



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr K Sivarajah

**Respondents:** Sikandar Ali Jatoi  
Tahir Shahab Khan  
Salman Shah  
Ghulam Mustafa  
Saghir Ahmad

**Heard at:** East London Hearing Centre (by Cloud Video Platform)

**On:** 28 June 2021

**Before:** Employment Judge Lewis (Sitting Alone)

## **Representation**

**Claimant:** In Person

**Respondent:** Did not attend due to ill health

*This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was by Cloud Video Platform. A face to face hearing was not held because the relevant matters could be determined in a remote hearing.*

## JUDGMENT

The judgment of the Employment Tribunal is that:

- 1 The Claimant's claims are dismissed for want of jurisdiction having been brought out of time.
- 2 The claims have been brought previously against the Claimant's employer Law Lane Solicitors – claims number 3202284/2020 and 3201743/2020 and were dismissed by Orders of Regional Employment Judge Taylor following a hearing on 23 November 2020.

## REASONS

1. By a claim form issued on 25 August 2020 following early conciliation which took place between:

11 June 2020 and 11 July 2020 in relation to Sikandar Ali Jatoi;

12 June 2020 and 12 July 2020 in respect of, again, Sikandar Ali Jatoi;  
12 June 2020 and 12 July 2020 in respect of Tahir Shahab Khan;  
12 June 2020 and 12 July 2020 in respect of Salman Shah;  
12 June 2020 and 12 July 2020 in respect of Ghulam Mustafa; and  
11 June 2020 and 11 July 2020 in respect of Saghir Ahmad.

the Claimant brought claims against the individuals named above. The Claimant claims various types of discrimination; dismissal for being a whistle-blower in bringing a grievance in respect of holiday pay, sick pay and his medical conditions; and claims for outstanding holiday pay and wages.

2. By a judgment dated 23 December 2020 sent to the parties on 29 December 2020, Employment Judge Reid dismissed the claims for age, race, disability, sex, marital status and religion and belief discrimination following a hearing at which Mr Sivarajah appeared in person. The remaining claims were set down for a hearing for today's date and the Claimant was ordered to provide a witness statement and supporting documents to explain why he brought his claims for unfair dismissal, notice pay, holiday pay and arrears of pay, outside the usual three months plus ACAS extension time limits.

3. In her order Employment Judge Reid set out what the Claimant was required to set out in his statement, which included explaining why this claim was not brought within the normal time limit when his first claim was brought in time. The first claim being the claim struck out by Regional Employment Judge Taylor on 23 November 2020.

### Relevant law

4. Section 111 of the Employment Rights Act 1996 provides that a Tribunal shall not consider a claim of unfair dismissal unless it is presented to the tribunal within three months of the effective date of termination or such further period as the tribunal shall consider reasonable where it is satisfied that it was not reasonably practicable to submit the claim within time. This period is extended by operation of the ACAS early conciliation scheme if entered within the primary time limit.

5. In deciding whether it was not reasonably practicable for the claim to be presented, the tribunal must consider whether there is just cause for not presenting the claim. The words "reasonably practicable" do not require the Tribunal to be satisfied that presentation was not physically possible, in the sense of a physical or mental bar, but should be read as being more a question of whether presentation within time was reasonably feasible, see *Palmer and Saunders v Southend on Sea Borough Council* [1984] IRLR 119, CA.

6. Generally, if a claimant is receiving advice from skilled advisers, such as a trade union representative or solicitor, it will be practicable to present the claim in time, see *Dedman v British Building & Engineering Appliances Limited* [1973] IRLR 379 Court of Appeal. However, the involvement of a solicitor (and by extension, a trade union) does not mean that an extension of time will automatically be refused, the Tribunal must look at all of the circumstances of the case, *North East London NHS Foundation Trust v Zhou* UKEAT/0066/18.

7. The principle in *Dedman* in the context of a CAB adviser was considered in *Marks & Spencer plc v Williams Ryan* [2005] EW IRLR 562, CA: cannot be held that fault on the part of an advisor such as the Citizens' Advice Bureau necessarily falls to be treated as fault on

the part of the employee. The mere fact of seeking advice from the CAB cannot as a matter of law, rule out the possibility of demonstrating that it was not reasonably practicable to make a timely application to an Employment Tribunal. It may well depend on who it was who gave the advice and in what circumstances. In *Williams Ryan* claimant had been advised by a Citizens' Advice Bureau that she should exhaust the employer's internal appeal procedure and the time limit had expired before she was told that her appeal had failed. The claimant in that case was aware of her right to claim unfair dismissal but was unaware of the time limit and believed that she had to await the outcome of the internal appeal. This was in part due to advice given by the employer which was insufficient and misleading.

8. It is generally reasonably practicable for a claimant to present a claim to the Tribunal even when an internal appeal is pending, *Palmer*. However, regard should be had to what, if anything, the employee knew about the right to complain to the tribunal and of the time limit for making such a complaint. Ignorance of either, however, does not necessarily render it not reasonably practicable to bring the complaint in time and I should also have regard to what knowledge the employee should have had if he or she had acted reasonably, see *John Lewis Plc v Charman*, UKEAT/0079/11/ZT

## Conclusions

9. Having heard from the Claimant today and having considered the claims that he brought against Law Lane Solicitors, which were dismissed by Regional Employment Judge Taylor on 23 November 2020, I am satisfied that the claims cover substantially if not identically the same ground. Mr Sivarajah explained today that the difference between his earlier claim and this claim was that he had been unfairly treated by his employer in the appeal process, not being provided notes of his disciplinary and not being given the opportunity to appeal and that therefore distinguished this claim from his earlier claim.

10. I note however that the claims that were dismissed by Regional Employment Judge Taylor included claims relating to stress at work in respect of return to work interviews in March and February 2020; claims for payment from November 2019 including holiday pay and sick pay due and December 2019 and statutory holidays in 2019; annual holiday for 2020 including periods in January and February 2020 and March 2020; a claim for dates attended at work which were not paid; a complaint about his grievance hearing in February and a claim for victimisation for raising a grievance and whistleblowing, relying on a report to the Solicitors Regulation Authority in respect of equipment and PAT testing as a protected disclosure for the whistleblowing claim and also an allegation that the Respondent's Directors exaggerated the time they claimed for fees and bills of costs.

11. These matters were set out in claim 3201743/2020 dealt with by Regional Employment Judge Taylor and are all repeated in the claim before me, claim number 3202239/2020. In claim 3201743/2020 the Claimant alleged that he had been discriminated against in terms of pay and in his treatment in the grievance and disciplinary procedures. The Claimant also made an allegation in respect of another employee, employed by the Respondent which is relied on as a whistleblowing claim and again that allegation is repeated in the claim before me and relied on as a public interest disclosure. I find that the facts relied on by the Claimant are substantially the same in this case as in the earlier claims brought against Law Lane Solicitors.

12. The Claimant was in receipt of advice from his trade union at least up until his appeal hearing. He holds a law degree completed the LPC. He was unable to satisfactorily explain

why he had delayed in bringing this claim, other than to say he thought he needed to obtain ACAS Certificates in respect of each named Respondent and that there was a delay at the ACAS end due to the lock down and the COVID 19 Pandemic. He referred to his own period of ill health with COVID but accepted that this was in January 2021, after he issued the claims. He also relied on his ill health as an explanation for the late submission of his statement as ordered by Employment Judge Reid.

13. Mr Sivarajah made reference to having made a request for reconsideration of the earlier decisions. One of the paragraphs in the Claimant's lengthy statement provided of today's hearing makes reference to a request for reconsideration. I explained to Mr Sivarajah that I was not able to reconsider the decisions of either Employment Judge Reid or Regional Employment Judge Taylor and that if he wished to ask either or both to reconsider their decisions, he should make an application setting out clearly which decision he is asking to be reconsidered explaining the basis for the application, as well as explaining the lateness of the application; it will then be up to each Employment Judge to decide whether they should consider his request out of time.

14. I am satisfied that it was reasonably practicable for the Claimant to have brought each of the complaints that are currently before me in time. He has previously brought the same complaints against his employer, Law Lane Solicitors. Those claims have been dismissed. I find that the claims before me have been brought out of time and that there is no proper basis for extending time.

15. I am satisfied that bringing the same claims against named individuals in circumstances where the previous claims against the correct Respondent have already been dismissed amounts to an abuse of process.

16. Further I am satisfied that the Tribunal does not have jurisdiction in respect of the complaints of holiday pay, sick pay, arrears of pay, notice pay, and unfair dismissal, (automatic unfair dismissal under s 103A or 104 of the Employment Rights Act 1996 or otherwise) as brought against each of the named individuals in any event.

17. The Claimant's claims are dismissed.

**Employment Judge Lewis**

**28 September 2021**