



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr K Patel  
**Respondent:** Juniper Ventures Limited  
**Heard at:** East London Hearing Centre  
**On:** 3rd February 2022  
**Before:** Employment Judge Reid

## Representation

**Claimant:** in person  
**Respondent:** Mr Moher, One Source

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

## JUDGMENT (Reserved)

1. The Tribunal decides it was reasonably practicable for the Claimant to present his claim in time and does not extend time under s111(2)(b) Employment Rights Act 1996.
2. His claim is therefore dismissed because the Tribunal does not have jurisdiction (ie the power) to decide his claim. This means that his claim does not go any further.

## REASONS

### Background and claim

1 The Claimant was employed by the Respondent as a cleaner (based at Ranelagh School at the time of his dismissal) from 1st April 2009 to 28th May 2021. He presented a claim for unfair dismissal on 11th September 2021.

2 The issue identified for this preliminary hearing was the time limit issue (page 33).

3 I was provided with a 65 page electronic bundle (including the Claimant's statement about the delay in presenting his claim at page 59) plus a supplementary bundle of medication information of a further 24 pages. I heard oral evidence from the Claimant and submissions on both sides. The Claimant attended without his representative (his friend) Mr Varsani; Mr Varsani had said he was happy for the Claimant to attend without him.

4 I explained the test to be applied in relation to a late unfair dismissal claim to the Claimant because he was not legally represented. He confirmed he wanted to rely on his one page statement about his health at page 59 and the medical documents in the bundle as the reasons why his claim was presented late.

#### Findings of fact relevant to the time limit issue

5 The Claimant was dismissed with immediate effect on 28th May 2021 following a disciplinary hearing on 24th May 2021. The effective date of termination was 28th May 2021. The primary time limit therefore expired on 27th August 2021.

6 The Claimant contacted ACAS on 6th September 2021 and ACAS issued its certificate on 7th September 2021 (page 1). The Claimant had therefore contacted ACAS outside the primary time limit and therefore did not benefit from an ACAS extension to the time limit.

7 I find that the Claimant was supported at his disciplinary hearing on 24<sup>th</sup> May 2021 by a trade union representative, Ms Dobbs. I find based on the Claimant's oral evidence that after he lost his appeal Ms Dobbs advised him about making a claim in the Employment Tribunal; the Claimant said that she had told him about Employment Tribunals but not about time limits but I find this unlikely and find that the Claimant was advised there were time limits by Ms Dobbs. I accept the Claimant's oral evidence that Ms Dobbs told him she personally could not help him any further after the appeal but she had already directed him to the Employment Tribunal and advised about time limits, even if only to say there were time limits and that the Claimant needed to check this out himself. I find based on the Claimant's oral evidence that she specifically said that it was up to him to take anything further.

8 I find based on his oral evidence that the Claimant felt his dismissal was unfair as soon as he received the notice of dismissal sent by email on 28th May 2021 (page 49). He was therefore aware that he wanted to challenge it. He then spoke to a friend at his temple (Mr Varsani) after he had received the outcome of his appeal which was sent on 19<sup>th</sup> July 2021; that conversation with Mr Varsani was about a month later, so around mid August 2021. Based on his oral evidence I find that Mr Varsani advised the Claimant to try and find out information from ACAS or the CAB. The Claimant was then unable to get through to the CAB on the telephone and when he saw Mr Varsani again, Mr Varsani then googled the contact number for ACAS and gave it to the Claimant. The Claimant gave contradictory answers as to when this second conversation was, saying it was around 2 weeks after the first conversation in mid August 2021 (so around the end of August 2021) and also that it was around 4 weeks after the first conversation (so around mid September 2021, which it could not have been as that was after he contacted ACAS anyway on 6<sup>th</sup> September 2021).

Given that contradiction and the Claimant's prior failure to act on the advice from his union and find out about how to present his claim (indicative of a tendency not to act on information provided to him), I find that Mr Varsani gave the Claimant the number for ACAS before the primary time limit expired, although the Claimant did not follow up on that and did not contact ACAS for around a further 1-2 weeks.

9 I find based on his oral evidence that the Claimant also found out about a solicitor online before he had spoken to Mr Varsani at the temple. This contact was during the first two weeks of August 2021. He was advised he would have to pay £50 for a short interview and that put him off and ultimately, he did not speak to the solicitor. The Claimant's adult daughter (who he lives with) had helped him to find that solicitor online by doing some research for him so he was not without help.

10 The Claimant said that when he contacted ACAS they asked him when he had been dismissed but then never said anything about time limits. I find this unlikely but in any event by the time he contacted ACAS on 6th September 2021 to obtain the certificate, he was already out of time.

11 Taking the above findings of fact into account I find that the Claimant knew about time limits generally from his trade union representative, at the latest when he received his appeal outcome and the trade union representative told him that it was a matter for him to take further if he wanted to. Even if he did not know specifically that the time limit was three months or was unsure how to work out the exact date when the time limit expired, he unreasonably delayed in checking the matter further out himself, after he received the appeal outcome in mid July 2021 and during August 2021. He accepted in his oral evidence that there were no other sources of advice he obtained at the time, contrary to his statement which refers to receiving lots of advice from lots of organisations/people. In any event the Claimant says in his statement that he was not sure which was the best avenue to go down, consistent with knowing what those avenues were (or that there were avenues to explore). Taking into account the findings of facts set out below regarding his health, it was incumbent on the Claimant to take steps to find out about how and when to contact ACAS and then present his Employment Tribunal claim and he had enough information to do so from his union, or could have done some further online enquiries himself, with his daughter's help if necessary.

12 The Claimant also said that his ability to present his claim in time was affected by his health, namely his back pain, the side effects of the medication he was on leading to "brain fog" and mental confusion about what to do (page 59).

13 The Claimant has a back condition affecting his mobility (page 54); no other restrictions or conditions are identified in that letter. Until his dismissal, he had been taking painkillers (page 46), initially paracetamol and co-codamol and then trying Pregabalin (page 47) from February 2021, the dose increasing in May 2021 (page 48) and co-codamol and Ibuprofen gel being added in June 2021 (page 53). He did not start the strongest painkiller Tramadol until October 2021 (page 58, 61) after he presented his claim so could not have been affected by any side effects of that particular medication during period between when he was dismissed and when he presented his claim. Whilst recognising that the medication he was on before he presented his claim had side effects, the Claimant was nonetheless attending for work on these medications at the Respondent until his dismissal on 28th May 2021, doing a job which involved a degree of physical activity and being mentally able

enough to be responsible, from which I find the painkillers were working well enough for him to be able to attend for work and were not affecting his mental or physical ability to do his job. I find based on page 46 that when he saw his GP in February 2021 the GP suggested that he discuss with his boss possibly taking 1-6 weeks off but the Claimant did not do that or take any time off after that point; the Claimant said the GP advised three months off but that is not what the GP notes record. The Claimant did not take that advice to speak to his boss and carried on at work; he says (page 14) that it was getting worse after February 2021 but yet he was still able to attend for work and had not asked for time off even though he knew he had his GP's support for a medical certificate for between one and six weeks.

14 After the Claimant was dismissed by the Respondent he continued to work at the school site, at this time directly employed by the school, on an as and when required basis when the main caretaker was not available. The Claimant said he did this around two days a week and as he was contacted if the caretaker was not available, I find he had no control over the days he was asked to go and work from which I find that his physical and mental condition was not such unable to cope with work at short notice and on an unpredictable basis, even if as he said, the school now limited his duties to avoid heavy things such as doing the bins. He did not say he had ever had to turn down a request to work because of his health.

15 The Claimant's ability to attend for work on his pain medication prior to his dismissal sheds light on his ability to carry on after his dismissal, by now working direct for the school, because he was able to work both before and after his dismissal, which was consistent with a physical and mental ability to do the job and consistent with not raising any other things he could not mentally do in the period after he was dismissed. I therefore find that the Claimant did not, after he was dismissed, have "brain fog" caused by medication to a degree which might impact on his ability to find out how to get his claim in on time and then contact ACAS and present the claim within the time limit. The medical evidence produced by the Claimant does not support the degree of physical or mental restriction claimed in the period after he was dismissed. He has also not produced any medical evidence of a mental health condition meaning he was unable to take rational decisions about bringing a claim, as claimed in his statement.

#### Relevant law

16 The primary time limit for presenting an unfair dismissal claim is three months - s111(2)(a) Employment Rights Act 1996.

17 The time limit is extended by a period of ACAS conciliation – s207B(3) Employment Rights Act 1996.

18 If the extended date is less than a month after the date the certificate is issued the claimant has a month from the date of issue of the certificate – s207B(4) Employment Rights Act 1996.

19 The time limit can be extended if the Tribunal is satisfied that it was not reasonably practicable to bring the claim in time - s111(2)(b) Employment Rights Act 1996. The test is whether it was reasonable to expect a claimant to do that which was possible to have been done.

20 If the Tribunal decides that it was not reasonably practicable to present the claim in time, it then has to decide whether the claim was presented within a further reasonable period.

21 It is for the Claimant to show why his claim should be allowed to be presented outside the time limit.

Reasons

22 Taking the above findings of fact into account I conclude that the Claimant considered he had been unfairly dismissed at the time of his dismissal on 28<sup>th</sup> May 2021. He was aware from his trade union representative that where he would have to go to about that would be the Employment Tribunal (ie he was aware of his rights) and that there were time limits, even if not specifically aware of how long the time limit was or how it was calculated. There was nothing factually confusing about his dismissal as he knew when it was and why he had been dismissed and did not claim there was any confusing or misleading information from the Respondent. It was incumbent on him to look into that further, with his daughter's help if necessary. He left it a month after his appeal to discuss it with Mr Varsani and then delayed further after Mr Varsani specifically gave him the contact number for ACAS (though the Claimant could have found that number out for himself on a basic internet search much sooner in any event). He had a back condition and was taking medication but was able to continue working directly for the school on a basis which meant he did not have control over the days he worked meaning he had to be well enough to work all working days, as he might be called in to work. Feeling stressed about his situation, in the absence of any other evidence showing a cognitive or mental health condition, is not enough to justify extending time.

23 Time is therefore not extended under s111(2)(b) Employment Rights Act 1996 and the Claimant's claim is dismissed.

**Employment Judge Reid  
Dated: 10<sup>th</sup> February 2022**