



## **EMPLOYMENT TRIBUNALS**

**Claimant:** Mr N Stubbs

**Respondents:** The Alpine Club R1  
White Mountain Chalets Ltd R2

**Heard at:** On the papers **On:** 4/3/2022

**Before:** Employment Judge Wright

## **JUDGMENT ON PRELIMINARY HEARING**

The claim was presented out of time and the Tribunal was not persuaded to exercise its discretion to extend the time limit(s). The claim is therefore struck out.

## **REASONS**

1. Further to the hybrid preliminary hearing on 1/2/2022 and due to that hearing being curtailed for the reasons set out in the Judgment, it was directed that R2's application to strike out the claimant's claim would be determined on the papers.
2. The respondent was asked to confirm within 14 days whether it had anything additional to add to its application and on 17/2/2022 it confirmed that it did not.

3. The claimant then had a further 14 days to respond/make any additional points. The Tribunal was told the claimant did not do so.
4. The claimant gave his dates of employment as 27/11/2017 to 27/11/2017. Its ET3 response the respondent said his employment in fact ended on 1/4/2018. The claimant worked as a chalet chef in the French Alps for a respondent based in Exeter, Devon.
5. He engaged in Acas early conciliation on 16/8/2020 and the certificate was issued on 17/8/2020. He presented his claim on 11/2/2021.
6. If his employment terminated on 1/4/2018 the primary limitation date (subject to any extension to take account of Acas early conciliation) was 30/6/2018. He brought claims of: unfair dismissal; unlawful discrimination based upon the protected characteristics of age and sex; breach of contract; breach of trust; slander of character; and health and safety.
7. In the claim form, the claimant acknowledged that it had been presented late. He said that this was due to him only finding out about Acas and his legal rights in July 2020. He said that he had been evicted from his home in August 2020, had been homeless and in an unstable position until 4/2/2021, when he was able to acquire stable accommodation.
8. The claimant does not have qualifying service to present a claim of unfair dismissal contrary to Part X of the Employment Rights Act 1996 (ERA) of two years, as required under s.108.
9. There are different time limits which apply to the presentation of a claim and a response. There are also different considerations which apply when an extension of time is contended for.
10. For an extension of time for a claim form, s.123(1)(b) of the Equality Act 2010 (EQA) for any claims of unlawful discrimination. The provides:

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) ...

(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.

11. In so far as the claimant has pleaded a breach of contract claim, the time limit under the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 is:

Time within which proceedings may be brought

7. Subject to article 8B, an employment tribunal shall not entertain a complaint in respect of an employee's contract claim unless it is presented—

(a) within the period of three months beginning with the effective date of termination of the contract giving rise to the claim, or

(b) where there is no effective date of termination, within the period of three months beginning with the last day upon which the employee worked in the employment which has terminated, or

**(c) where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented within whichever of those periods is applicable, within such further period as the tribunal considers reasonable.**

12. The other suggested claims do not appear to be ones over which the Tribunal has jurisdiction. It is generally the case that the time limit in the Tribunal is three months.

13. The respondent made a written application to strike out the claim for lack of jurisdiction (time limits) and in the alternative, that the claimant is a vexatious litigant.

14. In the absence of a written submission from the claimant, all the Tribunal has to consider is the statement which the claimant made in the claim form. Whilst there was no evidence provided from the claimant, even accepting what he said, there is no explanation why, once he found out about his rights he did not contact Acas any earlier than 16/8/2020. It is not clear when in August 2020 he was evicted. If the eviction post-dated the 16/8/2020 and

- was later in August, that does not explain why the claimant did not contact Acas any earlier in August or indeed in July 2020.
15. Irrespective of the eviction, the claimant presented his claim form electronically, he provided an email address and said that his preferred method of communication was via email. During the hearing on the 1/2/2022 the claimant also communicated with the Tribunal via email, from the waiting room; presumably he sent that email via his mobile telephone.
  16. If the claimant believed he was unfairly dismissed, discriminated against and his employer was in breach of contract; there was no explanation why he did not look into or establish what claims he could bring to the Tribunal before July 2020. There was the whole period from April 2018 to July 2020, which was prior to his eviction, within which the claimant could have researched his right to bring a claim.
  17. Besides the internet, there are other sources of advice, such as: Citizens Advice Bureau; the conciliation service Acas; and some solicitors offer a free initial consultation.
  18. The time limits in the Tribunal are well publicised and are not disguised or difficult to establish.
  19. Robertson v Bexley Community Centre t/a Leisure Link 2003 [IRLR] 685 said that there is no presumption of an extension of time, rather the converse is the case, it is the exception rather than the rule and an out of time claimant would have to convince the Tribunal why an extension should be granted.
  20. Finally, there would be prejudice to R2 if it now had to defend a case in respect of events which occurred in late 2017 and into 2018. Particularly in an industry such as this, where staff may only work for one ski-season, then move on and possibly return to their country of origin, which may not be the UK.
  21. Unfortunately, the claimant did not make any attempt to convince or persuade the Tribunal to extend the time limit beyond the bald statement in his claim form. The Tribunal finds the claim is out of time and it is not just and equitable to extend the time limit for the EQA claim and that the breach of contract claim was not presented within the primary time limit and furthermore, it was not presented within such further period which the Tribunal considers reasonable.
  22. For those reasons, the claim is struck out.

23. In light of that, the Tribunal did not need to consider R2's alternative application.

Employment Judge Wright  
4/3/2022