



EMPLOYMENT TRIBUNALS

**Claimant**  
**Mr T Alakiu**

v

**Respondent**  
**DNATA Limited**

**OPEN PRELIMINARY HEARING**

**Heard at: London South by CVP**

**On: 12 October 2020**

**Before: Employment Judge Truscott QC**

**Appearances:**

**For the Claimant: In person**  
**For the Respondent: Mr E Duffield solicitor**

This has been a remote hearing which was not objected to by the parties. The form of remote hearing was video. A face to face hearing was not held because it was not practicable to do so.

**JUDGMENT on PRELIMINARY HEARING**

1. The claim of unfair dismissal has not been lodged within the time limit provided by section 111(2)(a) of the Employment Rights Act and it was reasonably practicable to do so within time, accordingly the claim is dismissed.

2. The claims of sexual orientation and race discrimination have not been lodged within the time limit provided by section 123(1) of the Equality Act and it is not just and equitable to extend the time limit, accordingly the claims are dismissed.

**REASONS**

**Preliminary**

1. This preliminary hearing was fixed in order to consider the claimant's ET1 which was lodged out of time.

2. The claimant gave evidence on his own behalf. There was a bundle of documents to which reference will be made where necessary.

**Findings**

3. The claimant commenced employment with the respondent on 5 May 2015.

4. On 22 May 2019, the claimant was suspended while an investigation took place. On 14 June, he was told that no further action was intended but he was further suspended as there was a new allegation. He was dismissed on 9 August 2019. He was not at work during the period of suspension.

5. The claimant appealed against the decision to dismiss by email on 15 August 2019. His appeal was not successful.

6. He was aggrieved by his dismissal, he felt “used and abused”. He consulted the CAB and his trade union. He does not recall the CAB telling him of a time limit. In consequence of speaking with a friend who had also been dismissed by the respondent, he contacted ACAS and lodged his claim with the Employment Tribunal.

7. The claim should have been lodged by 8 November 2019. It was lodged on 17 December 2019. The ACAS Certificate was issued on 16 December 2019.

8. In his ET1, the claimant acknowledges that the claim is late but he was “numb and traumatised by the experience”. There was no evidence of a medical condition following the dismissal. In advance of the hearing, the claimant had explained why the claim was late in an email [32].

## Submissions

9. The Tribunal heard oral submissions from both parties.

## Law

### Time limits and extension

#### Not reasonably practicable to present claim in time

10. Section 111(2)(b) of the Employment Rights Act 1996 provides that the three month time limit can be extended:

- (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.

11. There are two limbs to this formula. First, the employee must show that it was not reasonably practicable to present his claim in time. The burden of proving this rests firmly on the claimant (**Porter v. Bandridge Ltd** [1978] ICR 943 CA). Second, if he succeeds in doing so, the tribunal must be satisfied that the time within which the claim was in fact presented was reasonable. The leading authority on the subject is the decision of the Court of Appeal in **Palmer and Saunders v. Southend-on-Sea Borough Council** [1984] ICR 372 CA.

### Just and equitable extension

12. Section 123(1)(b) permits the Tribunal to grant an extension of time for:

- (b) such other period as the employment tribunal thinks just and equitable.

13. The Tribunal can take into account anything which it judges to be relevant': **Hutchison v. Westward Television Ltd** [1977] ICR 279, EAT. Notwithstanding the breadth of the discretion, it has been held that 'the time limits are exercised strictly in employment cases', and that there is no presumption that a tribunal should exercise its discretion to extend time on the 'just and equitable' ground unless it can justify failure to exercise the discretion; as the onus is always on the claimant to convince the tribunal that it is just and equitable to extend time, 'the exercise of discretion is the exception rather than the rule' (**Robertson v. Bexley Community Centre** [2003] IRLR 434, at para 25, per Auld LJ); **Department of Constitutional Affairs v. Jones** [2008] IRLR 128, at paras 14–15, per Pill LJ).

## **DISCUSSION and DECISION**

14. The complaints are made out of time. The claimant said that he was unaware of any time limit and he suffered mental health issues after his dismissal. He only became aware of the time limit when a friend told him in November.

15. The claimant was suspended from work since 22 May 2019 and had time to find out what to do in the event that he might be dismissed. He was receiving counselling from Peter Joy [33] but the screenshot is a reference to 6 June 2019 before he was dismissed. There is no medical evidence related to the period after dismissal. The claimant said he could not afford counselling after he was dismissed. He concentrated on trying to find work. He appeared to be able to seek other employment

16. The claimant was able to submit an appeal [22]. He thought that his dismissal was wrong. After he received his appeal outcome, he contacted the CAB who said he needed a solicitor. He does not recall if they told him about a time limit. It is likely that they did. He contacted his trade union who said he had no case. It is likely that they told him of the time limit. He denied having any contact with his friend who had also been dismissed by the respondent in 2018 until November 2019 when he learned about the time limit. This also seems unlikely.

17. The Tribunal did not accept the claimant's evidence. The Tribunal considered that it was reasonably practicable for the claimant to claim unfair dismissal and lodge his ET1 in time.

18. The Tribunal considers that it is not just and equitable to extend the time for lodging the discrimination claims. In balancing relative injustice, the Tribunal concluded that extending time would cause hardship to the respondent in that it has to incur the expense of a much more extensive investigation. The claims are not adequately detailed in the ET1 as it stands. The Tribunal did not accept the claimant's evidence as to the reasons for the delay as set out earlier.

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**Employment Judge Truscott QC**

**Dated: 12 October 2020**