



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr D Perks  
**Respondent:** East London Science School Trust  
**Heard at:** East London Hearing Centre (by video, CVP)  
**On:** 24<sup>th</sup> October 2022  
**Before:** Employment Judge Reid

## Representation

**Claimant:** Mr Harris, United Voices of the World  
**Respondent:** Mr Magee, Counsel

## JUDGMENT (Reserved)

1. The Claimant's claim of race discrimination is dismissed on withdrawal.
2. The Claimant's claim of unfair dismissal was brought outside the time limit in s111(2) (a) Employment Rights Act 1996 and the Tribunal does not extend time under s111(2)(b) because the Tribunal decides that it was reasonably practicable for the Claimant to present his claim in time. His claim is therefore dismissed because the Tribunal does not have jurisdiction to hear it.
3. The hearing listed for 24-26 January 2024 will not go ahead.

## REASONS

### Background and time limit issue

1 The Claimant presented his claim form on 13th March 2022. He had contacted ACAS on 25th January 2022 and an ACAS certificate was issued on 14th February 2022. His employment ended on 18th October 2021 which meant that the normal three month time limit for an unfair dismissal claim expired on 17th January 2022. He therefore had not

contacted ACAS within the three month time limit. This means he did not benefit from an extension of time because of the ACAS process. Although he then presented his claim within one month of the issue of the ACAS certificate, he did not benefit from an ACAS extension to the time limit because he had not contacted ACAS within the three month time limit – I explained this issue to his representative who had thought that the claim was possibly still in time because presented within one month of the ACAS certificate being issued.

2 The issue for this preliminary hearing was therefore whether time should be extended under section 111(2)(b) Employment Rights Act 1996, which requires the Claimant to show firstly that it was not reasonably practicable for him to have brought his claim within the required time limit and if so secondly that he then brought his claim within a further reasonable period. The burden is on the Claimant to show these grounds are met.

3 The preliminary hearing (open) was listed as a video (CVP) hearing. Although the notice of hearing said that it was a video hearing, the Claimant's representative Mr Harris attended the Tribunal building instead. He did not make himself known to Tribunal staff until around 10:30 am. After unsuccessful attempts between 10:00 AM and 10:25 AM to contact him by phone and email and not being aware that he was in the building I decided to proceed in the absence of the Claimant/his representative under Rule 47 of the Tribunal Rules having made inquiries as to non-attendance. However once I was notified that his representative was in fact in the building I stopped the hearing and made arrangements for him to attend via video link from one of the Tribunal rooms. When he joined the hearing I explained to him that I would hear submissions from him first and then from the Respondent's Counsel who could then respond to the Claimant's submissions, the burden being on the Claimant to show why time should be extended.

4 Mr Harris confirmed the Respondent's understanding that the claim for race discrimination was withdrawn, something communicated to the Respondent on 16<sup>th</sup> May 2022 but not to the Tribunal.

5 The Claimant particularly relied on a letter dated 19th October 2021 from the Chairman of Governors to the Claimant, as to why the Claimant had not presented his claim in time. I was provided with a copy of this letter by the Respondent's Counsel by email. The Claimant also relied in submissions on *Wells Cathedral School v Souter* [2020] UKEAT 00801. I identified with his representative that this other case was a discrimination case under the Equality Act 2010 for which the time limit extension test is different, namely whether it is just and equitable to extend time; that was not the test I had to apply to the Claimant's unfair dismissal claim which is the not reasonably practicable test under the Employment Rights Act 1996. I explained in particular that the test for the Claimant's unfair dismissal claim does not include assessing the balance of prejudice as between the parties; that is an assessment carried out as part of the just and equitable test in a discrimination claim and not as part of the reasonably practicable test in an unfair dismissal claim.

#### Relevant law

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

7 The time limit is extended by a period of ACAS conciliation – s207B(3) Employment Rights Act 1996, provided that ACAS is contacted by the claimant during the normal time limit.

8 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.

9 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.

10 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.

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

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

12 The Claimant was aware on 18th October 2021 that he was resigning with immediate effect and that he was treating himself as constructively dismissed on that date. Mr Hinde the Chair of Governors wrote to him on 19th October 2021 accepting his resignation. The letter told the Claimant that he was supposed to give notice to expire on 31st December 2021 but that in the circumstances his immediate resignation was accepted. When he presented his claim form the Claimant was still clear that his employment had ended on 18<sup>th</sup> October 2021 (ET1 para 2).

13 In submissions the Claimant's representative referred to the penultimate paragraph of that letter as an explanation as to why he did not present his claim in time. That paragraph thanked the Claimant for his commitment and service. It was said in submissions that the Claimant interpreted this in a positive way, particularly because the Claimant wanted to continue his work on a separate science project connected to the school, of which he was still a director; it was said that the Claimant was not inclined to issue a claim in that context because he wanted to be able to continue the working relationship on that project and interpreted the letter as having a positive tone. The fact that part of his previous grievance outcome had been to suggest mediation was also said to have influenced the Claimant into this thinking at this time because that mediation had not yet happened.

14 The Claimant's resignation letter stated that the Claimant was being advised by Mr. Harris (from United Voices of the World, a trade union) at this time and referred to possible employment tribunal proceedings. The Claimant was therefore not in a position where he had no advice or no knowledge of Tribunal claims and even if (although this was not asserted) he himself did not know the way the time limit worked, he was capable of finding that out from Mr Harris or by doing basic research himself. The Claimant was not said to have been ill or incapacitated at any stage.

15 Although the Claimant had resigned, the Respondent subsequently took the decision to proceed with a post-employment investigation into serious allegations against the Claimant and invited the Claimant to a disciplinary meeting in a letter dated 24th January 2022. The Claimant contacted ACAS on 25th January 2022. I therefore find that the Claimant was prompted to take action to bring his Tribunal claim when it became apparent that even though he had resigned in October 2021 there was still to be a disciplinary investigation by the Respondent, given his role as past school Principal.

16 I find that the Claimant changed his mind about bringing a claim when invited to the disciplinary meeting in the letter dated 24th January 2022. He was aware of the possibility of an employment tribunal claim on 18th October 2021 when he resigned, he had advice from Mr. Harris and knew the basis for his constructive unfair dismissal claim, based on events prior to that date. The reason he did not bring his claim in time was because he had decided not to bring a claim, until he realised that a post-employment disciplinary process would take place. His employment had already ended in October 2021 so this was not a situation whereby that disciplinary process could result in his dismissal, because it had already happened on his own account by way of a constructive dismissal. The disciplinary process during January/February 2022 (and any criticisms of it including any reliance on the investigations of Mr Ward) would have limited impact on his unfair dismissal claim which on his own account had crystallised as a constructive dismissal in October 2021; he was not dismissed by the Respondent for misconduct in October 2021 based on Mr Ward's then investigations. The fact that the Claimant had decided in October 2021 that he did not want to bring a claim because he wished to maintain the relationship as regards his separate directorship of the science project, did not mean that it was not reasonably practicable to present his claim in time. If the Claimant wanted to challenge the January/February 2022 disciplinary proceedings which could not result in his dismissal, the way to do that was not by pursuing an unfair dismissal claim based on his previous claimed constructive dismissal in October 2021. He already knew in October 2021 the grounds on which he disagreed with the investigation at that point (including why he said Mr Ward was not competent or appropriate to do it) and had resigned he said as a result of it.

17 The submission was also made that the Claimant felt that the only way he could defend the investigations being undertaken by Mr Ward was to pursue an employment tribunal claim. However he was aware of Mr Ward's investigations when he resigned and was already unhappy about his role as investigator (ET1 para 32). He could have challenged those investigations which took place up to October 2021 as part of his constructive dismissal claim.

### Reasons

18 I therefore conclude taking the above findings of fact into account that that it was reasonably practicable for the Claimant to present his claim within the three months time limit. He had decided not to bring a claim and that only changed when he was notified on 24<sup>th</sup> January 2022 of the post-employment disciplinary meeting, by which time his claim was already out of time. It was possible for him to bring his claim in time and it was reasonable in his situation to expect the Claimant to have brought his claim in time.

19 The Claimant may have wanted to keep things amicable to preserve his directorship of the science project and may have thought that was possible, but that did not mean it was

not reasonably practicable to bring his claim within the time limit.

**Employment Judge Reid  
Dated: 26 October 2022**