



# EMPLOYMENT TRIBUNALS

## Claimant

## Respondent

Mr A Ceesay

v

Unify Enterprise Communications

**Heard at:** Cambridge

**On:** 5 April 2019

**Before:** Employment Judge Finlay

## Appearances

**For the Claimant:** In person

**For the Respondent:** Miss Connor, Counsel

## JUDGMENT ON PRELIMINARY HEARING

1. The claimant's complaint of breach of contract (deduction of tax from salary during his notice period) is dismissed following its withdrawal by the claimant.
2. The remaining complaints of unfair dismissal and breach of contract are struck out as the Employment Tribunal has no jurisdiction to hear them.

## REASONS

1. This was an application to consider whether or not the claims brought by the claimant were brought in time or if not, whether it is reasonable to extend time. The claimant appeared in person and gave evidence on oath. The respondent was represented by Miss Connor of Counsel. Miss Connor had prepared a written note and the claimant had prepared a witness statement on which he was cross examined by Miss Connor. Both parties made oral submissions.
2. The claimant had brought three complaints within his claim form as follows:
  - 2.1 a complaint of unfair dismissal;
  - 2.2 a complaint that payments received during his notice period should not have been taxed;

- 2.3 a complaint that he was owed some £4,000 by the respondent arising from his employment.
3. There was a preliminary discussion regarding the second complaint. The claimant's argument was that initially he had been told by the respondent that a payment in lieu of notice could be made to him tax free. However, his redundancy took place in April 2018 just after the tax rules had changed. In the event, the claimant was on 'garden leave' during his notice period and received his salary less tax and national insurance contribution. It is extremely difficult to see how there could be any cause of action in respect of the monies properly deducted by the respondent in respect of that period. The claimant admitted that he was not an expert in this area and agreed to withdraw this particular complaint.
4. Turning to the first and third complaints, I make the following findings of fact having heard evidence from the claimant.

### **The Findings of Fact**

5. The claimant's father, who lived in Gambia, passed away at the end of 2017. The claimant then had to deal with issues relating to the estate early in 2018 and travelled to Gambia to do so.
6. Upon his return in March, he found that he was at risk of redundancy. The first consultation meeting took place on 29 March.
7. The respondent confirmed on 12 April that the claimant would be made redundant with effect from 30 April 2018 and was duly dismissed on grounds of redundancy with effect from that date. The claimant submitted an appeal on 26 April. He was 30 April 2018.
8. In May, the claimant travelled to Gambia to care for his mother. He returned on 7 July. He had no reliable internet access in Gambia. The respondent completed the appeal review in writing on 22 May and wrote to the claimant with the outcome details. The claimant, however, did not see this document until 7 July 2018 when he returned to this country. He was aware that the respondent had written to him – his wife had told him he had received envelopes from the respondent - and he emailed the respondent on 2 July 2018 to enquire about this correspondence. He was told by the respondent that it was indeed the appeal outcome and that *"all can wait for your return"*.
9. The claimant had been suffering from hypertension following the loss of his father and the loss of his job. He consulted his GP in July soon after he returned and was put on medication. The claimant has not provided any evidence of this, but I fully accept his evidence on this point. He described his symptoms in detail and the clear effects on him of the losses he has suffered which have affected him quite considerably. Nevertheless, having been applying for jobs internally prior to 30 April, he continued his job search externally from his return in July onwards.

10. In August 2018, the claimant applied for Job Seeker's Allowance.
11. On 14 August 2018, the claimant wrote to the respondent in response to the appeal outcome. That email included the following wording: -  
  
*"I have no choice but to now forward this matter and seek external help. I will be putting this to the Employment Tribunal to get my money and be treated fairly as expected from a blue chip company".*
12. The claimant could not afford to consult a solicitor but did contact the Citizen's Advice Bureau sometime in August. They referred him to Acas. The claimant said that he tried to contact Acas at the end of August and tried ringing on two or three occasions without success. It seems implausible to me that he would be unable to obtain any response from the Acas Helpline but in any event, this does not explain a delay until 10 September when the claimant did speak to Acas thereby commencing the early conciliation process. Acas issued the early conciliation certificate immediately and it is fair to assume at that point, the claimant realised that time was very much of the essence.
13. The claimant says that he received his Acas certificate on or about 22 September 2018 and issued the claim form to the Tribunal a couple of days later on 24 September. Again, it seems implausible that it would have taken Acas almost two weeks to send out the certificate and it is not clear why the certificate could not have been sent to the claimant by email.
14. The claimant told me that he did not know of the three month time limit until it was mentioned by the respondent after these proceedings had been issued. I accept that he did not know that it was a three month period but he must have been aware of the urgency of the situation from 10 September at the very latest.
15. The claimant applied for a Masters Course at Aston University in January 2019.
16. The time for the claimant to bring the complaint of unfair dismissal expired on 29 July 2018. The time for the breach of contract complaint expired on 29 July at the very latest and may well have expired a couple of days earlier depending on the date of payment of the claimant's final salary.

### **The Law**

17. Complaints of this nature must be brought within three months or alternatively *"within such further period as the Tribunal considers reasonable in a case where it is satisfied where it was not reasonably practicable for the complaint to be presented before the end of that period of three months"*. There is therefore a two stage test. Firstly, was it reasonably practicable for the claimant to have presented the claim before

the expiry of the initial time period and if not, is it reasonable to extend time to 24 September 2018?

18. The wording in quotes above should be given a "*liberal construction in favour of the employee*" but the onus is on the claimant to prove that it was not reasonably practicable to present the claim in time.

### Conclusions

19. I do not consider it was reasonably practicable for the claimant to have brought his claim before he returned from Gambia on 7 July 2018.
20. The question of whether it was reasonably practicable for him to have brought the claim before 25 July or 29 July (as the case may be) is more finely balanced. I take into account that the claimant had only recently returned from Gambia and was suffering from ill health such that he sought medical assistance in July. On balance, I consider it was not reasonably practicable for him to have presented his claim before the time limits expired. However, I do not consider it reasonable to extend time to 24 September. The claimant was clearly aware of his rights to bring his claim as evidenced by his email on 14 August. I do have considerable sympathy for the claimant in respect of the loss of his father and his job and the effect which this had upon him. During this period, however, there was no suggestion that he was unable to carry out other activities such as an application for Job Seekers Allowance and making applications for alternative employment. The claimant is clearly an intelligent and articulate person, currently studying for a Masters qualification. He was aware of his ability to bring a claim to the Tribunal by mid-August at the very latest and in my judgment, this put him on enquiry as to the time limits involved. Ignorance of the time limits themselves is not sufficient to make it reasonable to extend time unless that ignorance in itself is reasonable and taking into account all the circumstances, I do not think it was.
21. For these reasons, I do not consider it is reasonable to extend time for a further period of almost eight weeks and I therefore conclude that the Tribunal has no jurisdiction to hear the claimant's claim.

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Employment Judge Finlay

Date: 28 April 2019

Sent to the parties on: .....03.05.19...

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For the Tribunal Office