



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr G Williams  
**Respondent:** Premier Security 247 UK Ltd

## At an Open Preliminary Hearing

**Heard at:** Nottingham  
**On:** Friday 14 May 2021

**Before:** Employment Judge J Blackwell (sitting alone)

### Representation

**Claimant:** Ms Mahmood  
**Respondent:** Miss Hallam

# JUDGMENT

The decision of the Tribunal is:

1. The Tribunal does not have jurisdiction to hear the Claimants claim of automatic unfair dismissal pursuant to Section 103a of the Employment Rights Act 1996 and it is therefore dismissed.
2. The Tribunal also does not have jurisdiction to hear the Claimants claims of disability discrimination and they too are struck out.

# REASONS

## Introduction

This hearing was adjourned on the 9 March 2021 and a Judgment was sent out which

1. Dismissed the claim of age discrimination on withdrawal by Mr Williams.
2. Set out that it was common ground that Mr Williams was a worker and finally it dismissed Mr Williams claim of unfair dismissal pursuant to Section 94 & 98 of

the 1996 Act because Mr Williams did not have the requisite service.

3. I want to deal with a couple of preliminary matters that arise from Ms Mahmood's email to the Tribunal of the 23 March.
4. In the third paragraph of that email Ms Mahmood states that the Claimant wishes to appeal his workers status. I explained to Ms Mahmood that in fact Mr Williams had succeeded on that point and that is set out in judgment of which I have referred.
5. In the fourth paragraph Ms Mahmood stated that the claimant wishes to appeal the unfair dismissal decision. I explained to Ms Mahmood that an appeal lay to the Employment Appeals Tribunal or alternatively she could seek a reconsideration. I invited her to consider the matter given that I had found in the previous hearing that the effective date of termination was the 5 January 2020 and that it was common ground that Mr Williams began his service with the Respondent in July 2018. Since 2 years continuous service is required that claim had to be dismissed. I also explained to Ms Mahmood that the service requirement of 2 years does not apply to the Section 103A claim.
6. Turning now to today's business I made it clear at the beginning of the hearing that I intended to deal first with the issue set out paragraph 11(i) of the issues identified by REJ Swann in an order sent to the parties on the 14 December 2020. In essence that issue requires a determination of the effective date of termination and as I have indicated above I have found it to be the 5 January 2020. That then leads on to the question whether the claims were lodged out of time and in relation to the discrimination claim whether time should be extended.

In respect of the claim pursuant to Section 103A of the Employment Rights Act 1996 the relevant provision is Section 111 (2). It is a 2 part test was reasonably practicable to bring the claim within the statutory time limit of 3 months. If it was not so practicable was the claim brought within such further period as was reasonable. The second claims are all disability discrimination act claim in the relevant provision is Section 123 of the Equality Act 2010.

**"111 Complaints to employment tribunal.**

.....

*(2) Subject to the following provisions of this section, 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."*

**Section 123 Equality Rights Act 2010**

**“123 Time limits**

*(1) Subject to section 140B proceedings on a complaint within section 120 may not be brought after the end of—*

*(a) the period of 3 months starting with the date of the act to which the complaint relates, or*

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

*(2) Proceedings may not be brought in reliance on section 121(1) after the end of—*

*(a) the period of 6 months starting with the date of the act to which the proceedings relate, or*

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

*(3) For the purposes of this section—*

*(a) conduct extending over a period is to be treated as done at the end of the period;*

*(b) failure to do something is to be treated as occurring when the person in question decided on it.*

*(4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—*

*(a) when P does an act inconsistent with doing it, or*

*(b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.”*

Here the Tribunal has discretion to extend time if it would be just and equitable so to do.

**Findings of Fact**

1. The effective date of termination and which is also relevant for the Equality Act was the 5 January 2020. Mr Williams at page 150 on 5 January 2020 sent an email as follows:

‘Hi Louis I have enjoyed working at Premiere Security and have been treated fairly but unfortunately due to my ongoing mental health problems and my brother was seriously ill in hospital over Christmas and sadly passed away on Friday which has not helped my health. I have made decision I will not be returning to work, thanks for your understanding’.

2. The Respondents did not acknowledge that email but they did receive it and as a matter of law that email which is in my view clear and unambiguous brought an end to the contract of employment by resignation.

3. At about the same time Mr Williams spoke to Mr Asif. Mr Asif offered the services of We Care, Mr Asif being a Director of that company but at that time Mr Asif did not know the nature of Mr Williams complaints against his employer.

4. There followed in terms of the service of the claim an early conciliation certificate dated 23 July 2020 with a date of issue of the 6 September 2020.

5. The claim form was lodged with the Tribunal on the 10 September 2020. It is now clear though it was not so during the first day of hearing that Mr Williams approached We Care for advice on the 26 May 2020. On the 4 July 2020 at page 151 Ms Mahmood acting for Mr Williams raised a grievance, the grievance is set out on pages 152 and 153.

6. The grievance appears to be largely based on employment status in that Mr Williams alleges that he was at all times an employee of the Respondents but that he was deprived of the benefits of employment status. He also goes on to say 'I also lost my job without benefits given to me. I just found out now that one was wrongly classified as self employed and I want to claim my unpaid sick pension contributions, holiday pay and compensation for deliberately classifying me as self employed by working for them'.

7. There was an immediate response from Mr Cartledge for the Respondents at page 154 in which he said "please note that whilst we dispute the content of the email and our solicitors will deal with this in full when an authority is received it appears that you are mistaken with regard to IR35 as the legislation has been delayed so it will not be coming into force for private companies until April 21 as a result of Covid 19".

8. Ms Mahmood promptly provided the authority as requested by Mr Cartledge in an email of the 29 June in that email she also said 'Our client therefore wishes to pursue a grievance he has written to you via us. You will need to investigate and contact us back only so that we may speak to our client regarding the appropriate compensation he should be entitled to you from our firm'.

9. Ms Mahmood wrote a further email of the 24 July at page 156 which rather oddly went on to say we await response from you by Monday 7 July 2020 at 4pm with respect to SSP. If no response is received our client will pursue the matter with ACAS Conciliation for the purposes of compensation at the Employment Tribunal. Our client has made contact with ACAS and intends to continue unless settlement is reached by the above date. It may well be that was meant to be Monday 8 August.

10. A response from the Respondents Solicitors was sent on the 12 August at page 163. Ms Mahmood has argued that that letter is in fact a letter of dismissal this is plainly not so. The letter refers for example to Mr Williams having left his employment I accept it is not a full response but none the less taken with Mr Cartledge's earlier email it is clear that there is a dispute.

## **Conclusions**

11. Firstly to deal with the effective date of termination and the last act in the context

of the Equality Act. As I have said above Mr Williams email of the 5 January is an unequivocal act of resignation which was accepted by the Respondents. I accept that Mr Williams would not have known that a letter of resignation does not have to be acknowledged for it to have effect. The consequence therefore is that the claim form should have been served by not later than the 4 April 2020 and in fact it was not served until the 10 September 2020 thus being slightly over 5 months out of time.

12. In terms of the delay Mr Williams evidence is relevant both to the Section 103A claim and the disability claims. He says that throughout the relevant period ie from January 2020 to 26 May 2020 he was unfit to progress his claim. He relies on the medical evidence which is set out in the bundle at pages 186 to 195 and other matters which I will come to.

13. It is clear he underwent CBT in the summer of 2019. It is clear that in the relevant period he was being treated by his GP for the symptoms of depression and was prescribed either citalopram or fluoxetine. I further accept that in March 2020 he was completing a mood diary to assist his treatment.

14. I accept that in late July 2020 he informed his GP that he was fit enough to look for work but the effects of Covid and the lack of a car stopped him from doing so. I have looked carefully at the medical evidence and there is nothing of particular note other than that which is set out above as to the period January to May. There is no explanation as to why Mr Williams was fit to contact We Care and communicate with them in May rather than in January when Mr Asif offered his services. It is clear on the evidence that Mr Williams took no steps between January and May to advance his claim. Then we have the period post the 26 May when We Care became involved on Mr Williams behalf. We Care are not employment law specialist but Mr Williams treated them as competent and I accept his evidence that he relied on them to do what was necessary to progress his claim.

15. What was in fact done? Firstly there was the grievance of the 4 June and the correspondence in June and July at pages 156 and 157. There was also the approach to ACAS to start the early conciliation procedure as of the 24 July. Then finally the claim was lodged on the 10 September.

16. In my view We Care either knew or should have known shortly after Mr Williams approach to them his claim was already out of time and they should have acted accordingly. I accept that there was some delay in getting a response from the Respondents Solicitors but in my view that does not excuse We Care because Mr Cartledge made it clear that the grievance was disputed.

### **Section 111 Employment Rights Act**

17. Applying then those background matters to the Section 111 test in my view it was reasonably practicable for Mr Williams to lodge his claim by the 4 April, I accept that he was unwell, but there is no clear evidence why he could not have acted at the end of March beginning of April as he later did on the 26 May. In terms of the involvement of We Care in the context of Section 111 the authorities indicate that the fault of an advisor is visited upon the Claimant. However, if I am wrong about that then

I find that the period of delay between Mr Williams seeking advice and the lodgement of the claim form was not a reasonable period. I therefore conclude that the Tribunal does not have jurisdiction to hear Mr Williams claim pursuant to Section 103A.

### **Section 123 Equality Act**

18. Turning now the disability discrimination claims and Section 123 as a matter of case law it is for the Claimant Mr Williams to convince me that it is just and equitable to extend time. So the exercise of the discretion is the exception rather than the rule.

19. To summarise the factors I have taken into account the delay is a period of some 5 months. It is clear that a fair trial is still possible, I accept also that there was some delay in the Respondents Solicitors responding to Ms Mahmood, however, I do not see this as a significant factor because it was clear that Mr Williams grievance was going to be resisted.

20 I also note the correspondence at 156 and 157 where it was clear that action in the Employment Tribunal was contemplated in late June and July 2020. The actions of We Care are a factor to be taken into account and it does not always follow that the omissions of an advisor are visited upon the Claimant, simply that it is a relevant factor to be taken into account. As I have said above it is still not clear why Mr Williams could not act in March when he acted in May.

21. Further in taking into account that this is an exercise of judicial discretion and reliant upon the just and equitable test I put in the balance that Mr Williams when he was cross examined about the document at page 118 which showed his signature on a contract of employment dated of 30 November 2019 compared to the comment in his grievance at page 152 which stated 'in November I received documents about becoming an employee to which I was not in a right mind to sign or read in my condition'. When that was put to him it was clear that Mr Williams had not sent the contract of employment at page 118 to the Respondents as he had alleged.

22. The final matter, which is the most important, that is to weigh the prejudice to Mr Williams if I refuse his application for a just and equitable extension. If I do so he will not be able to bring forward and pursue a claim of disability discrimination. That is a very significant prejudice and I recognise it as such. The prejudice to the Respondent is somewhat less they would have to defend such a claim and incur the expense that would be necessary so as to defend it.

23. On balance however I decline to exercise my discretion in favour of Mr Williams because he has not persuaded me that I should do so.

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Employment Judge J Blackwell

Date: 8 June 2021

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