



EMPLOYMENT TRIBUNALS

Claimant: Brett Millington

Respondent: Asda Stores Ltd

Heard at: Bodmin **On:** 25 June 2019

Before: Employment Judge Housego

Representation

Claimant: Did not attend and was not represented

Respondent: Mr N Moore, of Counsel, instructed by Addleshaw Goddard LLP

JUDGMENT

1. **The claims are struck out.**

REASONS

1. This was a hearing to determine the applications of the respondent to strike out the claims. The claims were said to be out of time. No reason was advanced as to why it was not reasonably practicable for the claim for unfair dismissal to have been submitted in time, and no reason had been advanced to explain the late submission of the discrimination claim, and so it was not just and equitable to extend time where the claim.
2. The respondent also applied at this hearing to strike out the claims as having no reasonable prospect of success, or for a deposit to be ordered on the basis that they had little reasonable prospect of success.
3. The claimant had contacted the respondent's solicitor at the end of the previous week, saying that he might not be able to attend the hearing by reason of work commitments. They had contacted the Tribunal, which had written to the claimant at 12:48 on 24 June 2019 telling him that there was no application for an adjournment and that the hearing would proceed. That letter was sent by email to the email address given by him on his claim form.

4. The claimant did not attend, and did not contact the Tribunal. The claim form contains a mobile telephone number. I rang it at 10:10am. The number was unobtainable. I rang again and a recorded message from the telecom provider said that the call *“could not be answered at this time”*.
5. I decided to proceed with the hearing. The claimant knew of the hearing (for had said that he might not attend it) and he had decided not to attend, but made no application for an adjournment.
6. I strike out the claim under rule 47 of schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.
7. The time limit for all the claimants claims is 3 months, extended by the early conciliation provisions. The claimant was summarily dismissed on 08 December 2018. The 3 month period would expire on 07 March 2019. The early conciliation period was 06 February 2019 to 01 March 2019. This means that time expired 1 month after the end of the early conciliation period, and so on 30 March 2019. The claim was lodged on 04 April 2019, and so was out of time.
8. I strike out the unfair dismissal claim for the second reason that the claim is out of time. The claimant has offered no reason as to why it was not reasonably practicable for him to submit the claim in time, and therefore there can be no other conclusion.
9. I also strike out the discrimination claims for the same second reason that they are out of time. The time limit in such claims is not absolute, and can be extended if it is just and equitable to do so. Absent any explanation or attendance, there is no evidential basis on which I could conclude that it would be just and equitable to extend time.
10. For both reasons (non attendance and being out of time) I strike out all the claims of the claimant.
11. The respondent made application for the costs of this hearing limited to Counsel’s brief fee of £850, exclusive of VAT. In principle I consider a costs order should be made under Rule 76(1)(a), on the basis that the claimant’s conduct of the proceedings has been unreasonable, as he knew of the hearing and decided not to attend, but neither withdrew his claim nor made application for adjournment. The time points are very clearly set out in the response to the claim, and the claimant has not attempted to address them. However Rule 77 precludes a costs order unless the paying party has had an opportunity to make representations in writing. Accordingly I make an “unless” order in respect of costs.

UNLESS ORDER
Employment Tribunals Rules of Procedure 2013 Rule 38

Unless by noon on 10 July 2019 the claimant shows good cause why a costs order should not be made against him in respect of his non attendance at the hearing on 25 June 2019, he is ordered to pay to the respondent the sum of £850.

Employment Judge

Date 25 June 2019