



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr L Hackett

**Respondent:** G4S Secure Solutions (UK) Limited

**Heard at:** Nottingham      **On:** 13 August 2019

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

## Representatives

**Claimant:** In Person

**Respondent:** Mr N Sheppard, Senior Counsel

# JUDGMENT

The Employment Judge gave judgment as follows: -

The Employment Tribunal does not have jurisdiction to hear the claim of unfair dismissal. The claim is dismissed.

# REASONS

## Background to the Claim

1. The Claimant presented his claim to the Tribunal on 23 January 2019. He said that he had been employed by the Respondent from 1 October 2014 until 3 September 2018 as a Cargo Screener. His claim was of unfair dismissal only.

2. With the claim form there was an early conciliation ("EC") certificate. The date of notification of ACAS was 26 November 2018 and the date of the certificate was 11 December 2018.

3. The claim appeared to be presented out of time and this hearing was converted from the original hearing to decide whether the Tribunal had jurisdiction to hear the claim.

4. I must decide: -

4.1 Was the claim presented in time?

4.2 If it was presented out of time, was it reasonably practicable to present the claim in time?

4.3 If it was not, was it presented within such further time as was reasonable?

## Evidence

5. I heard evidence from the Claimant and he presented to me various documents in support of that evidence. I had no reason to doubt what he said to me and his evidence was not challenged.

## Relevant Facts

6. The Claimant was employed by the Respondent as a Cargo Screener. He worked at East Midlands Airport. He started work for the Respondents on 1 October 2014.

7. On 3 September 2018 he attended a disciplinary hearing. I have seen the notes of that hearing which was conducted by his manager, Jason Storer. The Claimant had with him Trevor Mosely who was his union representative, the Claimant being a member of the Unite trade union and they are a recognised trade union by the Respondents.

8. The hearing was lengthy and at the end of it Mr Storer decided to adjourn. He said that he would not make a decision that night but would go through everything in the morning and speak to the Claimant later.

9. Mr Storer eventually spoke to the Claimant sometime between 4:00 pm and 6:00 pm. He had had to wait for Human Resources to come back to him. He told the Claimant that he had decided to dismiss him with immediate effect and that a letter would be sent to confirm the position.

10. A letter was sent to the Claimant dated 5 September 2019 confirming that he was dismissed for gross misconduct. The letter which I have seen also confirms that he was dismissed with effect from 4 September 2019.

11. Mr Hackett appealed against that decision and the appeal hearing was conducted on 18 October 2018 by Mark Betteridge, Regional General Manager. The Claimant was attended by another union representative. Mr. Betteridge adjourned the hearing and then wrote to the Claimant on 26 October 2018 to confirm that the decision to dismiss him was upheld. The Claimant was told of his right of a second appeal and on 30 October 2018 he lodged that second appeal.

12. The Claimant was aware of the 3-month time limit and decided to contact ACAS. He notified ACAS on 26 November 2018 and ACAS issued him with a certificate on 11 December 2018.

13. At the hearing the Claimant also produced a second ACAS certificate. This was sent to him by a conciliator. That certificate name the respondent as G4S. The date of receipt of ACAS of the EC notification on that certificate is 23 November 2018 and the date of issue of the certificate was 23 December 2018.

14. I am satisfied that the Claimant believed that he had until 23 January 2019 to present his claim and when he had not heard from the Respondents about his second appeal he presented his claim to the Tribunal on 23 January 2019.

15. The Claimant had never been involved in a case such as this before and did genuinely believe that he had until that date to present his claim. There was no other reason for his delay in presenting the claim.

## The Law

16. The burden of proof is on the Claimant to satisfy me that the tribunal has jurisdiction to hear his claim of unfair dismissal. Section 111 Employment Rights Act 1996 (“ERA”) provides:

“(2) ... an employment tribunal shall not consider a complaint under this section unless it is presented to the tribunal: -

(a) before the end of the period of three months beginning with the effective date of termination, or

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.”

17. Employment Tribunal proceedings under this section are “relevant proceedings” for the purpose of the conciliation provisions contained in the Employment Tribunals Act 1996. Before a Claimant can present an application to institute proceedings for unfair dismissal the prospective Claimant must provide to ACAS prescribed information in the prescribed manner about the matter.

18. Section 207B Employment Rights Act deals with the extension of time limits to facilitate conciliation before institutional proceedings:

“(1) This section applies where this act provides for it to apply for the purposes of a provision of this act (a “relevant provision”). But it does not apply to a dispute that is (or so much of a dispute as is) a relevant dispute for the purpose of Section 207A.

(2) In this section: -

(a) Day A is the day on which the complaint or applicant concerned complies with the requirement in subsection (1) of Section 18A of the Employment Tribunals Act 1996 (requirement to contact ACAS before instituting proceedings) in relation to a matter in respect of which the proceedings are brought, and;

(b) Day B is the day on which the complainant or applicant concerned receives or, if earlier, is treated as receiving (by virtue of regulations made under subsection (11) of that section) the certificate issued under subsection (4) of that section.

(3) In working out when a time limit set by a relevant provision expires the period beginning with the day after day A and ending with day B is not to be counted.

(4) If a time limit set by a relevant provision would (if not extended by this subsection) expire during the period beginning with day A and ending one month after day B, the time limit expires instead at the end of that period.”

19. I also referred myself to the case of the **Commissioners for HM Revenue and Customs v Garau** [2017] ICR 1121. That case held that the early conciliation certificate provisions do not allow for more than one certificate of early conciliation per “matter” to be issued by ACAS. If more than one such certificate is issued, a second or subsequent certificate is outside the statutory scheme and has no impact on the limitation period.

**My Conclusions**

20. I am satisfied that the Claimant was dismissed on 4 September 2018. That was the date he was told by Mr Storer that he was dismissed.

21. The Claimant had been represented by his trade union during the dismissal process and knew about the time limits to make a claim for unfair dismissal and that they would be applied strictly.

22. The appeal process, as he knew, did not affect the time limit.

23. He contacted ACAS as he knew he should prior to issuing the claim and received his ACAS EC certificate on 11 December 2018.

24. The second ACAS certificate issued on 23 December 2018 against GRS had no effect.

25. Taking into account the early conciliation extension of time the claim should have been presented one month after the first ACAS certificate, i.e. on 11 January 2019.

26. The Claimant’s explanation that he mistakenly believed that he had until 23 January 2019 to present his claim is not sufficient for me to hold that it was not reasonably practicable to present the claim in time.

27. I am satisfied that the Claimant has not been able to establish it was not reasonably practicable to present his claim in time and as it was presented out of time the Tribunal does not have jurisdiction to hear the claim of unfair dismissal. It fails and is dismissed.

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Employment Judge Hutchinson

Date 1 October 2019

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE