



# EMPLOYMENT TRIBUNALS

**BETWEEN**

**Claimant**

**and**

**Respondent**

**Mr E Eltahir**

**1<sup>st</sup> Class Driving School, B Worger**

**HELD AT London South**

**ON Friday, 5<sup>th</sup> October 2018**

**Regional Employment Judge Hildebrand (Sitting alone)**

## **Appearances**

**For Claimant:**

**In Person**

**For Respondent:**

**Mr B Worger, Former Director of the Respondent**

## **REASONS**

*For the judgment sent to the parties on 30 November 2018  
(as requested by the Claimant by e-mail received on 30 November / 5 December 2018)*

1. I set out firstly the issue in relation to the representation by the Respondent. Mr Worger identified himself to the Tribunal as a former director. On enquiry I established that he is a former director of UK Driving Ltd said to be the company trading as 1<sup>st</sup> Class Driving School by which the Claimant was engaged. Mr Worger informed me, and I have verified with Companies House, that UK Driving Ltd was dissolved and is no longer on the register of Companies and the date of dissolution is 19 September 2017. The documentation produced in the case has not established clearly that UK Driving Ltd was the correct Respondent to the claim but in light of the other significant hurdles faced by the claim I have not taken evidence on that point to resolve it.
2. In terms of the other issues faced I have explained to the Claimant that there are two jurisdictions engaged in the case that, of unfair dismissal and breach of contract. In respect of both jurisdictions in order to bring a claim the Claimant would need to be an employee of the Respondent. The Claimant has explained to me that he does

not contend he was an employee of the Respondent. In fact, he was recorded as stated in his claim form as self-employed and that continues to be his position. Further, the documentation produced provides for him to share profit with the Respondent on a basis approaching 50/50 and the Claimant has explained to me that he understands that would not be consistent with an employment relationship. Accordingly, the Tribunal does not have jurisdiction to entertain claims of breach of contract and unfair dismissal in those circumstances.

3. Further, pursuant to section 108 of the Employment Rights Act 1996 subject to certain limited exceptions which do not apply in this case the Claimant must demonstrate two years' service in order to bring a complaint of unfair dismissal. It is clear in this case that the Claimant's engagement begun in June 2015 and concluded on 10 November 2016. He therefore has less than 2 years' service and would not be in the position to bring a claim of unfair dismissal based on the service which he had accrued at the date of termination.
4. A further difficulty in relation to this claim is the date of presentation. The Claimant has produced following the termination of the relationship in November 2016 an ACAS Certificate demonstrating that day A was 2 December 2016 and day B was 16 December 2016. It follows that the period of conciliation was some 14 days. 14 days are added to the 3-month period within which the Claimant is required to present a claim to the Tribunal beginning with the effective date of termination both for the purposes of the unfair dismissal claim and for the Claimant's breach of contract claim. If the date of termination of the arrangement was 10 November 2016 the Claimant should have presented his claim by 9 February 2017 to which is added the 14 days of conciliation making the final day for presentation of the claim the 23 February 2017. This claim was not accepted by the Tribunal until 21 May 2018, that is a year and three months outside the time for presentation. The Claimant's first attempt to present the claim was received by the Tribunal on the 23 January 2018 and so taking out of the equation arguments in relation to presentation and production of the correct ACAS Certificate the claim was approaching a year out of time at that point. I have explained to the Claimant that in order to consider a claim presented outside the three-month time limit the Tribunal must be satisfied that it was not reasonably practicable for the claim to be presented within the period of three months and that it was presented within such further period as the Tribunal considers reasonable.
5. In this case the Claimant has explained to me that he had the benefit of comment from ACAS and also appears to have had access to other legal advice. There is nothing to suggest the Claimant was wrongly advised by ACAS that he had unlimited time to present a claim. ACAS are familiar with the field and I do not consider that ACAS would have advised the Claimant that it was possible for him to wait another year before bringing his claim to the Tribunal. Consequently, I do not accept that even if it was not reasonably practicable for the claim to be presented in time that the Claimant presented it with any such further period as is reasonable in the circumstances.

6. Consequently, and without having to direct the Tribunal's attention to the fact that the correct potential respondent is in the case brought against Mr Worger, a company which was dissolved in September 2017, I conclude that the Tribunal does not have jurisdiction to entertain the Claimant's claims in this case; they are therefore dismissed.

Employment Judge Hildebrand

Date: 8 March 2019