



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs N Sukmen

**Respondent:** New Start Limited

**Heard at:** Liverpool

**On:** 30 May 2018

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

## REPRESENTATION:

**Claimant:** Not in attendance

**Respondent:** Mr T Sutherland, Solicitor

# JUDGMENT

The judgment of the Tribunal is that the claimant's claim for unfair dismissal is struck out on the following basis:

1. The claim has been made out of time.
2. It was reasonably practicable to issue the proceedings within time.
3. The claim has not been actively pursued.
4. On the application of the respondent, the manner in which the proceedings have been conducted by the claimant has been unreasonable.

# REASONS

1. This matter was before me on 30 May 2018. On the morning of the hearing I received an email from the claimant dated 30 May 2018 timed at 07:48 from the Manchester Administration with an attachment showing Mrs Sukmen's application to postpone which was timed the day before at 23:17.

2. The claimant sets out a number of reasons why the Tribunal should not deal with the respondent's application and required a postponement.
3. I had no explanation as to why the claimant could not have sent in her application for a postponement earlier than 11.17pm on the night before the hearing.
4. The respondent had had no previous indication that the claimant was going to ask for such a postponement.
5. I therefore waited for Mrs Sukmen to attend, having sent to her at 09:17 on 30 May 2018 an email saying that her application for postponement was refused until the respondent had had a chance to comment.
6. During the course of the hearing I heard from Mr Sutherland who made application that there was no reason for this matter to be re-listed. He had no knowledge of any disability that the claimant had nor of any illness that she was suffering from, and that she had had notice of this preliminary hearing since 26 April 2018.
7. I therefore felt that it was appropriate to proceed with the preliminary hearing and to listen to Mr Sutherland's submissions. I also made sure that all the pleadings were read by me before making a decision.
8. Although the claimant suggests she was employed from 1 August 2014 to 28 September 2017, her actual date of termination was 29 August 2017. The initial limitation period ended on 28 November 2017. The ET1 was received on 7 February 2018. The ACAS certificate was issued on 20 November 2017, the notification being on 27 October 2017. The final limitation date, therefore, would have been 22 December 2017. Even if I was to take the incorrect date of termination from the claimant's ET1, the claimant's final limitation date would have been 20 January 2018 and consequently the claimant had waited 18 days after that date before issuing the proceedings.
9. In paragraph 15 of the ET1 the claimant submits that the claim was submitted three months and 24 days after she received notice of the end of her employment.
10. I was told by Mr Sutherland that the claimant was emailed informing her of her dismissal and that there was no "bounce back" from that email. She was dismissed for gross misconduct. The information that Mr Sutherland also produced to me was that the claimant started a new job on 11 September 2017. Obviously the claimant will be entitled to have more than one job but that suggests that she knew that she had lost her job with this respondent in August 2017.
11. In all the circumstances, therefore, I decided that the claimant had not actively pursued her claim and she had acted unreasonably in the way that she had asked for a postponement, leaving it until the last minute and not providing any medical evidence although suggesting that she had a medical condition which stopped her from attending.
12. Most importantly, however, the Tribunal would not have jurisdiction to deal with this case on the basis that the claim was made out of time and the claimant has had the assistance of her trade union during the period any claim issued could have

been in time. In those circumstances it was reasonably practicable to issue proceedings within time, and in any event if it was not reasonably practicable to issue proceedings in time she took too long after the final limitation period to issue proceedings.

13. In those circumstances the claims are struck out.

3-08-18

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Employment Judge Robinson

Date \_\_\_\_\_

JUDGMENT AND REASONS SENT TO THE PARTIES ON

6 August 2018

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