



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr K Shazad

**Respondent:** Bluewater Law Solicitors Limited

**HELD AT:** Manchester

**ON:** 17 December 2018  
10 January 2019  
(In Chambers)

**BEFORE:** Employment Judge Barker

## REPRESENTATION:

**Claimant:** In person

**Respondents:** Ms Logan, Counsel

# JUDGMENT

The decision of the Tribunal is that the claimant's claims for unlawful deduction from wages, failure by the respondent to provide written particulars of employment and failure to provide itemised pay statements are out of time. It was reasonably practicable for the claimant to present these claims in time and he did not. These claims will not be considered further by the Tribunal.

The claimant's disability discrimination complaints will proceed to a final hearing. The parties will be notified in due course of the date and time for a preliminary hearing at which the parties will be given a date for the final hearing and the Tribunal will set down case management orders to ensure the good future conduct of these proceedings.

# REASONS

## Issues for the Tribunal to decide

1. The claimant's claims for unlawful deductions from wages contrary to s13 Employment Rights Act 1996, failure to give a statement of employment particulars contrary to s38 Employment Act 2002 and failure to provide itemised pay statements contrary to s8 Employment Rights Act 1996 would appear to have been presented to

the Tribunal out of time. However, the effective date of termination of the claimant's employment is disputed by him. If the Tribunal accepts the date put forward by him of 31 December 2017, his claims may be in time. Therefore, a preliminary issue for the Tribunal to decide is what the claimant's effective date of termination of employment was.

2. The claimant submitted a claim to the Tribunal which was accepted on 17 May 2018 for unfair dismissal, unlawful deductions from wages, failure to provide written particulars of employment and failure to provide wage slips. The claimant's claim for unfair dismissal was struck out by the Tribunal at an early stage because the claimant does not have sufficient service pursuant to s108(1) Employment Rights Act 1996 to present an unfair dismissal claim to the Tribunal.

3. By an email sent to the Tribunal on 6 September 2018 the claimant sought to amend his claims to include a claim for disability discrimination. At a Preliminary Hearing on 24 September 2018, Employment Judge Ross permitted the claimant to amend his claim to include a claim for disability discrimination. However, the issue of whether or not the claimant's claim for disability discrimination is within time and if not, whether it is just and equitable to extend time, has not been decided by the Tribunal and will be dealt with at the final hearing.

4. At the preliminary hearing on 24 September 2018, a further preliminary hearing was listed to determine whether the claimant's claims for unlawful deductions from wages, failure to provide written particulars of employment and failure to provide wage slips were out of time and if so, whether or not it was reasonably practicable for the claimant to present the claims within the relevant time limits such that the Tribunal may exercise its discretion to allow him to bring his claims late, pursuant to section 111 of the Employment Rights Act 1996.

5. The respondent is a small solicitor's firm, managed by Mr Raja Khan who is the principal solicitor. The claimant, Mr Shazad, was employed by the respondent as an administrator from approximately 28 June 2017 until his dismissal. The date of the claimant's dismissal is disputed by the parties. The claimant says that his employment ended on 31 December 2017.

6. The claimant told the Tribunal that he was dismissed in a WhatsApp message from Mr Khan at 12.55 on 11 December 2017, but that he understood that Mr Khan was intending to pay him for the rest of December. Therefore, the claimant took from this that the last day of his employment would be 31 December 2017.

7. The Tribunal finds that on that day, both in the conversation that Mr Khan and the claimant had at approximately 9.30am and in the WhatsApp message that was subsequently sent by Mr Khan at 12.55, no mention was made of the respondent honouring any notice period that the claimant had. The conversation at 9.30 am took place because the claimant had asked Mr Khan for a couple of days off work because his son was ill. The claimant told the Tribunal that Mr Khan had reacted angrily to his request for time off and had been aggressive with him. The claimant told the Tribunal that Mr Khan had said to him "*you should think about your position and I'll do the same*". The claimant then received a WhatsApp message at 12.55 which read:

*"I spoke to Accountant and he will clear your dues on 15 Dec for December hours. Thanks"*

8. The claimant told the Tribunal that on receipt of this message, and based on Mr Khan's tone in their earlier conversation, he assumed he was dismissed. However, the claimant told the Tribunal that because the text message appeared to promise him payment for hours in December that his date of termination would be the end of December, that is, 31 December 2017. He asserts in these proceedings that that was his effective date of termination and the date from which the time limit to bring Employment Tribunal proceedings should run. If the Tribunal were to accept this submission, the claimant would have commenced ACAS conciliation in time.

9. By contrast, it is the respondent's case that Mr Khan held a meeting with the claimant on 23 November 2017 at which their colleague Shahbaz Ali was present. Mr Ali was not before the Tribunal to give evidence. Mr Khan told the Tribunal that the meeting was held to tell the claimant that because of his unsatisfactory probation period and because he had failed to provide a reference from his previous employer, which was a condition of his employment, his employment was terminated with one week's notice and therefore ended on 30 November 2017. The respondent also produced the claimant's P45 which was dated 2 January 2018 and which records a leaving date of 30 November 2017 as evidence to support these assertions.

10. The Tribunal received the claimant's claim form on 3 May 2018 but it was rejected because the name of the respondent on the claim form did not correspond with the name of the respondent on the ACAS conciliation certificate, which was dated 11 April 2018. The conciliation certificate contained the respondent's corporate name, Bluewater Law Solicitors Limited, but the original claim form has Mr Khan's name as that of the respondent. The claimant was informed by the Tribunal on 17 May that his claim had been rejected and, the same day, on discovering why the form had been rejected, he corrected the respondent's identity and resubmitted the form, such that the claimant's claim form was validly accepted at the Tribunal on 17 May 2018.

11. According to the ACAS conciliation certificate, the claimant commenced ACAS early conciliation on 20 March 2018. However, the claimant told the Tribunal that he had contacted ACAS by telephone in the week of 26 February 2018 and had assumed that this telephone call with ACAS had been sufficient to start early conciliation.

12. The claimant wrote to the respondent on 26 February 2018 requesting payment of his outstanding wages. He told the Tribunal that "*when I did not hear from the respondent*" he contacted ACAS again. Early conciliation formally commenced on 20 March 2018.

13. The issues for the Tribunal to decide are therefore: -

- (i) What the claimant's effective date of termination was. Was it 30 November 2017, 31 December 2017 or some other date;

- (ii) The date on which the claimant commenced ACAS early conciliation: was this in the week of 26 February 2018 or on 20 March 2018;
- (iii) Was the claimant's claim form, which was originally submitted on 3 May 2017, submitted in time or out of time; and
- (iv) If the claim form was out of time, was it not reasonably practicable for the claimant to submit the claim form within the relevant time limits.

**Conduct of the parties during these proceedings**

14. The Tribunal notes the following about the conduct of the parties during these proceedings. It is clear from the submissions made by the parties that the issues between them are not limited to those issues that were for the Tribunal to decide on this occasion. In addition to the claimant's disability discrimination claim, the claimant told the Tribunal that he had prepared a submission to the Solicitors Regulation Authority concerning alleged acts of professional misconduct on the part of Mr Khan which the claimant says became known to him during his period of working at the respondent.

15. The parties frequently attempted to discuss issues concerning Mr Khan's management of the respondent during this hearing and the parties had to be reminded on several occasions by the Tribunal that these were not issues for the Tribunal to decide, nor did the Tribunal have any jurisdiction over such complaints by the claimant. In addition, it became apparent that the parties' wives were friends and that therefore there are personal and domestic issues which have a bearing on the parties' conduct in these proceedings.

16. The Tribunal noted that neither party had agreed any kind of bundle of documents to assist the Tribunal on this occasion. Each party also engaged in lengthy correspondence with the Tribunal administration prior to the hearing, accusing the other party of a variety of misdemeanours, including failures to comply with case management orders.

17. Although the respondent was on this occasion represented by counsel, it became apparent early on in the hearing that counsel had not been properly briefed by the respondent and several adjournments were necessary for counsel to take instructions from Mr Khan. This caused delay to the proceedings. The lack of proper management of documentary evidence caused further delay in these proceedings as time was spent ensuring that each side had copies of documents that the parties wished to put before the Tribunal and was able to participate in the hearing by having taken time to read them.

18. At the conclusion of the time allocated for this hearing on 17 December 2018, the Tribunal told the parties that no further evidence was required for the Tribunal to be able to make a decision on the issues that were before the Tribunal to decide on this occasion. The parties were told that the Tribunal would reach a decision in chambers on a date to be notified to them and that the parties would be provided with full written reasons when the decision was issued.

19. This information notwithstanding, the claimant sought to introduce further written submissions and documentary evidence after the end of the hearing and before the Tribunal sat in Chambers. The claimant's email, which was dated 31 December 2018, states

*"I am writing to you following the hearing that took place in your presence on 17 December 2018. Unfortunately, as we ran out of time during the hearing I was unable to fully question the respondent whilst he was under oath.... Based on the respondent's statements whilst on the witness stand, I wanted to provide some information which I hope will assist you with your decision".*

20. The respondent objected in an email dated 6 January 2019 but nonetheless submitted further documents of its own. Both parties' additional evidence has been considered by the Tribunal. The additional evidence is either not relevant to the issues that the Tribunal had to decide or repeats discussions which had already taken place at the hearing itself. The fact that further Tribunal time has been wasted considering further unnecessary submissions and evidence from the parties is further indication of the parties' failure to conduct themselves in a reasonable manner during the course of these proceedings.

21. Given that both parties have experience of working in the legal profession and as Mr Khan is a qualified solicitor, these issues are particularly regrettable. Both parties are urged during the future conduct of these proceedings to comply promptly with all case management orders in full and to focus only on the issues that are before the Tribunal to decide. Both parties are also reminded of their obligation to assist the Tribunal in achieving a fair hearing of the issues without unnecessary delay.

22. The parties are to note that if this judgment and the findings of fact hereafter are silent on some issues that were discussed in evidence given by the parties it is not that this evidence was not considered, but that it was not sufficiently relevant to the issues the Tribunal had to decide to be taken into account in the findings of fact and decisions that follow.

### **A - The claimant's date of termination of employment**

23. The first issue for the Tribunal to decide was the claimant's effective date of termination.

24. The respondent's evidence that a meeting to dismiss the claimant was held on 23 November 2017 and thereafter recorded in a letter of 23 November 2017 is rejected by the Tribunal. Time records and text messages supplied to the Tribunal by the claimant, including text messages between Mr Khan and the claimant, show that the claimant continued to work for the respondent until 11 December 2017. This is wholly inconsistent with the claimant's employment having terminated by notice on 23 November, the notice to expire on 30 November 2017.

25. Furthermore, the claimant's P45 dated 2 January 2018 is also not a reliable source of evidence as to the claimant's termination date. Several documents from the claimant demonstrate that he did not receive his P45 until after the

commencement of these proceedings. His letter of 26 January 2018 to Mr Khan notes that he had not received his P45. Indeed the claimant's ET1 claim form to the Tribunal which was initially sent in on 3 May 2018 also notes that he had not received his P45 by then. On the balance of probabilities, the Tribunal finds that the claimant's P45 was backdated and issued on receipt of the claimant's claim form to support the respondent's assertions that the claimant had been dismissed by the end of November 2017, such that his claims would then be out of time.

26. The claimant consistently stated, both when giving evidence under oath at this hearing and also in correspondence, that he understood that he had been dismissed on 11 December 2017 by Mr Khan because he asked for time off work as his son was ill. For example, the claimant's letter of 26 January 2018 to the respondent states

*"I am writing to you following your decision to sack me via WhatsApp message on 11 December 2017."*

27. The claimant's evidence that he assumed that he would be paid to the end of December and that therefore the end of December would be his date of termination is also not accepted. The text message from Mr Khan told the claimant that he would ask his accountant to "*clear your dues on 15 Dec for December hours*". On the balance of probabilities, the Tribunal finds that this was a reference to paying the claimant for the hours that he had already worked in December. There was no mention of paying him notice monies. There is also no evidence that the respondent would choose to pay the claimant for a notice period of almost three weeks, such as would allow his employment to run to the end of December.

28. On the balance of probabilities and considering the evidence of both parties the Tribunal finds that the claimant's effective date of termination was 11 December 2017.

## **B – The date of commencement of ACAS Conciliation**

29. It is settled law that a claimant who wishes to commence Employment Tribunal proceedings has an obligation, in proceedings to which ACAS conciliation applies, to engage in ACAS early conciliation before issuing proceedings in the Employment Tribunal as per s18A Employment Tribunals Act 1996.

30. Tribunal proceedings in the claimant's case must have been issued within three months of the date of termination of his employment, subject to the extension of time limits for ACAS conciliation as set out in s207B Employment Rights Act 1996. The effect of this is that the claimant needed to commence ACAS early conciliation within three months of the date of termination of his employment. If he did not do this, and cannot persuade the Tribunal that it was not reasonably practicable for him to do so such that his time limit should be extended, his claim will not be heard.

31. The conciliation certificate issued by ACAS to the parties at the end of the early conciliation period states on its face the date that early conciliation started and ended. The date on the early conciliation certificate for these proceedings is 20 March 2018. This is outside the three-month limitation period, which commenced

with the effective date of termination of 11 December 2017 and ended on 10 March 2018. The claimant would appear to have been ten days late starting early conciliation.

32. The claimant wishes to inform the Tribunal that he understood that as of 26 February 2018 he had commenced early conciliation. He alleges that there must have been some form of error on the part of ACAS or a misunderstanding by him, as it is clear from the ACAS certificate that conciliation did not start until 20 March 2018.

33. The Tribunal accepts that the claimant had a telephone conversation with ACAS on or before 26 February 2018. The claimant had sent a letter to the respondent on 26 January 2018 asking to be paid wages that he said he was owed outstanding on the termination of his employment. This letter did not mention any intention to bring Employment Tribunal proceedings. When the claimant did not receive a response from the respondent he wrote again on 26 February 2018, having spoken to ACAS. However, on the balance of probabilities the Tribunal finds that the claimant did not contact ACAS at the end of February with the intention of starting early conciliation, but that instead he sought ACAS advice before making a further attempt to persuade the respondent to pay him the money outstanding on termination of his employment. It was only when payment was not received by him that he decided to take formal action against the respondent. The claimant told the Tribunal that, as his wife was friends with Mr Khan's wife, he was under some pressure at home not to start proceedings against Mr Khan. I find that this is consistent with the claimant having taken some time to allow Mr Khan to make payment voluntarily before issuing proceedings against him.

34. The claimant told the Tribunal that he had communicated with ACAS only by telephone and was told on 26 February that this was sufficient to start early conciliation. However, it is standard procedure that ACAS early conciliation should be commenced by filling in an early conciliation form providing ACAS with the details of the parties and other important information, such as the nature of the claimant's complaint and the date of dismissal. There was no suggestion from the claimant's evidence that any of this was done by 26 February 2018.

35. Furthermore, in a situation where a claimant seeks to persuade the Tribunal to extend time limits where the claimant is generally aware of his or her rights before the Tribunal, ignorance of the time limit or how this deadline should be complied with will rarely be acceptable as a reason for delay. Claimants who are aware of their rights are generally taken to have been put on enquiry as to the relevant time limits and the steps that need to be taken to satisfy them.

36. In the case of *Trevelyan's (Birmingham) Limited -v- Norton 1991 ICR 488 EAT*, it was said that where a claimant knows of his or her right to complain to a Tribunal, he or she is under an obligation to seek information and advice about how to enforce that right and a failure to do so usually leads to the Tribunal to reject the claimant's claim. Applying this principle to the claimant's case, having been in contact with ACAS at the end of February 2018 and having had access to ACAS guidance and information, the claimant was under an obligation to obtain specific information and advice from ACAS or elsewhere about what to do next and how long he had to do it.

37. Even taking the claimant's case at its highest, he ought to have known that there was a possibility that time limits may start to run from 11 December 2017. It was therefore incumbent upon him to make enquiries or further enquiries of ACAS before 10 March 2018 and to start early conciliation by that date, and he did not do so.

38. The Tribunal has taken into account the fact that the claimant knew that ACAS assistance was available and had worked for approximately six months in a solicitor's firm. He had assisted in the respondent's litigation cases and therefore the Tribunal finds, would have had a greater awareness than the average claimant of litigation time limits and the need to comply with them. He had the means at his disposal to investigate what these were and to ensure his compliance with them and he did not do so.

39. It ought to have been apparent to him on or before 10 March 2018, having not heard from the respondent and presumably also received no correspondence from ACAS, that early conciliation had not started, if indeed he mistakenly believed it had. Indeed, he had clearly realised this by 20 March 2018 because he contacted ACAS on that date to begin it.

40. It was therefore reasonably practicable for the claimant to start ACAS conciliation on or before 10 March 2018 and he did not do so. He has therefore not complied with the time limits for doing so and his claim is out of time and cannot proceed in relation to the unlawful deduction from wages, failure to provide wage slips and failure to provide written particulars of employment claims.

### **C – Presentation of the ET1 to the Tribunal**

41. Having finished ACAS conciliation on 11 April, the claimant then had a further month, that is, until 11 May 2018, in which to present his claim form to the Tribunal. He sought to do so on 3 May 2018 but made an error in that he included Mr Raja Khan's name as the respondent whereas the ACAS conciliation certificate included the respondent's corporate name as the respondent. The Tribunal therefore rejected the claimant's claim form and informed him of this fact on 17 May 2018.

42. Upon learning of the reasons for the rejection of his claim form on 17 May 2018, the claimant acted promptly to rectify the problem and resubmitted his claim form the same day. The claim form was therefore accepted on 17 May 2018. Had the claimant's ACAS conciliation begun in time, the Tribunal would have allowed an extension of time for lodging the ET1 claim form to the 17 May 2018. The claimant made a mistake and rectified it promptly. He was not notified of the error by the Tribunal until 17 May 2018. It was therefore not reasonably practicable for him to present the corrected version any earlier than 17 May 2018 and he did then submit the corrected version on that date. He therefore lodged it within a reasonable period thereafter it having not been reasonably practicable for the claim to have been presented in time.



43. However, this extension of time under section 111(2) Employment Rights Act 1996 is not sufficient to allow the claimant's claim to proceed given the failure to comply with the initial time limit for ACAS early conciliation as set out above.

**Next Steps**

44. The claimant's claim of unlawful deductions from wages, failure to provide written particulars of employment and failure to provide itemised pay statements are out of time and cannot proceed. However, the claimant's disability discrimination complaints may proceed to a final hearing.

45. The parties will be notified by the Tribunal administration of the date and time of a further Preliminary Hearing at which case management orders will be made to ensure the future good conduct of these proceedings and to set a date for the final hearing.

Employment Judge Barker

Date 28 January 2019

JUDGMENT AND REASONS SENT TO THE PARTIES ON

31 January 2019

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FOR THE TRIBUNAL OFFICE