



# EMPLOYMENT TRIBUNALS

## Claimant

Miss N Ugoji

## Respondents

AND

London Underground Limited (1)  
Transport for London (2)

**HEARD AT:** London Central **ON:** 22 August 2018

**BEFORE JUDGE:** Employment Judge Hemmings

## Representation

**For Claimant:** In Person

**For Respondent:** Mr A Allen – Counsel

## JUDGMENT ON A PRELIMINARY HEARING

The Judgment of the Employment Tribunal in respect of the Claimant's claim that she was constructively dismissed, unfairly, by the Respondents is:

- (1) to dismiss the Claimant's claim against the First Respondent, London Underground Limited, because the Claimant presented her claim out of time and in circumstances where the Tribunal does not have a discretion to extend time, and
- (2) to dismiss the Claimant's claim against the Second Respondent because the Tribunal does not have jurisdiction, the Second Respondent never having been the Claimant's employer.

## REASONS

### The Preliminary Hearing Agenda

1. This is a Preliminary Hearing in public to determine applications by the Respondents for the removal of Transport for London as a Respondent to these proceedings on the ground that Transport for London has never been the Claimant's employer; for a ruling that the Employment Tribunal does not have jurisdiction to consider and decide the Claimant's claim against either Respondent that she was constructively dismissed, unfairly, because the claim was lodged with the Tribunal out of time, as acknowledged by the Claimant, and that the Tribunal should not exercise its discretion to extend time; alternatively for the Tribunal to strike out the Claimant's claim on the ground that it has **no reasonable** prospect of success; and , alternatively to the strikeout application, that the Claimant be ordered to deposit a sum of money with the Tribunal as a precondition to

continuing with her claim on the ground that it has **little reasonable** prospects of success.

2. The following Reasons, including references to the law, are tailored for focus and brevity to the circumstances of these proceedings. Any highlighting of text has been added by the Tribunal, unless indicated otherwise, to provide emphasis.

### THE FACTS

3. The First Respondent, London Underground Limited (“London Underground”), operates the train network on the London Underground and employed the Claimant.
4. The Second Respondent, Transport for London, is the Executive Agency responsible for public transport in London. The Claimant believes that it was her employer but there is no evidence before the Tribunal that Transport for London employs station staff at London Underground stations.
5. Ngozi Ugoji, the Claimant, commenced employment with London Underground on 15 February 2005 as a customer service assistant. She resigned from her employment on 13 December 2017 with effect from 30 December 2017.
6. The Claimant’s employment over those 12 years was relatively uneventful in terms of the issues before the Tribunal, except to note that during 2015/16, she attempted more than once to change her shift pattern to accommodate her personal circumstances and was dissatisfied with her treatment by her manager.
7. In June 2016 Claimant commenced 12 months maternity leave.
8. In June 2017 London Underground agreed a request from the Claimant to take a six-month unpaid career break, expiring in December 2017.
9. On 11 October 2017 the Claimant approached her manager regarding a further six-month unpaid career break from December 2017 until June 2018. London Underground’s policy does not permit a second six-month break and her request was not accommodated. The option available to an employee is to return to work or to resign and reapply for employment, if they wish, at a later date, but without the guarantee of being offered a post.
10. The Claimant subsequently sought a change to her shift pattern, effective from her return in December, which London Underground did not accommodate.
11. On 15 November 2017 the Claimant informed London Underground that she could not work her contracted hours and therefore intended to resign.
12. London Underground arranged a meeting with the Claimant on 27 November 2017 to discuss the situation, but the Claimant could not attend because of a serious fire at home, resulting in an emergency rehousing of herself and her family out of London.
13. On 8 December 2017, the Claimant attended a return to work meeting, but was dissatisfied with the failure to accommodate her shift preferences. The parties discussed the Claimant’s return to work in spite of the Claimant’s indication in mid-November that she was contemplating resignation but the Claimant was unsure about timings.
14. London Underground was sympathetic to the Claimant’s domestic circumstances and agreed that the Claimant could take the substantial amount of paid annual leave she had accrued and use the time to resolve her personal circumstances and plans. The Claimant was asked to put her request for a shift change in writing and arrangements

made to meet again with her manager in early January 2018 to discuss a possible return to work.

15. The Claimant remained dissatisfied with the treatment she had received regarding her request for a shift change, telling the Tribunal that she was "*being messed about by*" her manager. She concluded that London Underground was acting unreasonably and had made it impossible for her to continue in employment. In short, she considered that unfair treatment by her manager in respect of her shift pattern had destroyed the working relationship with London Underground and left her with no choice but to resign.
16. Nevertheless, the letter from the Claimant to her manager was in cordial and gracious terms, thanking him for his support and asking if she could shorten the notice period she was obliged to give so that it would expire on 30 December 2017. That request was accommodated. Accordingly the effective date of termination was 30 December 2017.
17. The Claimant was aware at that time that an employee could complain of unfair dismissal, that such claims were dealt with in an Employment Tribunal, and that the claim of unfair dismissal could be brought when an employee had resigned due to unfair treatment.
18. The Claimant was a long-term member of her Trade Union, the RMT. She knew at the time of her resignation that the RMT supported members who were dissatisfied with their treatment by London Underground and that the RMT could also support its members in making claims to the Employment Tribunal.
19. The Claimant called the RMT's Helpline on 14 December 2017. She was asked to discuss the situation with the RMT full-time officer for the Northern Line, Mick Croft.
20. The Claimant spoke with Mr Croft on 15 December 2017. Mr Croft felt that if the Claimant had been accompanied at the earlier meetings with the Claimant's manager the outcome regarding a change in working hours may have been more favourable. His advice was that the Claimant should withdraw her resignation and the RMT would support and represent her in negotiating a shift pattern which would accommodate her personal circumstances.
21. The Claimant, however, decided not to follow the advice because "*my manager had never helped me*" and that any further meeting with him would be "*pointless*" because she did not trust him to deal with her fairly.
22. Mr Croft advised the Claimant that the matter then would have to be escalated to making a claim of unfair dismissal to the Employment Tribunal, that he did not deal with those himself, and he gave the Claimant the telephone number of the RMT regional office where the legal team were based.
23. The Claimant contacted the RMT regional office and discussed her potential claim. She was asked to complete an application for legal support; was informed that not every claim for legal support was granted; that the form should be completed and returned promptly; and that there was a three-month deadline for making a claim. She discussed with the RMT whether it was three months from her resignation on 13 December or three months from the last date of employment, confusingly referring to 31 December 2017 although the Claimant and London Underground both appear to agree that the last date of employment was 30 December 2017, recorded as such by both parties in the Claim Form and the Response.
24. Reasonably enough, but mistakenly, the Claimant thought that she had until the end of March 2018 to start the process. That mistake, however, was not the cause of the late presentation.

25. The deadline for commencing the ACAS Early Conciliation process was 29 March 2018.
26. On or about 6 March 2018 the RMT legal office phoned the Claimant and said that they would not have sufficient time to reach a decision on her application of legal support and to start any proceedings on her behalf should her application be approved.
27. The Tribunal could not determine from the evidence before it what went wrong with the RMT process and timings. The Claimant said that she filled in the legal support Application Form as soon as she received it at the beginning of the year, posted it to the RMT on 12 January 2018, that the RMT lost it and then found it again before the 6 March phone call.
28. The Claimant thought the date of that phone call from the RMT was 6 March. The form was sent back to the Claimant marked that the application would not proceed.
29. On or about 8 March 2018, the Claimant could not be certain of the day, she spoke with the Employment Tribunal about her claim. The Tribunal provided her with the telephone number to speak with ACAS. She spoke with ACAS who explained the Early Conciliation process, stating that it would send her a link to the Early Conciliation form on the ACAS website and that she should fill it in as a matter of urgency.
30. The online Early Conciliation form is short and quick and simple to complete and send through to ACAS.
31. What happened next is not clear. The Claimant told the Tribunal that she had problems downloading the link to the ACAS website in order to access the Early Conciliation form so postponed doing it until she had some spare time to try again.
32. At the beginning of April the Claimant was conscious that she had missed the Tribunal deadline. She could offer the Tribunal no explanation for that beyond, understandably enough, a busy family life preoccupying her and needing her full attention.
33. The Claimant took her family to Butlins at Skegness between 6 and 13 April 2018.
34. The Claimant subsequently spoke with ACAS again and discussed her claim being out of time. ACAS told her that the Employment Tribunal had a discretion in certain circumstances to allow a claim to proceed even if it was presented after the three month deadline.
35. Eventually, the Claimant engaged the ACAS Early Conciliation process on 18 April 2018.
36. On 20 April 2018 ACAS issued a certificate of compliance.
37. On 26 April 2018 the Claimant presented her Claim Form, out of time, to the Employment Tribunal, 28 days late.

**Preliminary Summary of the Law**

38. The procedural rules governing Employment Tribunals are in Schedule 1 of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013, as amended (“the Rules”).
39. The Overriding Objective of the Rules is expressed in Rule 2 to be to enable Employment Tribunals to deal with cases fairly and justly.
40. A sensible starting point for an Employment Tribunal is to establish at the outset that it has jurisdiction to decide a claim.

Claim brought against the Employer

41. Section 94 (1) of the Employment Rights Act 1996 (the 1996 Act) provides that an eligible employee, qualifying for legal protection:

*has the right not to be unfairly dismissed by [his/her] **employer***

42. Section 111(2) of the 1996 Act provides that:

Claim presented within three months

*.....an employment tribunal shall not consider a complaint [or unfair dismissal], unless it was 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 the case were it is satisfied that **it was not reasonably practicable** for the complaint to be presented before the end of that period of three months.*

43. There is much case law about the meaning of “reasonably practicable” in section 111(2) . One of the leading cases is still the decision of the Court of Appeal in Palmer and Saunders v Southend-on Sea Borough Council [1984] IRLR 119 which, amongst other guidance from the Court of Appeal, directs the Employment Tribunal to consider the substantial cause of the employee’s failure to comply with the statutory time limit

44. There are procedural protections available to a party, in certain limited specified circumstances, designed to bring proceedings to an end without incurring the time and expense of a Final Hearing by striking out claims, or at least designed to discourage the other party from pursuing a specific allegation or argument by requiring that party to pay a deposit not exceeding £1000.

45. The specific procedural protections are in Rule 37 in relation to striking out a claim and in Rule 39 in respect of Deposit Orders.

46. An Employment Tribunal may strike out a claim where, for example, the Tribunal is satisfied that the claim has **no** reasonable prospect of success.

47. The Employment Tribunal may order a deposit to be paid where it considers that any specific allegation or argument in a claim has **little** reasonable prospect of success.

48. However, primarily the optimal prospects of achieving justice between parties engaged in a legal dispute is through conducting a fair and reasonable pre-trial process, followed by a fair trial resulting in a just outcome. Accordingly, striking out a claim before trial or placing the obstacle and burden of additional significant cost to a litigant through a Deposit Order are not orders to be made by the Tribunal lightly.

49. Nevertheless, occasionally, the Overriding Objective of dealing with cases fairly and justly set out in Rule 2 is achieved by the Tribunal exercising its powers under Rule 37 or Rule 39.

50. SUBMISSIONS

On behalf of the Respondent

The Respondent helpfully prepared written submissions which were considered by the Tribunal together with Counsel’s supplementary observations.

On behalf of the Claimant

The Claimant was preoccupied with the fire in her home in November 2017, moving to Luton before returning to Barnet in January, which was all very traumatic. The Claimant has a family to look after as a single parent. The Claimant did everything within the time limits provided to her by ACAS, and does not understand why anyone is saying the claim is out of time.

51. CONCLUSIONS

- (1) The Claimant was aware from her discussion with an RMT legal officer, before her employment ended on 30 December 2017, that there was a three-month deadline to bring a claim that she had been constructively dismissed, unfairly, by London Underground.
- (2) She knew that the deadline was around the end of March 2018.
- (3) On or about 6 March the Claimant knew that the RMT would not be undertaking a claim on her behalf and that if she wanted to pursue a claim she would have to do it herself or arrange for someone else, other than the RMT, to do it for her.
- (4) At that time the Claimant was unaware of the precise deadline, in law, of 29 March 2018 but knew that she had just over three weeks to make a claim if she was not to lose the right to test, in an Employment Tribunal, the fairness of the ending of her 12 years employment with London Underground.
- (5) The Tribunal does not underestimate the demands of a single parent running a family household. They are substantial. Nor does the Tribunal underestimate the frustrations which can arise in downloading links and completing unfamiliar online forms.
- (6) Nevertheless, the Claimant had a settled intention to make an unfair dismissal claim to the Employment Tribunal against London Underground from the moment she resigned on 13 December 2017. The Claimant's reliance upon the RMT explains, perfectly justifiably, the passage of time until the end of the first week in March. The deadline had not expired then and there were more than three weeks in which to start legal proceedings.
- (7) The Claimant has failed to identify to the Tribunal any significant obstacle preventing her from starting, and explaining why she did not start, the Tribunal process during the 23 days available to her between 6 March and 29 March 2018.
- (8) On the facts as the Tribunal find them, it was reasonably practicable for the unfair dismissal process to have been commenced comfortably in time. On the Claimant's evidence, the substantial cause for the late presentation was simply that she did not make it a priority and failed to ensure that the claim was pursued within the deadline.
- (9) It is unfortunate that the Claimant is time-barred and the claim cannot proceed to a determination of whether or not she was constructively dismissed, unfairly, particularly in the light of her deep conviction that she has suffered an injustice at the hands of her former employer.
- (10) The Judgment of the Employment Tribunal in respect of the Claimant's claim that she was constructively dismissed, unfairly, by the Respondents is to dismiss the Claimant's claim against the First Respondent, London Underground Limited, because the Claimant presented her claim out of time and in circumstances where the Tribunal does not have a discretion to extend time, and to dismiss the Claimant's claim against the Second

Respondent because the Tribunal does not have jurisdiction, the Second Respondent never having been the Claimant's employer.

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**Employment Judge Hemmings**

Date ... 26 September 2018 .....

JUDGMENT AND REASONS SENT TO THE  
PARTIES ON

27 September 2018

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FOR THE TRIBUNAL OFFICE