



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr A Rahmat

**Respondent:** Hygiene Improvement Solutions Limited

**Heard at:** Leeds      **On:** 16 February 2024

**Before:** Employment Judge Cox

**Representation:**

**Claimant:** Did not attend

**Respondent:** Mr Mawoko, litigation consultant

## JUDGMENT AT PRELIMINARY HEARING

1. The Respondent's name is amended to Hygiene Improvement Solutions Limited.
2. The claim is dismissed, having been presented out of time.

## REASONS

1. The parties agree that the Claimant worked for the Respondent as a Hygiene Operative from February 2022 to 22 March 2023, on which date he was dismissed without notice.

2. The Claimant seeks to claim that his dismissal was unfair. He went through the early conciliation procedure with ACAS from 17 April to 29 May 2023. He first attempted to present his claim on 25 July 2023, but did not use one of the methods prescribed for the presentation of claims (see Rule 8(1) of the Tribunal's Rules of Procedure and the 2020 Practice Direction on Presentation of Claims). His claim form was returned to him on 28 July 2023 with a covering letter explaining what the acceptable methods were. On 27 September 2023 he sent his claim form in again, again by a method that was not a prescribed method, with a covering letter saying that he was out of the country when his claim form was returned and had not seen it until he returned to the UK. He did not give the dates on which he was out of the country. On 6 October 2023 the form was again returned to him with a covering letter explaining what the acceptable methods were. The claim was finally validly presented on 11 October 2023.

### **The time limit issue**

3. A claim of unfair dismissal must be presented within three months of the effective date of termination (Section 111(a) of the Employment Rights Act 1996 – the ERA). The time for presenting the claim is extended by the period of early conciliation through ACAS (Section 207B ERA). In this case, therefore, the claim should have been presented by 2 August 2023. It was in fact presented on 11 October 2023, over two months out of time.
4. A late claim can proceed if the Tribunal accepts that it was not reasonably practicable for the claim to be presented in time and it was presented within a further reasonable period (Section 111(2)(b) ERA). As this issue of time limits was to be decided at the Preliminary Hearing, the Claimant was directed to provide a statement by 9 February 2024 explaining why he did not present his claim to the Tribunal earlier. He did not do so.

### **Application to postpone**

5. The Preliminary Hearing was conducted by video link.
6. Neither the Claimant nor his advisor attended the Hearing. At the Hearing, the Respondent's representative informed the Tribunal that the Claimant's representative had emailed them at 5pm on 14 February 2024 asking for the Hearing to be adjourned. In that email, the representative said: "due to unforeseen circumstances I have been involved in an accident where I have sustained injuries". She asked for the Hearing to be postponed for at least 4 weeks so that she could convalesce and recover from her operation. The Respondent's representative replied to her within the hour as follows: "Please note that you have not copied the Tribunal into your email". The Tribunal did not receive any communication from the Claimant's representative before the Preliminary Hearing.

7. The Hearing was adjourned to allow a member of the Tribunal's administrative staff to telephone the Claimant's representative to find out why neither she nor the Claimant was at the Hearing and to give them a further opportunity to attend. The representative said that she had broken her ankle and would not be able to attend the Hearing. At this point, she provided the Tribunal with a copy of the email she had sent to the Respondent on 14 February 2024.
8. The Tribunal decided to view this as an application for the Hearing to be postponed. It refused that application. The Claimant's representative had not explained what the nature and extent of her injuries were. Even if she had broken her ankle, that did not necessarily mean that she was unable to take part in a hearing by video link. She had not said when she sustained her injuries nor had she provided any medical evidence in support of her application. The Hearing was adjourned again, to allow a member of the Tribunal's administrative staff to telephone the Claimant's representative to inform her that her application for a postponement had been refused and invite her to join the Hearing at 11am. She said she would not be attending the Hearing as she had a physiotherapy appointment.
9. The Tribunal proceeded with the Hearing in the Claimant's absence.

#### **Decision on time limits**

10. The Tribunal considered the information it had. The Claimant had the assistance of an advisor. The Tribunal considered that either the Claimant or his advisor could reasonably have been expected to know how to present a claim to the Tribunal. This information is readily available on various websites. It was therefore reasonably practicable for the claim to have been presented in time.
11. Even if for some reason it had not been reasonably practicable for the claim to have been presented validly on the first occasion, and even assuming that the Claimant was out of the country when the claim form was originally returned to him at the end of July until the end of September, the claim was not presented within a further reasonable period. On 28 September 2023 he again tried to present the claim using a method he had already been told was not valid. It was not until a fortnight later that he validly presented his claim.
12. The claim was therefore dismissed as having been presented out of time.

#### **Length of service**

13. Even if the Tribunal had decided that the claim could proceed, it would have struck it out on the ground that it had no reasonable prospect of success. The Claimant had not completed the two years' service with the Respondent that is normally required to be entitled to claim unfair dismissal (Section 108(1) ERA). There are certain circumstances where no qualifying service is needed, including

where the principal reason for the employee's dismissal is that they made a protected disclosure (Section 108(3)(ff) ERA).

14. The Tribunal therefore looked at the "Additional information" section of the claim form to see whether the Claimant might have an arguable case that the principal reason for his dismissal was a protected disclosure. The Claimant's case was that on 16 February 2023 he had told one of the Respondent's managers, Mr Valaitis, that another manager, Mr Mehmood, had been asking employees for £20 a week to cover travel expenses. Mr Valaitis had told the Claimant that the client was covering travel expenses and they should not pay Mr Mehmood anything. The Claimant said that he was then targeted at work by Mr Mehmood. He went to the Respondent's Head Office on 20 March to report Mr Mehmood's behaviour but Mr Mitchell, HR manager, would not see him and called the police to have him removed from the premises. On 22 March 2023 he was dismissed by email.
15. The Respondent's case is that the Claimant was in fact dismissed because he had acted aggressively towards the Respondent's staff on 20 March and had refused to leave the premises. It had had to contact the police to remove him.
16. The Tribunal considered the definition of a qualifying disclosure in Section 43B ERA. If the Claimant did complain as he said he did to Mr Valaitis about Mr Mehmood on 16 February, that might amount to disclosing information that in his reasonable belief tended to show that Mr Mehmood was committing a criminal offence, that is, defrauding the employees he was working with. The Claimant might also be able to show that he made that disclosure in the reasonable belief that it was in the public interest to do so, even if it affected only the employees that Mr Mehmood was working with. He had some reasonable prospect, therefore, of establishing that he had made a protected disclosure.
17. The Tribunal considered, however, that the Claimant would have no reasonable prospect of establishing that any protected disclosure he made to Mr Valaitis was the main reason for his dismissal. The Claimant accepted that Mr Valaitis did not act in a hostile way towards him when he complained about Mr Mehmood; rather, he confirmed that employees should not pay Mr Mehmood any money. The Claimant also accepted that the police were called to remove him from the Respondent's premises on 20 March. It was highly unlikely that the Respondent would have gone to the extremes of calling the police unless it had grounds for believing that the Claimant was behaving aggressively. In these circumstances, the Tribunal concluded that the Claimant had no reasonable prospects of establishing that the main reason for his dismissal was his complaint about Mr Mehmood on 16 February rather than his behaviour on 20 March.
18. In summary, therefore, even if the Tribunal had allowed the late claim to proceed, it would have struck it out because the Claimant had no reasonable prospect of establishing that the principal reason for his dismissal was a protected disclosure

and he did not have the two years' service he would otherwise need to complain of unfair dismissal.

Employment Judge Cox  
Date: 16 February 2024

Judgment and Reasons sent to the  
parties on:

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For the Tribunal