



EMPLOYMENT TRIBUNALS

Claimant: Mr N Stubbs

Respondents: The Alpine Club R1
White Mountain Chalets Ltd R2

Heard at: Via CVP and in person **On:** 1/2/2022

Before: Employment Judge Wright

Representation:

Claimant: In person

Respondent: R1 no response or representation
R2 Mr C Davey – counsel via CVP

JUDGMENT ON PRELIMINARY HEARING

The second respondent's (R2) application for an extension of time within which to present its response is granted.

REASONS

1. The claimant presented a claim form on 11/2/2021. In his claim form, he gave his dates of employment as commencing and terminating on 27/11/2017. R2 subsequently said the employment terminated on 1/4/2018. The claimant engaged in Acas early conciliation between 16/8/2020 and 17/8/2020. There is therefore an issue that the claim was presented out of time. Although the claim was vetted, when it was

referred to an Employment Judge, it was decided that an open preliminary hearing would be listed to determine whether or not the time limit would be extended.

2. In the claim form, the claimant acknowledged that it had been presented late. He said that this was due to him only finding out about Acas and his legal rights in July 2020. He said that he had been evicted from his home in August 2020, had been homeless and in an unstable position until 4/2/2021, when he was able to acquire stable accommodation.
3. The first issue to be determined at this hearing was R2's application for an extension of time within which to present its response.
4. There is no response from R1 and it is not clear who the entity 'The Alpine Club' is. The claimant said that a search on the internet led to a gambling website. R2 could not assist. All the Tribunal could establish was that there was no limited company listed on the Companies House website which appeared to be R1 (based upon the information supplied by the claimant). A search on 'Helen Raemers' revealed that she had been listed at an address in Les Trois Vallees and also in Eastbourne (these addresses bore some resemblance to those given by the claimant in the claim form), but that she currently holds zero appointments. The correct identity of R1 therefore remains unclear.
5. Having raised that issue, the Tribunal then moved onto R2's application. Mr Davey said that he had nothing of substance to add to the three-page application dated 26/1/2022. Mr Davey invited the Tribunal to allow the application for R2 to rely upon its response, albeit, he acknowledged it was presented late.
6. The claimant was then asked if he had anything further to add to his email response, sent two minutes later on 26/1/2022 to the respondent's email, which read:

'Your taking the PISS [emoticon]

Your's sincerely'

7. The claimant said that he upheld that statement. He then proceeded to berate the Tribunal in respect of permitting a respondent to present the response late; contrasted to the position of a claimant, such as himself, who had presented a claim out of time.
8. The claimant then proceeded to continue his tirade by shouting and being aggressive and abusive.

9. He was informed that unless he stopped shouting, the Tribunal would adjourn.
10. The claimant proceeded to shout even louder and he was again warned that unless he ceased, the Tribunal would adjourn.
11. He continued and the Tribunal adjourned. In total, the hearing had lasted approximately eight minutes.
12. After reflecting upon the claimant's outburst, his tone in written correspondence and in view of his behaviour, the Tribunal decided that it was unwise to continue with the hearing with the claimant in person, with R2's representative participating via video conferencing. The parties were informed that because they had no further representations to make, the application would be considered on the papers.

R2's application

13. R2 acknowledged that it was required to present a response by 31/8/2021 and that it did not do so. A response was presented on 26/1/2022 along with an application to retrospectively extend time.
14. R2 explained that it is a small business, whose primary operations concern the letting of winter holiday chalets in ski resorts in France. Aside from two directors, the UK staff work remotely and/or from Scotland and Oxfordshire. One director, Ms Downey, was based at R2's registered office in Devon.
15. The claim form was correctly served upon R2's registered office address.
16. R2's explanation was that due to COVID-19 work from home guidance, Ms Downey rarely attended the office after March 2020. The claim form was not collected by Ms Downey until December 2021. Ms Downey was surprised to receive the claim form as the claimant's employment had terminated in April 2018.
17. R2 was then involved in boarder closures between the UK and France, impacting, at that time of year on ski resorts. This 'threatened to destroy [R2's] entire winter season and financially ruin the business'. The Tribunal was told Ms Downey worked 14-hour days to prevent the business from going under.
18. As a result R2 applied for an extension of time to present its response.
19. In light of the overriding objective, R2 submitted that it was just and fair to permit the application, due to the application to strike out the claimant's

claim for lack of jurisdiction (time-limits) as the claim lacks any reasonable prospect of success. R2 said the claimant has insufficient service to claim unfair dismissal, no factual basis was pleaded for the claims of discrimination and the claimant is a vexatious litigant.

20. The noted response from the claimant is that R2 is 'taking the piss'.
21. There are different time limits which apply to the presentation of a claim and a response. There are also different considerations which apply when an extension of time is contended for. It is a claimant's choice to bring a claim. Unless the respondent admits the claim, it has no choice but to defend it.
22. For an extension of time for a claim form, a claimant has to rely upon s.111(2)(b) of the Employment Rights Act 1996 (ERA) in respect of an unfair dismissal claim and s.123(1)(b) of the Equality Act 2010 (EQA).
23. For a response to be accepted out of time, the statutory basis is Rule 20 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013. The Rule requires that the application sets out the reason why the extension is sought and shall be accompanied by a draft of the response. There is no requirement for a respondent establish why it was not reasonably practicable for the response to have been presented in time and if not, whether or not it was presented within such further period as the Tribunal considers reasonable. Equally, unlike a claimant bringing a claim under the EQA, whether the response was presented within such further period the Tribunal thinks just and equitable is not the test.
24. There are therefore completely different considerations to apply when considering a claim form presented late and a late response.
25. Whilst it may be the case the claimant disagrees with that, it is the legal position and it is the Tribunal's role to apply the relevant legislation.
26. The time-limits in the Tribunal are deliberately short. That is to ensure claims are presented while the facts are still fresh in the minds of the witnesses and so that there is a finality to the litigation. In the employment environment, witnesses/employees move on and it is then more difficult for them to be recalled to give evidence.
27. The claimant's claim was presented two months short of three years since his employment ended. R2 was entitled in those circumstances to think that no claim would be forthcoming (particularly as Acas early conciliation did not take place until August 2020 (it is not clear whether Acas did in fact contact R2 or was just asked to issue the certificate)). Even if Acas did

contact R2 during the early conciliation process, there was nothing to alert R2 to the existence of a claim form which although presented on 11/2/2021, was not served upon R2 until 3/8/2021 (with a return date of 31/8/2021).

28. R2 has candidly stated that Ms Downey visited the office and collected the Tribunal paperwork in December 2021. There was a further delay before the application was made on 26/1/2022; however there is no equivalent requirement that the response is presented within such further period as the Tribunal considers reasonable; as with a claim form.
29. R2 has referred to the nature of the business and the difficulties it was under during December 2021 and into 2022. Besides the border issue between the UK and France, there were other matters for those in the travel industry to deal with.
30. Taking all those factors into consideration, the Tribunal is prepared to grant R2's application and extend the time limit for the presentation of the response to the 26/1/2022. The response is therefore accepted out-of-time.
31. As the preliminary hearing was curtailed, the issue of whether or not to dismiss the claim for lack of jurisdiction (being out of time) will be dealt with on the papers (the Tribunal has R2's application of 26/1/2022 and the claimant's response of the same date). R2 has 14-days from receipt of this Order to make any further representations in writing. The claimant then has a further 14-days from receipt of any additional representations from R2 to make any additional representations in response.
32. The claimant is urged to moderate his correspondence and to refrain from offensive behaviour. Unreasonable behaviour in terms of conduct of the proceedings may lead to costs consequences and/or to a claim or response being struck out.

1/2/2022

Employment Judge Wright