



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr J Swires

**Respondent:** Nisa Retail Limited

## OPEN PRELIMINARY HEARING

**Heard at:** Nottingham

**On:** 9 September 2021

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

### Representation

Claimant: In person

Respondent: Miss Webber, counsel

## JUDGMENT

1. The judgment of the Tribunal is that:
  - 1.1 The claim was brought outside of the three month (plus extension for conciliation) time limit.
  - 1.2 It was reasonably practicable for the claim to be presented before the end of this time limit.
  - 1.3 The claim is dismissed.

## REASONS

2. This hearing was conducted remotely (by cloud video platform) with the consent of the parties.
3. The Claimant asserted that the Respondent dismissed him unfairly on 18 December 2020. The Respondent defended the claim on the basis that the reason for dismissal was redundancy and that the procedure had been fair.
4. The Tribunal order of 27 July 2021 directed that the following preliminary issues be determined at today's hearing:
  - 4.1 Whether it was reasonably practicable for the Claimant to present his claim in time in accordance with s.111 Employment Rights Act 1996.
  - 4.2 If not, whether the claim was presented within such further period as the Tribunal considered reasonable.

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5. The parties agreed that the Claimant's effective date of termination was 18 December 2020. It was further agreed that the ACAS certificate confirming the claimant's compliance with s.18A Employment Tribunals Act 1996 had been issued by email on 22 March 2021. As a consequence, it was accepted by both parties that the Claimant should have presented his claim by 22 April 2021. He in fact presented it on 11 May 2021.
6. The relevant law is contained within the Employment Rights Act 1996. Section 111(2) states that an Employment Tribunal shall not consider a complaint of unfair dismissal 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.
7. Section 207B Employment Rights Act 1996 further states that this period shall be extended to facilitate conciliation before the institution of proceedings. In this case it operated to extend the time for presenting the claim to one month after the expiry of the ACAS conciliation period.
8. My findings of fact were as follows:
  - a) That the time limit for presenting a claim expired on 22 April 2021, this being one calendar month after the conciliation period ended;
  - b) That, as a consequence, by presenting his claim on 11 May 2021, the Claimant was 19 days out of time;
  - c) That the Claimant was not aware of the existence of any legal time limits until 4 May 2021, when an ACAS officer informed him that the deadline for submitting his claim had already passed;
  - d) That whilst the Claimant was not familiar with court or tribunal proceedings, nor legally trained, he had been aware of his general right to make a claim and knew to contact ACAS;
  - e) That there was no mitigating circumstance such as illness, vulnerability, emergency or other intervening factor to explain the delay in the Claimant making his claim beyond 22 April 2021. The sole reason for the Claimant failing to comply with the time limit was because he did not know that such time limit existed.
  - f) That the Claimant was reasonably capable of making enquiry and / or conducting his own research (such as an internet search) to acquaint himself with the basic requirements of his intended claim and that it was reasonably practicable for him to have done so in sufficient time to have presented the claim by 22 April 2021;
  - g) That following the judgment in *Wall's Meat Co Ltd v Khan (1978) 10 WLUK 155* and finding that the Claimant ought to have been aware of the time limit, that the claim is out of time and should be dismissed;
  - h) That, even if the Tribunal had found that the Claimant could not have reasonably presented the claim by 22 April, he should have done so by 6 May 2021. This is because the Claimant had been made aware on 4 May 2021 by an ACAS officer that he was out of time for presenting a claim. This should

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have prompted the Claimant to present it no later than 6 May 2021. His failure to do so until 11 May, without any explanation for that delay, was unreasonable and would mean the dismissal of his claim in any event.

9. In making my findings of fact I considered the Respondent's Bundle (50 pages), the letter of the Claimant addressed to Employment Judge Butler (undated) and the oral evidence of the Claimant during the hearing. I accepted the Claimant's evidence as to the facts of the case in full.
10. I also considered the case law cited by the Claimant – *John Lewis Partnership v Charman (2011) UKEAT 0079/11*, and Respondent – *Wall's Meat Co Ltd v Khan (1978) 10 WLUK 155; Porter v Banbridge Ltd (1978) ICR 943 EWCA*.
11. I further considered the Claimant's submission that his claim should be allowed to proceed in the interests of justice because any delay had been minimal and had not caused unfairness to the Respondent. However, as I had found that the claim was out of time and the Tribunal had no jurisdiction to hear it, there was no residual power for me to exercise such a discretion.

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Employment Judge Flint

9/9/21

Date