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EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Mr S Wilson-Roberts

and

Respondent

Network Rail
Infrastructure Limited

Held by CVP on 7 December 2020

Representation

Claimant:

In Person

Respondent:

Mr B Uduje, Counsel

Employment Judge Kurrein

JUDGMENT

The Claimant's claim is struck out as the Employment Tribunal has no jurisdiction to hear it.

REASONS

- 1 These Reasons should be read with all earlier Judgments and Orders.
- 2 This was an Open Preliminary Hearing that I listed on 12 June 2020 to consider whether or not to strike out the Claimant's claim because it was out of time and/or because it had no reasonable prospect of success.
- 3 The law is set out in S.111 Employment Rights Act 1996:-
 - 111 Complaints to employment tribunal
 - (1) A complaint may be presented to an employment tribunal against an employer by any person that he was unfairly dismissed by the employer.
 - (2) Subject to subsection (3), 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.

- 4 It was common ground that the Claimant's claim was presented two days later than it should have been.
- 5 When I asked the Claimant to tell me why he had presented his claim late he replied to say,
"I misinterpreted it, I was working hard, there's no excuse for it. I thought I had a long time but it come round quickly."
and
"I'm very sorry, I didn't take it seriously."
- 6 I have had regard to the following guiding principles:-
Wall's Meat Co Ltd v Khan [1978] IRLR 499, Lord Denning, quoting himself in *Dedman*,
'It is simply to ask this question: Had the man just cause or excuse for not presenting his complaint within the prescribed time?
Palmer and Saunders v Southend-on-Sea Borough Council [1984] IRLR 119, the matters to be considered include:-
The substantial cause of the claimant's failure to comply with the time limit;
Whether there was any physical impediment preventing compliance, such as illness, or a postal strike;
Whether, and if so when, the claimant knew of his rights;
Whether the employer had misrepresented any relevant matter to the employee;
Whether the claimant had been advised by anyone, and the nature of any advice given; and whether there was any substantial fault on the part of the claimant or his adviser which led to the failure to present the complaint in time.
- 7 In light of the what the Claimant told me he has failed to satisfy me on the balance of probabilities that it was not reasonably practicable for him to present his claim in time.
- 8 The Claimant's claim must be dismissed because there is no jurisdiction to hear it.

Employment Judge Kurrein

7th December 2020

Sent to the parties and

entered in the Register on 22nd : 12 : 2020

For the Tribunal

Public access to employment tribunal decisions Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.