



## EMPLOYMENT TRIBUNALS

**Claimant**

Mrs. G. Francis

v

**Respondent**

Wright Leisure Limited t/a  
Exercise4less

Heard at: **Bristol**

**On: 11<sup>th</sup> March 2019**

Before:

**Employment Judge R. Harper MBE**

**Appearances**

**For the Claimant:**

**Mrs. Francis**

**For the Respondent:**

**Mr. Khan**

## JUDGMENT

**The Tribunal does not have jurisdiction to hear the case.**

## REASONS

- 1.1 The claimant was employed between 14/5/18 and 24/6/18 although she had had a very short earlier employment with them in March 2018. She did not have two year's service in relation to the relevant period of employment. The ACAS Certificate regarding a claim against "Nabilah Akram – Exercise4Less" shows the A date as 25<sup>th</sup> July 2018 and the B date as 31<sup>st</sup> July 2018. The original claim was for unfair dismissal. There was no other claim although the tribunal had, wrongly, also coded the file as a breach of contract claim even though there was nothing to indicate justification for that coding from the ET1.

The claimant had asked a solicitor to send an email to the employer but she says that he did not provide advice to her but she indicated that he had been her solicitor for some time. She therefore had access to legal advice, had she sought it.

I bear in mind that, unfortunately, the claimant's husband passed away earlier in 2018. However this did not prevent her filing the original claim in time and it could have been filed against the correct respondent for the wrongful dismissal and wages and there was nothing which prevented that being done.

The respondent produced an unsigned contract and some wage slips at the hearing. The claimant said she had never seen these documents before.

- 1.2 The ET1 was filed on 31<sup>st</sup> July 2018. The unfair dismissal claim against Nabilah Akram – Exercise4Less was struck out because of insufficient lack of service

on 5<sup>th</sup> October 2018. On the 5<sup>th</sup> October 2018 the claimant indicated that she wanted to proceed against “Wright Leisure Limited.”

1.3 The claimant’s problem is that she did not have an ACAS EC certificate at that stage for that proposed respondent.

A further ACAS certificate regarding Wright Leisure Limited (Exercise4Less Fishponds) Nabilah Akram shows the A date as 18<sup>th</sup> October 2018 and the B date as 18<sup>th</sup> October 2018.

The tribunal wrote to the parties on 26<sup>th</sup> October 2018 stating “the whole claim is now accepted.” This was ambiguous because the unfair dismissal claim against Nabilah Akram had been struck out but at the stage of that strike out this was the only named respondent. The current respondent was only added later.

It would appear that the filing of the claim against the current respondent assumed that the head of claim was unfair dismissal. In a subsequent email from the claimant dated 1<sup>st</sup> March 2019 the claimant appears to accept that she cannot proceed with her claim for unfair dismissal through inadequate length of service. However, by the same email the claimant then wished to amend her claim to include non payment of wages and overtime and wanted the claim to be re-titled “wrongful dismissal.” This was many months after the original claim had been filed. Those claims could have been brought very much earlier.

1.4 By a letter dated 20<sup>th</sup> December 2018 EJ Livesey directed the listing of this current preliminary hearing to consider “strike out of claim, strike out of unfair dismissal due to no jurisdiction (time and/or service), issues, directions.”

1.6 The first point to consider is whether there is jurisdiction to hear the claim against the present respondent since the effective date of termination was 24<sup>th</sup> June 2018 and the correct ACAS Certificate is not dated until 18<sup>th</sup> October 2018 so that the claim against the current respondent was filed outside the three month period. The test is one of “reasonably practicable.” It is a more severe test than the “just and equitable” test.

2. My primary finding is that the claim against this respondent was, for all the above reasons, out of time, and it had been reasonably practicable for it to have been filed in time. At the moment the only head of claim is unfair dismissal which is being withdrawn. Therefore at present there is nothing left to hear. If I was wrong in relation to that then the application to amend the claim was very substantially out of time and there is no reason why that claim of wrongful dismissal could not have been filed initially, or within three months of the EDT, and I would not have allowed the amendment. Therefore, whichever route is taken the claim goes not further.

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**Employment Judge R. Harper MBE**

13 March 2019