Appeal No. UKEAT/0290/17/LA
UKEAT/0291/17/LA
UKEAT/0292/17/LA

EMPLOYMENT APPEAL TRIBUNAL

FLEETBANK HOUSE, 2-6 SALISBURY SQUARE, LONDON EC4Y 8AE

At the Tribunal
On 23 March 2018

Before

HER HONOUR JUDGE EADY QC

(SITTING ALONE)

UKEAT/0290/17/LA & UKEAT/0291/17/LA

MR M MIAH APPELLANT

AXIS SECURITY SERVICES LTD RESPONDENT

UKEAT/0292/17/LA

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(1) MR M MIAH APPELLANTS
(2) SYEDS SOLICITORS - IN A MATTER OF COSTS JUDGMENT

AXIS SECURITY SERVICES LTD RESPONDENT

Transcript of Proceedings

JUDGMENT

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APPEARANCES

For Mr M Miah	MR IMRAN HUSSAIN (Legal Representative) Syeds Solicitors 76-78 Sherlock Street Birmingham B5 6LT
For Syeds Solicitors	MR GWYNN PRICE ROWLANDS (of Counsel) Instructed by: Syeds Solicitors 76-78 Sherlock Street Birmingham B5 6LT
For Axis Security Services Ltd	MR PHILIP PAGET (Solicitor) Gordon LLP Solicitors Forward House 8 Duke Street Bradford West Yorkshire BD1 3QX

<u>SUMMARY</u>

JURISDICTIONAL POINTS - Claim in time and effective date of termination

Mr Miah (represented by Syeds Solicitors) had sought to pursue a complaint of unfair dismissal against his former employer, Axis Security Services Ltd. His claim was date stamped by the ET as received on Monday 30 January 2017. It was common ground that the relevant time limit expired on Sunday 29 January 2017. At a hearing before the ET to determine whether the claim had been presented in time or, if not, whether time should be extended, the ET considered that there was no evidence to corroborate the account given as to when the claim had been posted. In the circumstances, it concluded that the claim had been presented out of time when it had been reasonably practicable for it to have been presented in time. At a subsequent hearing, when allowing an application for wasted costs, the ET noted that a different account was given as to when the claim had been posted. Mr Miah and Syeds Solicitors appealed. Their appeals were permitted to proceed on one question only: whether the ET had erred when it considered the question of time limits under section 111 **Employment Rights Act 1996** ("ERA") because it failed to have regard to Rule 4(2) **ET Rules 2013**, which provides:

> **"(2) If the time specified by these Rules, a practice direction or an order for doing any act ends on a day other than a working day, the act is done in time if it is done on the next working day. "Working day" means any day except a Saturday or Sunday, Christmas Day, Good Friday or a bank holiday …"**

It was contended that, reading section 111 subject to Rule 4(2) **ET Rules** would mean that the ET would have had to find that Mr Miah's claim had been presented in time.

Held: *dismissing the appeals*

Rule 4 of the **ET Rules 2013** introduced a set of principles into ET procedure governing the approach to be adopted when considering compliance with time limits but the application of those principles was expressly stated to arise in respect of time limits specified by the **ET Rules** and any Practice Direction or ET Order; the ET in the present case was concerned with a

statutory time limit, imposed by section 111 **ERA**, for the bringing of a complaint of unfair dismissal; Rule 4(2) **ET Rules** could not serve to extend a time limit provided by statute. The practical difficulties of presenting a claim on a non-working day had been acknowledged in the case law (see **Swainston v Hetton Victory Club Ltd** [1983] 1 All ER 1179 and **Consignia plc v Sealy** [2002] EWCA Civ 878) but Rule 4(2) **ET Rules** did not change the approach under section 111. That was apparent from the wording of Rule 4(2) itself, which stated that it only applies to the **ET Rules** themselves or to relevant Practice Directions and ET Orders. Moreover, to read section 111 **ERA** as subject to Rule 4(2) would mean that where time expired on a non-working day, then - provided it was accepted that the claim was presented on the next working day - it would necessarily be held to be in time (so, the time limit for unfair dismissal cases would automatically be extended in these circumstances). That was not what section 111(2) **ERA** provided, and Rule (4)(2) **ET Rules** did not change that position. Parliament had made clear provision for exceptions to the strict application of the time limit within section 111 itself.

Mr Miah had not been denied his right to a fair trial of his complaint but had failed to satisfy the ET that he had complied with the relevant statutory time limit, allowing for the approach to be adopted in cases in which that limit expired on a non-working day as provided in the case law.

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HER HONOUR JUDGE EADY QC

Introduction

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1. This is the Full Hearing in these three appeals, each of which turns on the question whether the Employment Tribunal ("the ET") erred in law in failing to have regard to Rule 4(2) Schedule 1 of the **Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013** ("ET Rules"). Mr Miah, the First Appellant, was the Claimant in the underlying ET proceedings against Axis Security Services Ltd ("Axis"), the Respondent to these appeals. Syeds Solicitors, the Second Appellant, acted for Mr Miah in his ET claim.

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2. The starting point for each of the appeals is the Judgment of the ET sitting at Midlands West (Employment Judge Benson, sitting alone on 27 April 2017), which ruled that Mr Miah's ET claim was not presented in time when it had been reasonably practicable for it to have for have been presented in time. That Judgment is the subject of the second of the appeals now before me. The ET subsequently made rulings on an application by Axis for wasted costs; those rulings now the subject of the first and third appeals.

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3. When permitting the three appeals to proceed to a Full Hearing, Simler P did so solely on the basis that there was a reasonably arguable question as to whether, in ruling that Mr Miah's claim had not been presented in time, the ET failed to have regard to Rule 4(2) of the **ET Rules**, which provides that:

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> **"(2) If the time specified by these Rules, a practice direction or an order for doing any act ends on a day other than a working day, the act is done in time if it is done on the next working day. "Working day" means any day except a Saturday or Sunday, Christmas Day, Good Friday or a bank holiday …"**

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It is important to keep this point in focus. Other proposed grounds of appeal, including a perversity challenge, were not permitted to proceed and are therefore not before me.

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4. For good order, I record that appeal UKEAT/0290/17 is an appeal against the ET's Order, sent to the parties on 9 May 2017, by which directions were given in respect of Axis' application for wasted costs; that application ultimately led to the Judgment appealed in UKEAT/0292/17 (see below). Appeal UKEAT/0291/17 is the appeal against the ET's

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Judgment ruling that Mr Miah's claim was dismissed as having been presented out of time, that Judgment being sent to the parties on 9 May 2017, with Written Reasons following on 25 July 2017. Appeal UKEAT/0292/17 is the appeal against a Judgment by the ET promulgated on 17

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October 2017, by which Syeds Solicitors were ordered to pay £3,600 to Axis by way of wasted costs. In each case, the decisions in issue were made by Employment Judge Benson.

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The Relevant Background and the ET's Decisions and Reasoning

5. Mr Miah had been employed by Axis as a building security manager. By letter of 18 October 2016, he was summarily dismissed from that employment; Mr Miah received that letter on 19 October 2016, so that was the effective date of termination for statutory purposes.

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6. Mr Miah considered his dismissal had been unfair. To pursue a claim of unfair dismissal before the ET, however, he had first to undergo the ACAS early conciliation ("EC")

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process. He duly started that process on 5 December 2016 and the EC certificate was issued on 16 December 2016. It was common ground that, allowing for the EC period, the last day for Mr Miah to present an ET claim was Sunday 29 January 2017.

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7. Mr Miah had instructed Syeds Solicitors to represent him in his dispute with Axis and it was agreed that they would lodge his claim with the ET. They were aware that the last day for doing so was 29 January 2017. It seems that Syeds Solicitors chose to post Mr Miah's claim to the ET. Before the ET, it was their contention that this had been done by recorded delivery on 26 January 2017, but the ET observed that there was no evidence produced before it to corroborate this assertion. In any event, Mr Miah's claim was recorded as having been received by the ET on Monday 30 January 2017. The ET office had been closed over the weekend and the claim had plainly not reached the ET during its opening hours on Friday 27 January 2017.

8. The ET accepted that, had the claim been sent by recorded delivery post on 26 January 2017 then, in the ordinary course of the post, it would be taken to have arrived on Saturday 28 January 2017, but there would have been no one in the office to sign for it as the office was closed. In those circumstances, the ET accepted it would not have been practicable to present the claim in time. The ET was, however, not satisfied that the claim had been posted, whether by recorded delivery or otherwise, on 26 January 2017, and accordingly found that it had been reasonably practicable to present the claim in time but that had not been done. The claim was thus lodged out of time and the ET considered it had no jurisdiction to hear it.

9. At the hearing on 27 April 2017, it had been submitted on Mr Miah's behalf that, because his claim had been sent by recorded post on 26 January 2017, it had been impossible to deliver as the ET office was closed over the weekend and its receipt on Monday 30 January 2017 should be taken as demonstrating that the claim had been presented in time. No reference was made at that stage, however, to Rule 4(2) of the **ET Rules**. That provision was relied on for the first time in a subsequent application for reconsideration, which was refused on its face.

A The ET only addressed this point when it was then raised at the subsequent wasted costs hearing on 12 September 2017.

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10. At that stage, Syeds Solicitors were themselves represented before the ET. It seems that it was then stated that Mr Miah's claim had not actually been posted until Friday 27 January 2017. It was, however submitted, that:

> **"8. … the postal rule under common law would allow for the deadline to be moved to the Monday 30 January when the deadline fell on a non-working day. …"**

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Reliance was placed on Rule 4(2) of the **ET Rules** to support this argument.

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11. The ET was concerned as to the apparent discrepancy in terms of the evidence as to the date on which the claim had been posted. It further noted there had been no attempt to check with the ET whether the claim had been received, although it would have been apparent that the office would be closed over the weekend; the onus was on Syeds Solicitors to ensure the claim had been submitted in time; there had been a number of different ways in which the claim might have been lodged but the solicitors had chosen to post it close to the limitation date and then failed to check it had arrived. As for the argument based on Rule 4(2) of the **ET Rules**, the ET observed that the time limits applicable to a claim of unfair dismissal were as set out in section 111(2) of the **Employment Rights Act 1996** ("ERA"); Rule 4(2) referred to time limits within the **ET Rules**.

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<u>The Relevant Legal Provisions and Principles</u>

12. The ET was here concerned with a claim of unfair dismissal. In respect of such complaints, section 111 **ERA** provides that:

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> **“(1) A complaint may be presented to an employment tribunal against an employer by any person that he was unfairly dismissed by the employer.**
>
> **(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.**
>
> **(2A) Section 207A(3) (extension because of mediation in certain European cross-border disputes) and section 207B (extension of time limits to facilitate conciliation before institution of proceedings) apply for the purposes of subsection (2)(a).**
>
> **(3) Where a dismissal is with notice, an employment tribunal shall consider a complaint under this section if it is presented after the notice is given but before the effective date of termination.**
>
> **(4) In relation to a complaint which is presented as mentioned in subsection (3), the provisions of this Act, so far as they relate to unfair dismissal, have effect as if -**
>
> > **(a) references to a complaint by a person that he was unfairly dismissed by his employer included references to a complaint by a person that his employer has given him notice in such circumstances that he will be unfairly dismissed when the notice expires,**
> >
> > **(b) references to reinstatement included references to the withdrawal of the notice by the employer,**
> >
> > **(c) references to the effective date of termination included references to the date which would be the effective date of termination on the expiry of the notice, and**
> >
> > **(d) references to an employee ceasing to be employed included references to an employee having been given notice of dismissal.**
>
> **(5) Where the dismissal is alleged to be unfair by virtue of section 104F (blacklists),**
>
> > **(a) subsection (2)(b) does not apply, and**
> >
> > **(b) an employment tribunal may consider a complaint that is otherwise out of time if, in all the circumstances of the case, it considers that it is just and equitable to do so.”**

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I have set out section 111 out in its entirety because it makes clear that it is a self-contained provision; there are exceptions to the standard three-month time limit, but they are as provided within section 111 itself.

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13. There has, over the years, been considerable case law relating to section 111 and its predecessor provisions. The following principles can be derived from that jurisprudence:

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(1) The use of the word "presented" means that to come within the time limit in subsection (2), the claim must be *received* by the ET; it is not enough that it is posted within the period in question, although if a claim is posted to arrive at the ET office in good time but is held up in the post, that may be a good ground for the ET to extend the time limit under subsection (2).

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(2) Presentation is a unilateral act; a claim is validly presented if it is delivered to the ET after office hours but before midnight on the last day of the limitation period; there is no requirement that the complaint has to actually have been put into the hands of a member of the ET staff.

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(3) Where there can be no actual receipt by the ET office - for instance, because the time limit expires on non-working day and the office is closed - if presentation can still be made (for example by posting the claim through the letterbox of the closed office) then the time limit will not be extended, see **Swainston v Hetton Victory Club Ltd** [1983] 1 All ER 1179.

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(4) If, however, there are no proper means in fact for presentation (where, for example, there is no letterbox) then the limitation period may be extended to the next working day, again see **Swainston**.

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14. The principles thus applicable to the presentation of an ET claim by post are more fully explained by the Court of Appeal in **Consignia plc v Sealy** [2002] EWCA Civ 878 in which, having reviewed the relevant case law, Brooke LJ provided the following guidance:

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> **"29. CPR Part 6 has introduced into the conduct of civil litigation in this country a clear set of principles governing the service of documents by post. Documents may be served by first class post (CPR 6.2(1)(b)). If a document is served by post, it is deemed to be served on the second day after it was posted (CPR 6.7(1)). Saturdays, Sundays, Bank Holidays, Christmas Day and Good Friday are excluded from this computation (CPR 2.8). In *Godwin v Swindon BC* [2001] EWCA 1478, [2002] 1 WLR 997 this court interpreted these provisions as meaning that even if it could be proved that the document had arrived by post on a day earlier than the deemed date of service, it must nevertheless be deemed to have been served on the deemed date of**

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service. May LJ, with whom Pill LJ agreed, said at [46] that uncertainties in the postal system made it sensible that there should be a date of service which was certain and not subject to challenge on grounds of uncertain and potentially contentious fact, particularly where claimants are wanting to serve a claim form at the very end of the period available to do so.

30. So far as tribunals are concerned, if we are moving towards a regime in which there is a unified tribunal service along the lines recommended by Sir Andrew Leggatt in his recent report, it would appear desirable that there should be a unified regime for the service of documents of the same simplicity as that which is now available to the courts. It appears to me to be quite wrong that tribunals should be troubled with the volume of case law with which we have had to contend in this case, and I am not surprised that the Employment Tribunal got the law wrong when it first issued its summary reasons: I agree with what Hart J says about this aspect of the matter in paragraph 9 of his judgment which I have read in draft.

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31. Until a simpler regime is introduced, the following guidance may be helpful:

> **(1) Section 111(2) of the Employment Rights Act 1996 speaks of "presenting" a complaint to a tribunal. It is now well established that a complaint is "presented" when it arrives at the Central Office of Employment Tribunals or an Office of the Tribunals ("the Office").**

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> **(2) If a complainant or his/her agent proves that it was impossible to present a complaint in this way before the end of the time prescribed by section 111(2)(a) - for example because the Office was found to be locked at a weekend and it did not have a letter-box - then it will be possible to argue that it was not reasonably practicable for the complaint to be presented within the prescribed period.**

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> **(3) If a complainant chooses to present a complaint by sending it by post, presentation will be assumed to have been effected, unless the contrary is proved, at the time when the letter would be delivered in the ordinary course of post (see, by analogy, section 7 of the Interpretation Act 1978).**

> **(4) If the letter is sent by first class post, it is now legitimate to adapt the approach contained in CPR 6.7 and conclude that in the ordinary course of post it will be delivered on the second day after it was posted (excluding Sundays, Bank Holidays, Christmas Day and Good Friday, being days when post is not normally delivered).**

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> **(5) If the letter does not arrive at the time when it would be expected to arrive in the ordinary course of post, but is unexpectedly delayed, a tribunal may conclude that it was not reasonably practicable for the complaint to be presented within the prescribed period.**

> **(6) If a form is date-stamped on a Monday by a Tribunal Office so as to be outside a three-month period which ends on the Saturday or Sunday, it will be open to a tribunal to find as a fact that it was posted by first-class post not later than the Thursday and arrived on the Saturday, alternatively to extend time as a matter of discretion if satisfied that the letter was posted by first class post not later than the Thursday.**

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> **(7) This regime does not allow for any unusual subjective expectation, whether based on inside knowledge of the postal system or on lay experience of what happens in practice, to the effect that a letter posted by first class post may arrive earlier than the second day (excluding Sundays etc: see (4) above) after it is posted. The "normal and expected" result of posting a letter must be objectively, not subjectively, assessed and it is that the letter will arrive at its destination in the *ordinary* course of post. As the present case shows, a complainant knows that he/she is taking a risk if the complaint is posted by first class post on the day before the guillotine falls, and it would be absurd to hold that it was not reasonably practicable for it to be presented in time if it arrives in the ordinary course of post on the second day after it was posted. Nothing unexpected will have occurred. The post will have taken its usual course."**

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15. For completeness, I note that the application of the potential escape clause provided by subsection (2) would almost always be a question of fact for the ET. It is not, in any event, an issue that arises on the current appeal: I am solely concerned with the question whether section 111(2) **ERA** should be read as subject to Rule 4(2) **ET Rules**, read in a way that is consistent with the overriding objective as provided at Rule 2 (that is, so as to deal with the case in a manner that is both fair and just).

The Parties' Cases on the Appeal

For the Appellants

16. Mr Miah and Syeds Solicitors are separately represented but have adopted essentially the same position for the purposes of this hearing. They note that, in the earlier case law (see as cited in **Swainston**, *supra*) time was treated as extended to the next working day when it had not been possible to physically present the claim and when the time limit would otherwise have ended on a non-working day.

17. Moreover, in **Consignia**, Brooke LJ had looked forward to a time in which there was a unified Tribunals service, subject to a unified regime for the service of documents. At that stage, **CPR** Rule 6 provided such a regime for the civil courts. Rule 4(2) **ET Rules** allowed for an approach that was consistent with the principles applied in the civil justice system more generally and, in the light of the introduction of Rule 4(2), section 111(2) **ERA** should now be read subject to that procedural rule. It was not an answer to that argument to object that section 111(2) set a statutory time limit, whereas Rule (4)(2) only had a procedural effect under the **ET Rules** themselves. Section 111 **ERA** did not lay down any procedural requirements and it was appropriate to read in the procedure that was now provided by Rule 4(2). It was not being said

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that Rule 4(2) served to extend the statutory time limit, simply that it provided the procedural rules that should be applied, varying the **Consignia** guidance when looking to see whether a claim had been presented in time. That approach was further consistent with the overriding objective under Rule 2 **ET Rules** and respected the complainant's right to a fair determination of his case under the **European Convention on Human Rights**.

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For the Respondent

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18. For Axis, it is pointed out that section 111(2) lays down a jurisdictional time limit that neither the parties nor the ET could waive and a provision in the procedural rules applicable to the relevant Court or Tribunal could not be read as effectively amending a time limit imposed by statute, see per Megarry J in **Pritam Kaur v S Russell & Sons Ltd** [1973] 1 QB 336, page 352C-D.

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19. Yet further, Rule (4)(2) **ET Rules** was clear on its face; it solely applied to time limits under the **Rules**, any relevant Practice Direction or ET Orders; it did not purport to apply to any statutory time limit such as that imposed under section 111(2) of the **ERA**.

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Discussion and Conclusions

20. Rule 4 of the **ET Rules 2013** introduces a set of principles into ET procedure that govern the approach ETs are to adopt when considering compliance with time limits. The application of those principles is, however, expressly stated to arise in respect of time limits specified by the **ET Rules** and any Practice Direction or ET Order. The ET in the present case was concerned with a statutory time limit, imposed by section 111 of the **ERA**, for the bringing

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of a complaint of unfair dismissal. Rule 4(2) **ET Rules** cannot serve to extend a time limit provided by statute.

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21. Essentially accepting the force of that point, the Appellants - Mr Miah and Syeds Solicitors - argue instead that Rule 4(2) should be seen as providing a procedural mechanism to address the practical difficulties with the presentation of a claim when time expires on a non-working day, where the inability to physically present the claim at the ET office might

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otherwise mean that the time limit was effectively shortened.

22. I acknowledge that the practical difficulties of presenting a claim on a non-working day

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have not been dismissed as irrelevant in the case law, see in particular **Swainston** and **Consignia**, cited above. It is also correct that Rule 4(2) **ET Rules** was not in existence at the time when **Consignia** was decided, and the Appellants argue that it provides a procedural

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answer to the potential practical difficulties identified in the case law, which would give both clarity and consistency to the approach to be taken in determining whether a claim has been presented in time for section 111(2) purposes when the relevant time limit expired on a non-working day.

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23. Revisiting the **Consignia** principles in the light of the submissions made on these appeals, I am, however, satisfied that Rule 4(2) **ET Rules** does not change the approach the ET

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is bound to adopt. The answer is, I think, straightforwardly provided by Rule 4(2) itself, which, in terms, states that it only applies to the **ET Rules** themselves or to relevant Practice Directions and ET Orders. So, even allowing that, when it is said that a claim was lodged on a

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A non-working day, an ET will need to determine when the claim was actually presented, I am unable to see that Rule 4(2) applies.

B 24. The starting point is that the claim must be presented to the ET. That is a unilateral act and the claim is presented when it arrives at the ET office; it does not require any active participation on the part of the ET; see **Consignia** principle (1). Where, therefore, an ET office C date stamps the ET1 as received on a Monday (or a Tuesday following a bank holiday), it is open to the ET to find as a fact that it was actually presented - so physically delivered - to the office on the Saturday or Sunday (or the Monday, if that was a bank holiday). But that is a matter of fact for the ET to determine; see **Consignia** principle (6). If Rule 4(2) **ET Rules** D applied in these circumstances, the approach would be substantively modified: where time expired on a non-working day, then - provided it was accepted that the claim was presented on the next working day - it would necessarily be held to be in time; this would mean that the time E limit for unfair dismissal cases would automatically be extended in these circumstances. That would not simply provide guidance as to how an ET should approach the determination of the question when was the claim presented; it would serve to extend the time limit in those cases. F That, however, is not what section 111(2) **ERA** provides, and Rule (4)(2) **ET Rules** does not and could not purport to change that position.

25. For the Appellants, it is said that the need to do justice in these circumstances - pursuant G to the overriding objective and to ensure that a Claimant is not denied the right to a fair trial (a right guaranteed by Article 6 of the **European Convention on Human Rights**) - means that section 111(2) must be read consistently with the approach now laid down in Rule 4(2) **ET** H **Rules**. I disagree. First, I do not consider that the imposition of a reasonable time limit for the

A bringing of a claim constitutes an interference with the right to a fair trial of a complaint. Mr Miah was not denied the right to a fair trial of a complaint presented within the relevant statutory time limit; his complaint was not heard because his representatives failed to establish B before the ET that they had lodged his claim within that time limit. As for the overriding objective, provided by Rule 2 **ET Rules**, that also governs the ET's approach under its Rules; it does not purport to modify any statutory requirement. In any event, I again do not see any inconsistency between the application of a reasonable time limit and the requirement to deal C with the case fairly and justly. Indeed, there are good public policy reasons for time limits in ET claims, which can be seen as entirely in keeping with the aims laid down by the overriding objective.

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26. The principles laid down in the case law, in particular as explained in **Consignia**, demonstrate how practical difficulties arising from the expiration of the time limit on a non-E working day are to be addressed. Section 111(2) **ERA** also specifically allows time to be extended when ET is satisfied that it was not reasonably practicable for a claim to have been presented within the primary time limit. There are yet further provisions under section 111 for F a different approach to be adopted to the time limit in respect of certain particular forms of unfair dismissal claim. Where Parliament has intended for the ET to adopt a particular approach, it has chosen to do so within the regime set out within section 111 **ERA** itself.

G 27. The reason why Mr Miah's claim was found not to have been presented in time, and time was not extended, was because the ET was not satisfied that those acting for Mr Miah had posted his claim sufficiently early so as to give rise to any assumption of delivery in time within H the ordinary course of the post. At the hearing on 27 April 2017, Syeds Solicitors had been

given additional time to adduce evidence to establish when the claim had been put into the post, but were unable to do so. In the circumstances, the ET had permissibly rejected the assertion that the claim had been posted on Thursday 26 January 2017. At the subsequent wasted costs hearing, the position changed; it was then said that the claim had been posted on Friday 27 January. It was for the Claimant (and his representatives) to establish when his claim had been posted but he was unable to do so. The only certainty was that the claim was date stamped as received by the ET on Monday 30 January 2017, one day out of time. The ET did not consider it was in a position to find that Mr Miah's claim had been posted on either the Thursday or Friday, such that it could assume that delivery in the ordinary course of the post must have been over the weekend (or, at least, that it would have been had that been physically possible). That being so, applying section 111(2) **ERA**, the ET found that the claim had not been presented in time when it had been reasonably practicable to do so. As I have already noted, save for the one issue raised arising from the argument as to the applicability of Rule 4(2) **ET Rules**, there is no appeal before me against the ET's finding in this regard. As for the possible application of Rule 4(2), when this argument was subsequently raised, the ET concluded that this did not apply to the statutory time limit imposed by section 111(2) **ERA**. In my judgment, it was correct to so rule.

28. For those reasons, I therefore dismiss these appeals.

Costs

29. Having given my Judgment in this case, the Respondent has made an application for costs. It does so under Rule 34(A) **EAT Rules**. In particular, it is said that the appeal never stood any reasonable prospect of success, was misconceived and/or that the continuation of the

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appeal, notwithstanding the Respondent having questioned its merit, was unreasonable and, further, had been conducted in an unreasonable manner.

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30. The general rule in the EAT is that this is a no-costs jurisdiction. Just because a party has lost an appeal does not mean to say that costs will follow the event. Ultimately, I have ruled against the Appellants on the points that had been permitted to proceed to appeal, but I have not characterised the arguments as being wholly misconceived. Indeed, they were permitted to proceed to a Full Hearing by the EAT President on the basis that they raised a reasonably arguable case. Whilst that is not a complete answer to a costs application, it does not seem to me that this is a case that lies outside the normal course such that I should make such an award, and I decline to do so.

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