



# EMPLOYMENT TRIBUNALS

BETWEEN

Mr R Hughes

AND Hydrobolt Group Limited (1)

Hydrobolt Limited (2)

Claimant

Respondents

HELD AT Birmingham

ON

3 April 2019

EMPLOYMENT JUDGE Self

## Representation

For the Claimant: In Person

For the First Respondent: Mr A Forrest - Consultant

## REASONS

1. By a Claim Form received at the Employment Tribunal on 4 May 2018 the Claimant asserts that he was due compensation for his unfair dismissal, wrongful dismissal and “other payments” which were explained to be unlawful deductions from wages. This matter has come before me as a preliminary hearing to consider whether or not those claims had been brought within the relevant statutory time limits and if not whether time should be extended on account of it not having been reasonably practicable for the Claim to have been lodged within that time limit. The relevant statutory provisions are section 111 of the Employment Rights Act 1996 and Article 7 of the Employment Tribunal Extension of Jurisdiction Order 1994. So far as is material the tests to be applied for all claims is the same.
2. The Claimant started his employment with the Respondent on 12 September 2011. On 14 November 2017 the Claimant was suspended whilst there was

an investigation into a disciplinary matter. The outcome of that was that the Claimant's role at work was changed but he retained the same level of pay. There was a meeting at which this was discussed, and it was to be put in place from 2 January 2018 when the Claimant returned from a holiday.

3. Despite what the Respondent believed was the Claimant's agreement to the sanction imposed the Claimant elected to appeal the disciplinary outcome.
4. On 5 January 2019 the Claimant sent a letter that began as follows:

***"I am writing to inform you that I am resigning from my position of CNC Programmer with immediate effect. Please accept this as my formal letter of resignation and a termination of our contract".***

Later in the letter the Claimant asserted that he had been subjected to a fundamental breach of contract and also a breach of trust and confidence.

5. On the same day the Respondent indicated a reluctance for the Claimant to resign in the heat of the moment. The Claimant further asserted that he had a conversation with Mr Simpson wherein the latter asked the Claimant to work a weeks' notice and the Claimant says he agreed. I accept that conversation took place.
6. On 6 January the Claimant wrote again to the Respondent clarifying his role and concluded with "Please confirm by return whether you want me in on Monday night". By return the Respondent wrote "Your request to resign has been accepted by Jamie (Simpson)". A letter was sent out confirming this.
7. It is clear and unequivocal that the Claimant's employment had terminated on 6 January 2018 and it is also clear that following the acceptance of the Respondent for the Claimant to work his notice the Claimant was actually dismissed during his notice period on 6 January 2018 and it is this date from which time starts to run.
8. As a precondition of bringing a claim the Claimant needs to undertake the ACAS Early Conciliation process. If he does that within the three-month period, then time is extended pursuant to the relevant statutory provisions. That is not relevant in this case as the Claimant did not engage ACAS within the three-month limitation period which would have ended on 5 April 2019. ACAS Early Conciliation started on 11 April and finished on 1 May 2018.
9. It follows therefore that the Claim was lodged just under 4 weeks out of time. The Claimant raised a number of issues as to why his claim was lodged out of time. He indicated that he was depressed over the material period but provided no medical evidence to support that. I note that he in fact gained other employment on 15 January which he was able to attend without taking time

off sick and he told me he was contacting ACAS on a regular basis. He also brought up issues relating to his Wife's illness but again brought no medical evidence to support those points.

10. I reject the Claimant's suggestion that it was not reasonably practicable for him to bring his claim on account of any of these health issues. There is no clear evidence to support his contention and indeed evidence that he was fit to undertake the task of lodging his claim.
  
11. The Claimant further suggested that he was confused as to the date of his dismissal and in particular preyed in aid P45s which indicated that his employment ended on 12 January 2018 and in a later one 31 January 2018. I am satisfied from the evidence that the Claimant knew of the statutory limitation period well before the end of the three-month period. The Claimant's oral evidence was absolutely clear to me that he believed that his employment had terminated on 6 January. I accept that the P45s could have raised a question in his head about whether he was right about the 5<sup>th</sup> and 6<sup>th</sup> but as soon as he had any doubt it would have been reasonable for him to check on the date of dismissal either by making further enquiry of the employer or seeking advice via ACAS or some other body. I find that he could have discovered the true situation with a relatively modest amount of enquiry so the "not reasonably practicable" test is not met.
  
12. I do find that the Claimant knew of the time limit and if there was any doubt a reasonably prudent person would have submitted the ACAS EC papers well within the time and accordingly I do not accept that it was not reasonably practicable for the Claim to be lodged in time. Had the test been a just and equitable test then I would have been inclined to grant the extension, but it is not, and I conclude that the Tribunal has no jurisdiction to consider this claim which has been dismissed.

Signed by: Employment Judge Self

Signed on: 01 July 2019