



# EMPLOYMENT TRIBUNALS

*Claimant*  
**Mr Scott Wilson**

*Respondent*  
**Eden Global Infrastructure Limited**

**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**  
**At a Public Preliminary Hearing by telephone**

**HELD AT NEWCASTLE**  
**EMPLOYMENT JUDGE GARNON (SITTING ALONE)**

**On 13 July 2020**

*Appearances*

For Claimant:           in person  
For Respondent:       no attendance

**JUDGMENT**

**The claim of unfair dismissal is dismissed on withdrawal by the claimant. The remaining claims were presented outside the time limit prescribed for doing so, in circumstances where it was not reasonably practicable for them to be presented within time, and were presented within a reasonable time thereafter. The Tribunal will consider those claims.**

**REASONS**

1. During the Covid19 pandemic, I, like many judges, am working from home, without the paper file or printing facilities. The Tribunal staff, working split shifts to maintain social distancing, are under great pressure so I have not seen everything on the paper file but I have enough to make this decision. On the claim form, presented on **24 October 2019** the claimant has ticked boxes for notice pay, holiday pay and arrears of pay. He also ticked the box for unfair dismissal.

2. The facts he alleges can be briefly set out. He started work for the respondent on 29 October 2018. He and others were dismissed without notice on closure of the business on 12 February 2019. The respondent said he would receive his wages, notice and holiday pay in the week commencing 18 February. He has never been paid.

3. On all the primary relevant provisions as to time limits for bringing a claim, the claim needed to be presented by 11 May 2019 but with effect from 6 April 2014 s 207B of the Employment Rights Act 1996 provides for extension of time limits to facilitate Early Conciliation (EC) before institution of proceedings. The claimant contacted ACAS to commence EC on 21 February 2019 (Day A) and the respondent or ACAS conciliator extended the normal 4 week EC period until 4

April 2019 (Day B) when he received notice the EC process had been unsuccessful and an EC Certificate. The days between A and B do not count towards the running time limit. The claim now needed to be presented by 22 June 2019.

4. The claimant says, and I accept, he submitted an ET1 online before then but received no correspondence back. He waited for several weeks for a reply . Not having had one from the Newcastle Office of the Tribunal, because it had no knowledge of the claim submitted online , he had no address or telephone number to contact.

5. He contacted ACAS again who told him to try submitting another claim which he did. The date on the form showing when it was received is 24 October 2019. He then received notice his claim had been rejected as his EC number was not recognised by ACAS. When he queried this with ACAS they said it may have been a fault on their side as there had been a data migration He contacted the Tribunal. He was then notified his claim was accepted and received notification **on 30 January 2020**. A standard form letter written to him that day includes:

*It has come to our attention that this Claim was rejected in error and after a reconsideration by Employment Judge Garnon, the whole claim is now accepted. Because the original decision to reject the claim was correct but the defect which led to the rejection has since been rectified, the claim form is to be treated as having been received on 24.10.2019.*

*The respondent now has 28 days from the date of this letter to respond to the parts of the claim that were previously rejected. If a response is not received or not accepted a judgment may be issued and the respondent will only be entitled to participate in any hearing to the extent permitted by the Employment Judge who hears the case.*

6. I have no recollection of making this decision and no paper file to see exactly what I wrote and when. However, I would not say a claim was rejected “in error”, but go on to accept it was correct to reject. I must have been satisfied the claim had been submitted with an EC number which **appeared** invalid, but at a later date it was found, **as has happened many times**, the ACAS site which the Tribunal staff use to check on the validity of the number was not accurate. In effect I was holding the claimant was not at fault. The most probable explanation for it taking until January 2020 to identify what had gone wrong is that it took that long for the ACAS records to be corrected.

7. It is likely the claim was served on or shortly after 30 January. A response would have been due by 28 February but none was received. That would prompt a referral to a Judge to consider a Rule 21 judgment which should have occurred in early March. That is when the Covid 19 “lockdown” started, which is the most probable explanation for it taking until May for the file to be seen by a Judge.

8. On 12 May 2020 Employment Judge Johnson gave notice under Rule 27 the claim may be struck out because (a) the claimant did not have the qualifying period of continuous employment to claim unfair dismissal and it appeared the other claims had been presented well out of time. I see Employment Judge Johnson postponed a hearing for 18 May, which probably was listed at service. In reply the claimant wrote he was not claiming unfair dismissal and gave the explanation for delay in presenting which I have set out above. He added :

*I have been conscious to follow the letter of the law throughout this process and feel that the **technology of the system has let me down**, I received no correspondence whatsoever after*

*submitting the first ET1 and then a rejection following the second submission, none of these factors are on my side so therefore I do not feel it is fair to have them held against me.*

9. The burden of proving it was not reasonably practicable rests on the claimant, Porter-v-Bandridge 1978 ICR 943. Palmer-v-Southend on Sea Borough Council 1984 IRLR 119 held to limit the meaning of “reasonably practicable” to that which is reasonably capable physically of being done would be too restrictive a construction. We must ask “Was it reasonably feasible (“do-able”) to present the complaint within three months?” The question is one of fact for the Tribunal taking all the circumstances into account. Wall’s Meat Company-v-Khan, Riley-v-Tesco Stores and Dedman-v-British Building and Engineering Appliances Ltd held it may be enough to mean it was not reasonably practicable where the claimant was **reasonably** ignorant of the correct time limit. In modern times one must add **reasonably** ignorant of **the correct processes to follow in order to present a claim and have it accepted**.

10. The reason **this** claim was presented late was simply that the claimant believed he had already presented one validly. What happened to that claim is the modern day electronic equivalent of a validly posted claim being lost in the post on its way to the Tribunal office at which claims can be presented. I cannot explain how that happens in a digital world but this is not the first time I have known it to, albeit it happens rarely. The claimant gave sworn evidence today. I believe his account and accept any mistakes he made are understandable. The present rules for valid presentation and the requirement for EC through ACAS before that are not at all easy for litigants to follow. A combination of technology malfunctions and latterly the effects of the pandemic caused the initial confusion and subsequent delay in spotting the problem. A lawyer or other person used to submitting claims would have realised earlier something was wrong and known how to correct it, but the claimant waited patiently before realising his initial claim had gone astray. In my judgment that should not be held against him. I therefore find he presented with such further time as was reasonable.

**Employment Judge TM Garnon**  
**Judgment authorised by the Employment Judge 13 July 2020**