



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr A Depass  
**Respondent:** Center Parcs Limited  
**Heard at:** Nottingham  
**On:** 3 June 2019  
**Before:** Employment Judge Faulkner (sitting alone)

## Representation

**Claimant:** Did not attend  
**Respondent:** Mr A Webster (Counsel)

## JUDGMENT

The Claimant having failed to attend the Hearing, his Claim is dismissed pursuant to rule 47 of Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.

## REASONS

1. This case came before me for Final Hearing today, 3 June 2019. The Claimant's complaints were of unfair dismissal and either breach of contract or breach of the Working Time Regulations 1998 related to either alleged failure to pay holiday pay or alleged failure to make a payment in lieu of accrued but untaken holiday on termination of employment.
2. The Respondent was represented by Mr Webster of counsel and also had in attendance two witnesses, Mr Coleman and Mr Stothard, together with two observers from its Human Resources team. The Claimant did not attend.
3. Rule 47 to Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 ("the Rules of Procedure") provides:

*“If a party fails to attend or to be represented at the hearing, the Tribunal may dismiss the claim or proceed with the hearing in the absence of that party. Before doing so, it shall consider any information which is available to it, after any enquiries that may be practicable, about the reasons for the party’s absence”.*

4. In accordance with that rule, I asked one of the Tribunal clerks to telephone the Claimant to enquire of his whereabouts, which he did at around 10.10 am. The clerk’s note of that call, now on the Tribunal file, states that the Claimant informed him he had not received correspondence stating at what time on today’s date or where the Hearing would take place. He was therefore in Worksop. He enquired whether the case might proceed after the Hearing, by telephone, as he would not be able to state his case. The clerk’s account of that conversation given to me immediately after it was consistent with his note, in that he informed me the Claimant had said he was aware that the Hearing was taking place today, but did not know at what time or where, and so would not be attending.

5. Shortly after the delayed start of this Hearing, occasioned by the enquiries referred to above and by my needing to consider the jurisdictional point referred to below, the Tribunal clerk handed me an e-mail, with a copy for the Respondent, sent by the Claimant to the Tribunal at 10.22 am. That email reads:

*“To whom this concerns. //I have not received a date, time or location for this Tribunal. I am currently one hour and a half away in distance and without any paperwork to defend myself. This was the exact last response I received and was waiting for date of hearing. //Please find attached document. //I would like to give my account in person”.*

6. The attachment to the email was a copy of the Tribunal’s letter to the Respondent of 30 April 2019, copied to the Claimant, stating that the Respondent’s Response had been accepted by the Tribunal. It was addressed to the Claimant at the same address as all other Tribunal correspondence on file.

7. I noted in particular that in his e-mail of today’s date the Claimant referred to not having been aware of the date of the Hearing. This contrasts markedly with the clerk’s note and account of the telephone conversation referred to above. Mr Webster also drew my attention to the correspondence on the Tribunal’s file dated 4 March and 8 April 2019 respectively, in which the Respondent made and then withdrew (before it was dealt with) an application for today’s Hearing to be postponed. In both of those emails the Respondent naturally mentioned today’s date as the date of the Hearing. The Claimant was copied into that correspondence by way of the email address which he used to write to the Tribunal today.

8. The procedural background to this case, which I also had need to consider before the Hearing commenced, led me to conclude that on the face of it the Claim was presented to the Tribunal outside of the relevant time limit. This raised the question of whether the Tribunal had jurisdiction to consider it. It is necessary to provide a brief summary of the history of the case to explain why that is the case.

9. The effective date of termination of the Claimant’s employment is said by the Respondent to have been 27 September 2018. The Claimant said in his Claim Form that it was in fact 27 October 2018. I am satisfied that the Respondent was right in this respect.

10. Anticipating the full hearing of the case today, the Respondent presented what appears to have been an agreed bundle of documents. Although for reasons which will appear below, I did not hear any witness evidence, in order to satisfy myself as to

the correct date of termination I considered the following documents within the bundle:

10.1. the minutes of the disciplinary hearing, at the end of which (page 197) the Claimant was told of his dismissal and arrangements regarding his attendance on site and his pay were discussed as applying up to that point;

10.2. the dismissal letter of 1 October 2018 at page 205 which referred to a termination date of 27 September 2018;

10.3. the e-mail at page 208 dated 3 October 2018 in which the Claimant appealed against his dismissal – this was obviously before 27 October 2018;

10.4. the notes of the appeal hearing which took place on 11 October 2018 (see page 213), again well before 27 October 2018; and

10.5. the appeal decision letter dated 31 October 2018 at page 235 which confirms the September date as the date of termination.

11. Whilst occasionally and very unusually, disciplinary procedures or contracts of employment provide that employment continues until any appeal is resolved, there is nothing, either in the disciplinary procedure set out in the bundle (see in particular page 53) or in the note of the Claimant's terms and conditions of employment (see in particular page 37) which suggests that this is so in this case. I am satisfied therefore that the date of termination of the Claimant's employment was 27 September 2018.

12. The Claim Form was presented to the Tribunal on 7 November 2018, on the face of it therefore in time. It was however presented without an ACAS Early Conciliation number. Section 18A of the Employment Tribunals Act 1996 ("ETA") provides, as far as relevant, as follows:

*"(1) Before a person ('the prospective claimant') presents an application to institute relevant proceedings relating to any matter, a prospective claimant must provide to ACAS prescribed information, in the prescribed manner, about that matter.*

*(4) [This section deals with the issue of an early conciliation certificate by a conciliation officer].*

*(7) A person may institute relevant proceedings without complying with the requirement in subsection (1) in prescribed cases. The cases that may be prescribed include in particular cases where the requirement is complied with by another person instituting relevant proceedings relating to the same matter ...*

*(8) A person who is subject to the requirement in subsection (1) may not present an application to institute relevant proceedings without a certificate under subsection (4)".*

13. I note that subsection (8) is in mandatory terms. It is supplemented by rules 10 and 12 of the Rules of Procedure which provide for a claim to be rejected in the absence of an early conciliation number.

14. On 25 January 2019, which according to the Tribunal file was the first date on which the Tribunal took any action in this matter, the Tribunal wrote to the Claimant asking him to confirm who the other person was that he was making his Claim with. This was because the Claimant, who had ticked the box on the Claim Form saying

that there was no early conciliation number, had also ticked the box to say that the reason for this was that another person with whom he was making a claim had such a number. The Claimant replied by e-mail on 30 January 2019 providing an early conciliation number and the Claim was then accepted. The ACAS Early Conciliation Certificate on the Tribunal's file shows the date of Early Conciliation notification and the date of issue by ACAS of the certificate to be 30 January 2019.

15. Plainly however, by the time the mandatory requirement to provide the early conciliation number and obtain an ACAS Early Conciliation certificate had been complied with, which was the earliest date on which the Claimant could be said to have presented a valid claim to the Tribunal, namely 30 January 2019, his complaints were out of time. This is so whether the date of termination of his employment was 27 September or 27 October 2018. The time limit is three months from the effective date of termination. There is nothing on the file that suggests any of the exemptions set out in section 18A(4) ETA applied.

16. It was thus my intention to commence today's proceedings by hearing from the Claimant his evidence as to why it was not reasonably practicable for him to bring his complaints in time and, if I found that it was not, why he says that he had brought it within such further time after the three month time limit as was reasonable. Had I ruled in his favour in this respect, extending time for him to pursue his Claim, and had there been enough time left in the day, we would then have proceeded to consider the substantive case. As I have noted however, the Claimant was not in attendance to present any such evidence or arguments.

17. Mr Webster informed me that the only copy of the Claim Form which the Respondent had was given to it by ACAS. It included the Early Conciliation number. It is not at all clear to me from the Tribunal file how that came about, but in any event, it could not have been earlier than 5 February 2019, which is when the Tribunal first attempted, it appears unsuccessfully, to serve the Claim Form on the Respondent. Indeed, there is correspondence on the Tribunal file from the Respondent later in February stating that the papers had not been served and then stating that it had received a copy from ACAS. The Notice of Claim dated 5 February 2019 also included Notice of today's Hearing, which confirmed the start time and location. It was copied to the Claimant at the correct address.

18. In the above circumstances, as Mr Webster said, there were three options before me, namely postponement, proceeding with the Hearing as far as it was possible to do so in light of the jurisdictional point I have described, or dismissing the complaint under rule 47.

19. In deciding how to proceed, I had regard of course to the overriding objective of dealing with cases fairly and justly, set out at rule 2 of the Rules of Procedure. Dealing with cases fairly and justly does include ensuring the parties are on an equal footing, and no doubt as is usually the case the Claimant is not on an equal footing with the Respondent as far as resources are concerned. The overriding objective also requires however that Tribunals deal with cases in a proportionate way, avoid delay so far as compatible with proper consideration of the issues and, as far as practicable, have regard to saving expense.

20. With all of that in mind, I entirely agree with Mr Webster that it would not have been fair and just to postpone the Hearing to commence on another day. I considered the Claimant's e-mail, and treated it as a request for a postponement, but I also have to have regard to the interests of the Respondent. It instructed counsel and attended today with its two witnesses, which even if I disregard for these

purposes the attendance of the two observers, put it to considerable cost and investment of time.

21. Moreover, I make clear that I am wholly unsatisfied by the Claimant's explanation for his absence today, for two obvious reasons to which I have already referred. First, the content of his conversation with the Tribunal clerk and his e-mail to the Tribunal differ in the crucial respect of his knowledge of the date of the hearing. Secondly, there is more than sufficient correspondence on the Tribunal's file to indicate that he was well aware of the date. For these two reasons, I conclude that he was. That being so, and given, as Mr Webster pointed, out that he had been in regular contact with the Tribunal and indeed with the Respondent, I can see no reason why, if the Claimant was uncertain as to the location and time of today's Hearing, he could not have contacted the Tribunal to confirm those details. To postpone the hearing in the face of such an inadequate explanation, thus putting the Respondent to further expense and delay in having the matter resolved, would not have been a just way to proceed in my view.

22. For the same reasons, namely the unsatisfactory explanation as to the Claimant's non-attendance and the clear evidence that he knew it was taking place today and could quite readily have confirmed the time and location which had previously been notified to him, although I am of course mindful that dismissing a complaint is always a serious matter, I concluded that it would be the right course of action to dismiss the Claim in this case as rule 47 of the Rules of Procedure empowers me to do.

23. Of course, in normal circumstances if the Claimant were able to demonstrate that I had missed or misunderstood something of importance which he wished to bring to my attention in this regard, the decision to dismiss the Claim could be reconsidered. In this case I make clear however, that even if I had not dismissed the claim under rule 47 because of the Claimant's non-attendance, and had thus taken the alternative course of proceeding with the Hearing in his absence, I would have been bound to start by considering whether the Tribunal had jurisdiction to consider the complaints for the reasons I have given. In other words, I would have first had to consider whether it was not reasonably practicable for the Claimant to bring his complaints in time.

24. As Mr Webster points out, the burden in this respect would have been on the Claimant and he was not present to discharge it. I have considered the fact that there was a lengthy delay between receipt of the Claim Form in early November 2018 and the letter to the Claimant of 25 January 2019 raising the question of the Early Conciliation number. This was no doubt because of the considerable workload which the Tribunal administrative staff have been dealing with for some time. It is not for me to say however that this delay merits an extension of time. That is a matter for the Claimant and in any event on the face of it, the delay by the Tribunal would not have supported an argument that it was not reasonably practicable to make the Claim within the usual time limit. Accordingly, even had I proceeded with the Hearing in the Claimant's absence, I would have struck out the complaints on the basis that the Tribunal does not have jurisdiction to hear them, the Claim having been presented late and no reason having been provided as to why time should be extended.

25. The Claim is therefore dismissed for the reasons I have given. Mr Webster indicated that whichever route I took the Respondent instructs him to pursue a costs application. As I made clear, I was not in a position to deal with that substantively today, given the requirements of rule 77 of the Rules of Procedure to give the Claimant a reasonable opportunity to make representations about it. I therefore

made Orders regarding the costs application and the Claimant's response to it. The Orders will be provided to the parties separately from this Judgment.

---

Employment Judge Faulkner

Date: 3 June 2019