



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms J Sangha  
**Respondent:** JETS (Bournemouth) Ltd  
**Heard at:** By video (VHS) **On:** 7 July 2022  
**Before:** First Tier Tribunal Judge Volkmer sitting as Employment Judge

## Representation

Claimant: in person  
Respondent: Ms Nicholls (Commercial Director)

**JUDGMENT** having been sent to the parties on 21 July 2022 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided.

## REASONS

### *Background and issues*

1. This relates to an unfair dismissal complaint made by the Claimant by a claim form presented on 12 November 2020. The Claimant brought a complaint that she had been unfairly dismissed (which is asserted as being automatically unfair as the Claimant alleges it was for the reason or principal reason that she made protected disclosures).
2. The dates of the ACAS early conciliation certificate are 17 September 2020 until 17 October 2020.
3. A Preliminary Hearing due to be held on 14 December 2021 was adjourned by Employment Judge Gray due to "*the level of evidence and documents the Claimant was wanting to submit and refer to at this hearing and the lack of notice the Respondent and Tribunal had about it*". Judge Gray ordered that a further preliminary hearing be listed to determine the following issues:
  - a. The effective date of termination (the Respondent asserts it was the 15 May 2020, the Claimant asserts she believed it was the 15 June 2020 as she was still "under their [the Respondent's] books" until then).

- b. The date the Claimant commenced the ACAS early conciliation process. The Claimant says she completed the online early conciliation notification form and submitted it on the 14 September 2020, whereas the ACAS early conciliation certificate records a date of 17 September 2020. The Claimant intends to seek and provide evidence from ACAS to support what she says for consideration at the preliminary hearing.
  - c. Was the unfair dismissal complaint made within the time limit in section 111 of the Employment Rights Act 1996? The Tribunal will decide:
    - i. Was the claim made to the Tribunal within three months (plus early conciliation extension) of the effective date of termination?
    - ii. If not, was it reasonably practicable for the claim to be made to the Tribunal within the time limit?
    - iii. If it was not reasonably practicable for the claim to be made to the Tribunal within the time limit, was it made within a reasonable period?
4. Employment Judge Gray made case management orders that the parties disclose evidence and create an agreed bundle by 21 January 2022 and exchange witness statements by 28 January 2022.

### ***Preliminary Matters***

5. The Tribunal did not have before it a witness statement from the Claimant. The Respondent stated that it had also not received one. The Claimant asserted that she had sent one to the Respondent, when given additional time to locate it, she sent to the Tribunal an email with a statement by her witness Ms Heidi Styles dated 2 August 2021, and two documents relating to the Preliminary Hearing Agenda, one describing her claim and another with a timeline, which started with 12 November 2020. None of these documents therefore dealt with the issues in question in terms of setting out the Claimant's evidence.
6. Employment Judge Gray's order of 14 December 2021 was clear that "*Everybody who is going to be a witness at the hearing, including the Claimant, needs a witness statement.*". However, by agreement of the parties, the Claim proceeded with the Claimant permitted to give oral evidence, notwithstanding the fact that she had not provided the witness statement. Her position on these points had been stated in emails and in the Preliminary Hearing on 14 December 2021.

### ***The Evidence***

7. The Tribunal heard the oral evidence of the Claimant. No witness appeared on behalf of the Claimant as the employees involved had left the Respondent's business. The Tribunal also considered the Claimant's Hearing Bundle of 10 pages, the Respondent's Hearing Bundle of 20 pages and a voice recording submitted by the Claimant.

### ***The Law***

8. Section 111 of the Employment Rights Act 1996 sets out that:

(2) *Subject to the following provisions of this section, an employment tribunal shall not consider a complaint under this section 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.*

9. Section 207B of the Employment Rights Act 1996 has the effect of stopping the clock for limitation purposes, for a limited period, if ACAS conciliation is started within the primary limitation period (i.e. within the three months referred to in section 111, see above).
10. As set out in *Porter v Bandridge Ltd 1978 ICR 943, CA*, the burden of proving that presentation of the claim in time was not reasonably practicable lies with the Claimant.
11. The Court of Appeal *Palmer and anor v Southend-on-Sea Borough Council 1984 ICR 372, CA*, considered the meaning of 'reasonably practicable' and concluded that it does not mean reasonable, which would be too favourable to employees, and does not mean physically possible, which would be too favourable to employers, but means something like 'reasonably feasible'. Lady Smith in *Asda Stores Ltd v Kauser EAT 0165/07* stated the following: *'the relevant test is not simply a matter of looking at what was possible but to ask whether, on the facts of the case as found, it was reasonable to expect that which was possible to have been done'*.

### ***Findings of Fact***

12. On 15 May 2020, the Claimant received a phone call from the then directors of the Respondent, in which she was informed that she was being made redundant. It was stated that she would be paid "a month in lieu" and did not have to work the last month. These facts were agreed between the parties.
13. Ms Sangha, the Claimant, stated in her evidence, and I accept, that she had understood from the call that her last day was 15 June 2020. I asked her if either of the directors had expressly said that, and she said that they had not said it but she had assumed it based on what had been said about being paid "a month in lieu".
14. Ms Sangha then received a letter dated 14 May 2020, p 16 of the Respondent's bundle which states: *"Your employment commenced on 29 July 2019 and will terminate on 15th May 2020. In accordance with your Employment Contract you are entitled to; (1) One Month's pay in lieu of Notice"*. This is also agreed.
15. In my finding, Ms Sangha contacted ACAS on Friday 14 September 2020, but did not complete the notification of claim until Monday 17 September 2020.
16. The reason for this finding is that although Ms Sangha gave evidence that she completed the form on 14 Sept 2020, the ACAS certificate refers to date of notification as being 17 September 2020. When questioned by Ms Nichols, Ms

Sangha stated that ACAS had told her it was an automated system so should show the date without any delay. Ms Sangha said that she had not been able to follow up as IT records had not been kept. I prefer the information given on the ACAS certificate as being the correct information and am not convinced by Claimant's evidence that some sort of error has been made.

17. Ms Sangha stated, and I accept, that the reason for not making the claim earlier was that she had been promised her job back from the owner. She felt that she did not need to put a claim in. Ms Sangha said that he had promised money as well to keep her going. Ms Sangha told the Tribunal that she had not started her claim with ACAS because the owner had promised her job back and money to keep her going. In a voice recording, which Ms Sangha has submitted which she says is from the owner of the Respondent, makes a comment saying "*I am doing my best to fix the financial situation and then we will see, I will try to get you back*" regarding the job and offering her money. It is not asserted that these promises were said to be dependent on Ms Sangha not bringing a claim.

### ***Decision***

#### *The effective date of termination*

18. In my finding, the date on which the Claimant's employment ended was the 15 May 2020. I accept that the Claimant misunderstood the meaning of the telephone call, but in my finding it was made clear by Respondent in the call and at the latest in the dismissal letter letter that the Claimant was being paid in lieu of notice, meaning that she was not working her notice period. It is therefore clear that the termination date was 15 May 2020.

#### *The date the Claimant commenced the ACAS early conciliation process.*

19. As set out above at paragraphs 15 and 16, although the Claimant contacted ACAS on 14 September 2020, the early conciliation process was not started until 17 September 2020.

#### *Was the claim made to the Tribunal within three months (plus early conciliation extension) of the effective date of termination?*

20. The primary limitation period for bringing the Claimant's claim expired on 14 August 2020. Section 207B of the Employment Rights Act 1996 does not apply to extend the limitation period in this case. This is because the ACAS notification was made outside of the primary limitation period, on 17 September 2020.

#### *If not, was it reasonably practicable for the claim to be made to the Tribunal within the time limit?*

21. In my finding, it was reasonably practicable for the Claimant to have brought her claim within the limitation period. Her reason for not doing so was that she did not feel that she needed to, based on promises that her job would be given back. In my finding, that did not affect the question of practicability. There was no barrier to her bringing the claim in that period.

22. Since I have made a finding that it was reasonably practicable to have issued the claim within the limitation period, the Tribunal has no jurisdiction to hear the claim. I therefore dismiss the claim.

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**First Tier Tribunal Judge Volkmer sitting as  
Employment Judge**

Date: 5 August 2022

REASONS SENT TO THE PARTIES ON  
16 August 2022 by Miss J Hopes

FOR THE TRIBUNAL OFFICE