because he had failed to work for the Respondent in accordance with his contract and had not engaged with them for a period of 3 months by the date of his dismissal. This was a fair reason, and a fair process was followed despite the Claimant's lack of engagement.
8. I find that the Claimant ought to have either engaged with ACAS or filed his claim with the Tribunal by 16 March 2021. He did not do so. I find that he has provided no adequate reasons to explain why it was not reasonably practicable for him to do so in time and that he has not demonstrated that he did make such filings within a reasonable time thereafter.
9. **Respondent's application for costs**

The Respondent applies for costs in the sum of £3,900 (exclusive of VAT) under rule 76(1)(b) on the basis that the claim had no reasonable prospect of success for the reasons given by the Tribunal in summarising the merits of the claim and because the Claimant did not engage with the process, filed his claim late, did not engage with ACAS and did not communicate with the Respondent or comply with the listing directions of the Tribunal.
10. As to costs, the Claimant says that he believes that he had a right to have study leave and to be allowed to study and that he is a litigant in person. He told me that he is working part time in event security at football matches and is claiming Universal Credit. He receives £753 per month from Universal Credit when has not worked at all in a month - although he averages an income of £400 from his part time work. He impressed upon me his view that if he had money to pay for the Respondent's costs he would have engaged his own solicitor and that the Respondent chose to be represented so should pay for that themselves.
11. As to costs, I am satisfied that the claim - even if it had been brought in time - had no reasonable prospect of success (for the reasons I have already set out above). The papers I have now seen in relation to the costs application include offers from the Respondent and warnings as to costs (these were without prejudice save as to costs). The Claimant did not, in any meaningful way, engage with the Respondent and did not engage properly with the preparation for the hearing of the claim. I am satisfied that it is reasonable to make an award of costs in favour of the Respondent. Although the schedule of costs is relatively modest, I must set that against the even more modest ability which the Claimant has to pay any order. I will order that the Claimant shall pay £1,900 towards the costs of the Respondent.

12. **Judgment**

1. I have changed this hearing from a full merit to an open preliminary hearing; and
2. The name of the Respondent will be corrected to EQUANS Services Limited (the capital letters are deliberate); and
3. The Claimant made his claim to the Tribunal after the time limit for doing so had expired and has not satisfied the Tribunal that it was not reasonably practicable for him to do so in time or that he had done so as soon as possible after that time limit expired; and
4. The Claim is out of time and I do not extend time for it; and
5. As the Claim is out of time, it is dismissed as the Tribunal lacks jurisdiction to adjudicate it.
6. **Costs:** The Claimant shall pay a contribution of £1,900 towards the costs of the Respondent and the Respondent shall have ability to enforce in the usual manner.

**Judge M Aspinall on Tuesday, 17th May 2022**

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