



### 3. Findings of Fact

- 3.1. Mr Morrison had a serious road traffic accident on the motorway on 4/01/18. He has very limited recollection of the accident, in which he was helped from the burning vehicle by other motorists, the vehicle having traversed the motorway from the outside lane to the central reservation, hit it and then traversed the motorway back, by which time the trailer was on its side and the fuel tank ruptured. There was no other vehicle directly involved.
- 3.2. Another driver had reported concerns about and refused to drive the vehicle because of the tyres, but they were re-inspected and cleared as legal and safe. That driver's report was voided on further inspection (48) before Mr Morrison took the vehicle out.
- 3.3. Mr Morrison had thought the tyres were all right but that one had failed when the accident took place. There had been strong winds that day.
- 3.4. He was hospitalised and discharged after four days. He was diagnosed with post-concussion syndrome. He had no obvious head injury but had word-finding difficulties and some communication difficulties. He was seen by a clinical psychologist from the Gloucestershire brain injury team several times, in March, May, June and September 2018 and again in December 2018.
- 3.5. A misconduct investigation was launched. In the meantime, he was suspended from driving for work
- 3.6. In April he was able to return to part-time work but Royal Mail had little work for him because he was suspended from driving.
- 3.7. On 31/01/18, there was a fact finding meeting.
- 3.8. There had been a severe weather brief on the date of the accident. due to the strong winds, but according to the managers the CCTV shows the vehicle drifting for 100 yards towards the soft verge and eventually on to it, pointing to a loss of concentration by the driver as the cause of the accident rather than high winds or the condition of the tyres. That was their explanation for the loss of control of the vehicle.
- 3.9. The misconduct interview was held on 14/5/18, after some delays primarily due to Mr Morrison's health. His GP for example wrote on 9/04/18 that,

“The above 59 year old patient of mine is currently undergoing treatment for post-concussion syndrome and I gather he's due to attend a disciplinary hearing this week. In my medical opinion I think it unlikely that he would be fit to represent himself properly for this sort of meeting for at least 2 – 4 weeks. He is improving, albeit it slowly.
- 3.10. At the hearing in May, he was able to participate and to comment cogently on the evidence (37-38).
- 3.11. After investigation, the quality of which Mr Morrison challenges robustly, the decision to dismiss him was given to him in person on 5/06/18. The Leavers Pack gave the date of termination as 6/06/18. That was misleading.

- 3.12. He was summarily dismissed for gross misconduct. Dismissal was because he was held to have lost control of his vehicle which then overturned.
- 3.13. He appealed. The appeal hearing was held on 12/07/18. This was a full rehearing.
- 3.14. The appeal was dismissed, notwithstanding detailed further contributions from Mr Morrison. The decision letter is dated 24<sup>th</sup> August 2018 and Mr Morrison recalls receiving it about the time of the bank holiday weekend at the end of August. The late summer bank holiday in 2018 was on Monday 27/08/18, so by inference he had it by 28/08/18.
- 3.15. He was devastated by the outcome, having expected with some confidence to win the appeal. He saw his GP again on 29/08/18 to support a claim for Universal Credit and was again given a note signing him off work.
- 3.16. He had also during that year had the stress of a family bereavement and the real difficulties of losing the income that he relied on for the support of his family, including the loss of overtime even once he had gone back to work.
- 3.17. He had union assistance throughout the disciplinary and appeal process.
- 3.18. He had not made any enquiries about time limits for a claim before losing the appeal,

“I had not looked into it at all.”

“I had no idea what the process was.” (oral evidence)

- 3.19. He reports that he did not consult about the next steps to take until after he lost his appeal. At that point, his wife texted the union representative. They were referred on. The union representative to whom he was referred was not available until the very day of his ACAS application.

“My wife was trying to get advice. She got the number of the area representative. He deals with tribunal cases, and as such we needed to speak to him. She could not get hold of him until 6/09”

- 3.20. His wife made enquiries on his behalf and did research for him under his prompting, using the internet to do so. They found, for example, the ACAS code in that way.
- 3.21. She is Slovak and does not have the usual intimate knowledge of British institutions that would help in an internet search for information.
- 3.22. She spoke to the Union representative on 6/09/18 and they learned the time limits for this claim.
- 3.23. ACAS were notified of the potential claim on 6/09/18.
- 3.24. The ACAS certificate was issued on 7/09/18.
- 3.25. The claim was brought on 07/09/18.
- 3.26. The psychologist who saw Mr Morrison on several occasions between March 2018 and September reports that initially, in March, he suffered fatigue with word-finding difficulties and signs pointing to potential cognitive communication difficulties. There was some recovery by May, in spite of the

stress of events at work, and greater improvement by June in relation to fatigue, and with sleep. He no longer needed referral to Speech and Language Therapists. By September he was again experiencing fatigue and low mood and he attended a four week group programme. He resumed work elsewhere in December 2018, three days per week.

#### **4. Law**

- 4.1. The time limit for bringing an unfair dismissal claim is set out in section 111 of the Employment Rights Act 1996. The claim must be brought 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 where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented before the time limit expired.
- 4.2. Time Limits in the Employment Tribunal are strictly applied.
- 4.3. Where an employee is summarily dismissed, the effective date of termination is the date of dismissal (Employment Rights Act s97(1)).
- 4.4. The time limit for bringing a claim runs from the date of the original dismissal, even where there is an internal appeal. The appeal does not extend the time limit.
- 4.5. With the passage of time since unfair dismissal legislation was introduced and the publicity given to unfair dismissal cases, a claimant is unlikely to be able to show that it was not reasonably practicable for him to present a complaint because of ignorance of the right to claim (*Porter v Bandridge Ltd* 1978 IC\$ 943). Where an employee has knowledge of the right to claim, there is an obligation on him to seek information or advice about the enforcement of those rights, and so ignorance of time limits may not be reasonable in the absence of enquiry (*Trevelyan's (Birmingham) Ltd v Norton* [1991] ICR 488).

#### **5. Reasons**

##### *Was the Claim late?*

- 5.1. The dismissal took place on 5/06/18 but the Leavers Pack showed it as taking place on 6/06/18, so Mr Morrison was entitled to rely on that date instead. The effective date of termination was 05/06/18.
- 5.2. Limitation expires, absent early conciliation, on 4/09/18, but given the error over the date in the Leavers Pack, Mr Morrison would have been entitled to think that it expired on 5/09/18.
- 5.3. ACAS was notified of the claim on 6/09/18. Even using the Leavers Pack date, the time limit had already expired.
- 5.4. The early conciliation procedure did not extend the time limit, for that reason.
- 5.5. The ACAS certificate was issued and the claim went in on 7/09/18.
- 5.6. Mr Morrison's case is in particular that he did not know of the time limit and that he was in no fit state to take care of things for himself.

*Ignorance of the Time Limit*

- 5.7. Mr Morrison suffered a serious accident on 04/01/18. He was able to get back to work in April albeit suspended from driving and not fully recovered. He was by then driving privately, for short distances.
- 5.8. He was able to participate in the disciplinary investigation in May and comment cogently on the evidence.
- 5.9. He had union advice throughout.
- 5.10. He put his effort into presenting his case against the dismissal. He submitted an extremely detailed and carefully argued nine-page appeal on 6/06/18.
- 5.11. He says he did not know of the time limit. Once he knew, he was quick.
- 5.12. The question is whether the ignorance of time limits reasonable? Ought he to have known?
- 5.13. He is not young and inexperienced. He was born in 1958.
- 5.14. Unfair dismissal legislation has been in force for many years, throughout his working life. It is unlikely that he was wholly ignorant of the scope for a claim and he does not say he was. He and his wife were referred to the person dealing with Tribunal cases: he knew that was the next step.
- 5.15. What he may have been ignorant of was the time limit.
- 5.16. He was not misled by the union.
- 5.17. He says he did not ask about the next step until after the appeal.
- 5.18. Not to have made enquiries at all about next steps and the possibility of a Tribunal claim was not reasonable, in particular, when he had union assistance actively helping him and able to advise.
- 5.19. He was under a duty to make some enquiry. It is not enough to say that nobody told him. He can be expected to make reasonable enquiries.
- 5.20. His wife may have little understanding of English institutions but it takes very little in terms of a search on the internet to flush out the fact that there is a time limit for Employment Tribunal claims. That is the case even if the correct terms are not used. ACAS and other sources of advice are available.

*Was he too ill to handle things properly prior to putting in the Claim?*

- 5.1. The critical delay was after the dismissal of the appeal. At that point, he found himself having to wait for advice.
- 5.2. In September, he was still on treatment, he was having counselling and he was then referred for treatment to cope with post injury fatigue.
- 5.3. He had undergone a catastrophic accident and narrowly escaped with his life.
- 5.4. His GP in December speaks of a very difficult year, struggling with fatigue and cognitive impairment since the accident.
- 5.5. This was a horrific accident. That account from the GP is accepted. However, the evidence from his level of participation in the misconduct process and appeal do not speak of cognitive impairment to the extent of an inability to

manage his affairs or make enquiries. The evidence is of mental alertness and competence. He had been able to consult the union and to work with them on the appeal and the disciplinary, in depth.

- 5.6. The psychologist speaks of some improvement by May, further improvement by June, walking, driving short distances, going out as a passenger, back at work, attending the disciplinary. Fatigue and low mood having more of an impact on day to day life, obtaining less pleasure from activities he would usually enjoy. That is not an account of inability to address affairs. Nor does it report him saying in June or September 2018 that he was unable to focus or handle his affairs.
- 5.7. The time limit for bringing a claim is seven months after the accident and four months after initially being signed back to work and resuming driving. Driving is a complex task, in itself.
- 5.8. It is clear in particular from the appeal and the appeal report that he was participating well and making important contributions during the hearing in May and in commenting on the notes. He challenged in detail the notes taken in the fact finding and put forward a number of points in relation to the need for training, the possible mechanical failure of the trailer, the absence of a driver assessment, the state of the tyres (37/38).
- 5.9. He was not unable at that stage to make enquiries.
- 5.10. He says that after losing the appeal he was not in a state where he could think clearly. That is not consistent with the evidence overall or with his account of pursuing a claim for universal credit, that being the reason he gave for seeing the doctor. He may well have been badly affected by the outcome of the appeal, but not to the point of being unable to make enquiries with the help of his wife. He was no less able to make enquiries when he lost the appeal than he was when putting the claim in on 7/09/18 with an effective summary of his complaint.
- 5.11. I do not find that his mental condition stood in his way. In particular, he was not unable to make enquiries once he knew the appeal had failed; in any event it would have been reasonable to make enquiries before that so he knew where he stood.

5.12. In conclusion, the claim was late and it was reasonably practicable for him to bring the claim in time. Time is not extended. The Tribunal has no jurisdiction.

**Employment Judge Street**

Date 19 February 2019