



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4100847/2022

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Held via Cloud Video Platform (CVP) on 3 May 2022

Employment Judge L Doherty

10 **Mr Shaun Collins**

**Claimant
No appearance and
No representation**

15 **Bidvest Noonan (UK) Limited**

**Respondent
Represented by:
Ms Rezaie -
Counsel**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Employment Tribunal is that it does not have jurisdiction to consider the claim.

REASONS

1. The claimant presented a complaint of unfair dismissal on the 31 of January
25 2022. The claimant alleged that he was constructively unfairly dismissed on
31 July 2020. An ACAS certificate was issued on 17 November 2020, which
confirmed that the date of ACAS notification was 7 October 2021.
2. The claim was accordingly presented out with the statutory three month time
limit for presenting claims of this type under section 111 of the Employment
30 Rights Act 1996 (the ERA).
3. This Preliminary (PH) was fixed to consider whether the Tribunal had
jurisdiction to consider the claim. That required the tribunal to consider
whether the time limit for the presentation of the claim should be extended on
the basis it was not reasonably practicable for the claim to be lodged within
35 three months (plus any extensions of time as a result of the ACAS procedure)

of the date of dismissal. If the Tribunal was satisfied on that point, it would then have to consider whether the claim had been lodged within a reasonable period thereafter.

4. The respondents were represented at this PH by Ms Razaie, Counsel.
- 5 5. There was no appearance by the claimant. The Employment Tribunal service had attempted to contact the claimant in advance of the PH in order to conduct a CVP test to ensure that he could join the hearing, but had been unable to reach him. Ms Rezaie explained that the respondents had also attempted to contact the claimant and had also sent him a CVP link in order to assist him
10 to attend the hearing.
6. The tribunal was satisfied that the claimant had been sent notification of the hearing and the means to join it. There was no explanation for the claimant's nonattendance, and in the circumstances the tribunal decided to proceed in his absence.
- 15 7. The burden of proof rests with the claimant to establish facts upon which the tribunal could conclude that it was not reasonably practicable for the claim to be presented on time and that time should extend time to consider the claim. In the claimant's absence there was no evidence upon which the Tribunal could reach a conclusion that time should be extended to consider the claim,
20 and no information was contained within the ET 1 to suggest any reason why time should be extended to consider the claim.
8. In the circumstances, the tribunal was not satisfied that it has jurisdiction to consider the claim.
9. The respondents had made an application to strike out the claim, which only
25 required to be considered in the event the Tribunal was satisfied it had jurisdiction to deal with the claim.

10. The effect of the Tribunal's conclusion as to its lack of jurisdiction to deal with the claim means that this claim will not proceed further.

5 Employment Judge: Laura Doherty
Date of Judgment: 03 May 2022
Entered in register: 05 May 2022
and copied to parties