



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr Richard Laybourn

**Respondent:** 1. Stephens & George Limited  
2. The Enfield Printing Company Limited (t/a The Magazine Printing Company)

## RECORD OF AN OPEN PRELIMINARY HEARING

**Heard at:** Watford

**On:** 23 August 2019

**Before:** Employment Judge Alliott (sitting alone)

### Appearances

For the claimant: In person

For the respondent: Mrs V Jones (Director of Stephens & George)

## JUDGMENT

1. The tribunal is unable to determine whether the claimant's claims for unfair dismissal and for damages for breach of contract are out of time.
2. In all the circumstances, in the event that the claimant's claim was out of time, it would be reasonable to extend time for bringing his claims to 25 September 2018.

## REASONS

1. This Open Preliminary Hearing was directed by Regional Employment Judge Byrne on 7 January 2019 to determine the following issue:

“To consider whether the claims of unfair dismissal and for damages to breach of contract are out of time and if so whether time should be extended.”

2. The claimant was employed on 26 January 2015 as a Van Driver. On 28 March 2018 he was informed that his position was redundant but that he would not have to work his notice period. There was a dispute between the parties as to whether he was directed to deliver his van to Wales in early April 2018 and whether the claimant had refused to do so. I do not consider that I need to determine the rights or wrongs of that issue save to observe that any direction to the claimant to

do some work is only consistent with his contract of employment enduring. Mrs Jones, for the respondents, has shown me the claimant's P45 and this indicates that his employment ceased on 24 April 2018. That document also indicates that his employer was Enfield Printing Company (the actual legal entity being Enfield Printing Company Limited). In his claim form the claimant has stated that his employment ceased on 24 April 2018.

3. It is clear to me that the effective date of termination of the claimant's employment was 24 April 2018 and I so find.
4. Given the EDT of 24 April 2018 it follows that the three-month primary limitation period would have expired on 23 July 2018.
5. The claimant's claim form was presented on 25 September 2018. Thus, on the face of it, the claim has been presented just over two months out of time.
6. At the outset of his hearing I had an Acas Certificate in relation to the Second Respondent which indicated that the notification was dated 4 September 2018 and the Certificate was dated 18 September 2018. That is Certificate R312361/18/08 which is the early conciliation number recited on the claimant's claim form.
7. As regards the First Respondent, I have been shown an Acas Certificate which indicates that the notification was made on 2 August 2018 and the date of the Certificate was 30 August 2018. That is Certificate Number 295517/18/90. However, that certificate number does not accord with the one given on the claimant's claim form which is R290488/18/52.
8. During the course of his evidence Mr Laybourn produced to me two more Early Conciliation Notification Forms and an email from Acas dated 20 July 2018. One of these Early Conciliation Notification Forms has the reference number R312348/18. That was submitted on 4 September 2018. I have no further information concerning that reference number.
9. However, the second Early Conciliation Notification Form, with reference R290488/18 (which is the one referred to in the claimant's claim form) confirms that it was submitted to Acas on 20 July 2018. The email exchanges that I have referred to indicate a confirmation that Acas had received the claimant's notification on 20 July 2018. The email heading is as follows:-

“Acas Early Conciliation: R290488/18: Laybourn v Stephens & George Print Group incorporating The Magazine Printing Company”
10. Thus, the evidence before me suggests that the claimant submitted a notification to Acas about a claim against both respondents on 20 July 2018 which is prior to the expiry of the primary limitation period on 23 July 2018.
11. During the course of this hearing I adjourned for enquiries to be made of Acas as to whether or not there was a certificate in relation to the notification R290488/18, and, if so, what the date of it was. The information obtained by my clerk from Acas was to the effect that they had wiped their systems and had no records of the certificates issued during 2018.

12. Consequently, I am in the position of not being able to determine whether or not the claimant's claim was in time. Notification to Acas on 20 July 2018 would have "stopped the clock" in relation to the expiry of the deadline. Dependent on the date of the Certificate, the claimant's claim might or might not be in time as he would have had one month from the day after the date of the Acas certificate.
13. Generally speaking, Acas certificates are issued about a month after the notification although this is by no means a hard and fast rule. If the Certificate was issued about a month after the notification, it would have been issued around 20 August 2018, which would have meant that the time for presenting the claim would have expired on 19 September 2018. Form ET1 was presented on 25 September but, in my judgment, if the claimant's claim was out of time, then it can only have been by a matter of days.
14. The claimant candidly told me in evidence that very soon after his employment had been terminated in April 2018, he was in contact with the CAB who arranged for him to see a Solicitor who informed him that the time for presenting an unfair dismissal claim was three months from dismissal. Consequently, the claimant was aware of both his ability to present a claim for unfair dismissal and the requirement to present that claim within three months. The claimant told me in evidence that as far as he was concerned he had begun the process within time by virtue of the notification to Acas on 20 July 2018. He told me that there were some doubts in his mind as to who his employer was and, in my judgment, that is understandable given that all the correspondence that I have seen relating to redundancy and dismissal has been on paper headed with Stephens & George. The claimant accepted that he was paid from a bank account in the name of Enfield Printing Company Limited and that was the name that appeared on his wage slips. However, I accept that he was in some doubt as to who, in law, his employer was and that is borne out by the email that he sent to the CAB Solicitor dated 28 July 2018. That email explained why, on his notification, he had cited both Stephen & George Print Group and the Magazine Printing Company.
15. In all the circumstances I have concluded that it was not reasonably practicable for the claimant to present his claim in time (in the event that he is out of time) and that it was reasonable for him to present it on 25 September 2018. Accordingly, I extend time to that date.

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**Employment Judge Alliott**

Date; 2 September 2019

Sent to the parties on:

24 September 2019

For the Tribunal:

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