



# THE EMPLOYMENT TRIBUNAL

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**SITTING AT:** LONDON SOUTH

**BEFORE:** EMPLOYMENT JUDGE K ANDREWS, sitting alone

**BETWEEN:**

Mr B B Ramburn  
Claimant

AND

Wm Morrison Supermarkets plc  
Respondent

**ON:** 9 June 2017

**Appearances:**

**For the Claimant:** Mr B Mitchell, FRU

**For the Respondent:** Ms A Ahmed, Counsel

**REASONS FOR JUDGMENT DATED 9 JUNE 2017**  
**PROVIDED AT THE REQUEST OF THE CLAIMANT**

1. This was a preliminary hearing to determine whether the claimant's claim of unfair dismissal was presented in time.

**Relevant Law**

2. A complaint of unfair dismissal must be submitted before the end of the period of three months beginning with the effective date of termination or within such further period as the Tribunal considers reasonable if it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period (s111(2) of the Employment Rights Act 1996). The early conciliation provisions that may adjust that primary time are not relevant on the facts of this case.

3. Whether it was reasonably practicable for the claimant to submit the claim in time is a question of fact for the Tribunal to decide having looked at all the surrounding circumstances and considered and evaluated the claimant's reasons. In essence this test requires the claimant to demonstrate that it was not feasible to present the complaint within time (*Palmer v Southend on Sea Borough Council* 1982 ICR 372).
4. If the claimant is ignorant of the relevant time limit the starting point is to establish whether the claimant was what can be described as reasonably ignorant. It is settled law (*Dedman v British Building and Engineering Appliances*: CA 1973) that where a claimant receives and relies on advice from a professional legally qualified representative, any error on the part of that representative will be imputed to the claimant. Any remedy is against the adviser for negligent advice. Case law on the correct approach to adopt where a claimant is given erroneous advice by a non legally qualified person (typically a CAB adviser or similar) is however ambiguous precisely because cases are so fact specific and it is the Tribunal's task to consider all the relevant circumstances.
5. I have been referred in some detail by both parties to *Marks & Spencer v Williams-Ryan* (CA 2005) which is on point to a certain degree. In that case, the claim was allowed to proceed, not just because the claimant had received incorrect advice from a CAB adviser but also because of other factors including the personal circumstances of the claimant and that the respondent had given him misleading information as well as delaying the appeal.

### **Evidence**

6. I heard evidence from the claimant and also had a bundle of documents before me. I also had the benefit of submissions from Counsel for both parties.

### **Findings of Fact**

7. Having assessed all the evidence, both oral and written, I find on the balance of probabilities the following to be the relevant facts.
8. The claimant commenced employment with the respondent on 1 February 2010. That employment came to an end on 21 October 2016 after he was dismissed because of concerns by the respondent that he did not have the right to work in this country. The dismissal and date of termination were confirmed in a letter dated 22 October 2016.
9. The claimant very shortly thereafter obtained advice from a Mr Mehta who had been acting for some time for the claimant's wife in relation to her immigration status. Mr Mehta is not a solicitor or otherwise legally qualified, but clearly holds himself out as an expert on immigration law and also gave some advice at least about the nature of Employment Tribunal proceedings to the claimant.

10. The claimant submitted a letter of appeal to the respondent on 25 October 2016. He was assisted by Mr Mehta in drafting that letter which expressly referred to the possibility of Tribunal proceedings being commenced in certain circumstances. It also uses terminology indicating an amount of familiarity with employment law.
11. The claimant attended an appeal meeting on 22 November 2016. That meeting was adjourned and it is clear, having had the opportunity to look at the full notes of the meeting, that the reason for the adjournment was to allow the claimant time to produce more documents as to his right to work if they were available. The claimant was consulted about the length of that adjournment and he suggested that he needed until the end of December.
12. The meeting reconvened on 10 January 2017. The notes made of that meeting show that it was very clear, and it was said to the claimant, that no new documents had been produced and the appeal manager in terms said that he did not think anything would change as a result.
13. After that meeting the claimant again spoke to Mr Mehta, who still advised him to await the final outcome.
14. On 20 January 2017, the primary time limit for presenting an unfair dismissal claim expired.
15. The final outcome, namely that the dismissal stood, was confirmed in a letter dated 27 January 2017 received by the claimant on 1 February 2017. He again spoke to Mr Mehta on 2 February 2017 and then contacted ACAS promptly. A conciliation certificate was produced and the claimant presented his claim form to the Tribunal on 6 February 2017. That claim form was completed with the assistance of Mr Mehta.
16. Throughout this period the claimant had access to a computer at home which he used for general day to day activity although perhaps his wife is more familiar with IT. In this period the claimant was not suffering from any ill health. He was not working and had no particular pressures on his time.

### **Conclusion**

17. It is clear that the claimant was given inadequate advice by an adviser who was not legally qualified but held himself out as able to advise on immigration law and also gave advice regarding employment law. As Ms Ahmed submitted those two areas of law very often go hand-in-hand.
18. It is also clear that the claimant knew from 25 October 2016 that he had a potential claim in the Tribunal.

19. There was no wrongdoing or deliberate or unreasonable delay on the part of the respondent in the handling of the process. The delay between the first and second appeal meetings was expressly to the claimant's benefit in that it was to give him an opportunity to produce any further documentation and the length of that delay was principally dictated by the claimant. There is also no suggestion that the respondent gave him misleading advice.
20. It is also clear that the claimant knew in the meeting on 10 January 2017 that the outcome was almost certainly going to be dismissal.
21. I have considered very carefully that the claimant was relying on Mr Mehta's advice, but I also have regard to the fact that the claimant did nothing to check the position himself, and there was nothing preventing him from so checking. He had the ability, resources and time.
22. In short, it was not reasonable on these facts for the claimant to be ignorant of his rights and it was reasonably practicable for him to submit his claim in time. He did not do so and therefore his claim is out of time and must be dismissed.
23. I would say that if I had come to a different conclusion on that issue and then had to consider whether the claimant acted within a reasonable period thereafter, I would find that he did. Unfortunately for the claimant however, that is not the issue before me.

Employment Judge K Andrews

Date: 17 July 2017