



# EMPLOYMENT TRIBUNALS

**Between:**

Mr K Hayat  
**Claimant**

**and**

Kerry Foods  
**Respondent**

## **At an Open Attended Preliminary Hearing**

**Held at:** Nottingham

**On:** Thursday 3 October 2019

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

### **Representation**

**For the Claimant:** Did not attend and was not represented

**For the Respondent:** Mr M Warren-Jones, EEF

## **JUDGMENT**

The tribunal does not have jurisdiction to hear the single claim of unfair dismissal and that claim is therefore dismissed.

## **REASONS**

1. Mr Hayat was not present and was not represented. Mr Warren-Jones represented the Respondent.
2. The purpose of today's hearing was set out in a letter of 17 August 2019 as follows:-

*"The claim is out of time. Unless the Claimant can show it was not reasonably practicable to present the claim before he did, it will be dismissed for want of jurisdiction."*

*Accordingly, the hearing on 3<sup>rd</sup> October 2019 is converted to an attended preliminary hearing to adjudicate upon the out of time issue. The time estimate is 3 hours, The venue remains Nottingham. The hearing will commence at 10am.*

...

3. The Claimant was also directed to serve on the Respondent a statement on the out of time issue and any documents in support.

4. Firstly, Mr Hayat did not appear. He was telephoned at 10:02 am by the clerk to the tribunal and the record of the conversation is as follows:

*“Mr Hayat said he did not know the hearing was today and he had just got up. Mr Hayat was asked if he could attend today within the hour; he then put the phone down”*

5. In relation to Mr Hayat’s absence, Mr Warren-Jones has provided me with an email which he sent to Mr Hayat on 30 September 2019. It read as follows:

*“You will be aware that the above matter is currently listed for a preliminary hearing on 3 October to consider the issue of whether your claim was submitted in time. The letter from the tribunal dated 17<sup>th</sup> August, which I have attached for ease of reference, provides that you were to serve a statement on the Respondent by not later than 14 days before the hearing, which in this case is 19<sup>th</sup> September.”*

Mr Warren-Jones informs me that there was no response from that email.

6. In those circumstances, I have decided to proceed in Mr Hayat’s absence.

7. Turning now to the single issue to be determined, the relevant law is section 111(2) of the Employment Rights Act 1996, as follows:

**“111 Complaints to an employment tribunal.**

...

(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 considers 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.”*

8. The chronology is as follows. Mr Hayat was dismissed by a letter of 4 December 2018 which informed him that he had been summarily dismissed as of that date, ie 4 December. Attached to Mr Hayat’s Claim Form to this tribunal is a letter of 7 December 2018 in which he appealed against that dismissal. The second paragraph of that letter reads as follows:

*“I would like to challenge the decision to terminate my employment as noted to me which was dated on the final letter 4<sup>th</sup> December 2018.”*

9. Thus, at the very latest time begins to run from 7 December, by which date Mr Hayat clearly knew that he had been dismissed. According to section 111, time therefore ran out on 6 March 2019. The ET1 was received by the tribunal on 12 April 2019.

10. There is an ACAS certificate but it records that the date of receipt by ACAS of the EC notification is 20 March 2019 and thus it is of no effect. As noted above, the Claimant was required to serve a statement related to the out of time issue and he has not done so. In the circumstances and having regard the overriding objective and that I am satisfied that Mr Hayat did know of today’s hearing and has chosen not to attend, it is appropriate to reach a decision and plainly that decision is that this claim is out of time. There is no explanation for that and therefore the tribunal does not have jurisdiction and the claim is dismissed.

Employment Judge Blackwell  
Date: 07 October 2019

JUDGMENT SENT TO THE PARTIES ON

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