



# EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

v

E Ntim

TLC Group Limited

**Heard at:** Watford by CVP  
**Before:** Employment Judge Anderson

**On:** 21 November 2022

## **Appearances**

**For the Claimant:** In Person

**For the Respondent:** K Moss (Counsel)

## **JUDGMENT**

1. The claimant's claims of unfair dismissal and wrongful dismissal are out of time.
2. It was reasonably practicable for the claimant to have filed the claims within time and time is not extended.
3. The claims are struck out as the tribunal has no jurisdiction to hear a claim that is issued out of time.
4. The respondent's application for costs is refused.

## **REASONS**

### **Postponement Application**

1. At the outset of the hearing the claimant made an application to postpone. The hearing had been listed to start at 10.00am this morning and the tribunal notified the parties on Friday 18 November 2022 that the start time had been put back to 2.00pm. The claimant said that she had been unable to get her legal person to attend at 2.00pm. I questioned the claimant about the legal person, and she said that Haringey Law Centre was assisting her with the claim and had given her some written advice. The Law Centre is not on the record as representing the claimant and she confirmed that it was not the intention that anyone from the centre would have been speaking on her behalf today. Ms Moss for the respondent objected to any postponement. This had not been notified to the respondent in advance of the hearing. She noted that the claimant was not represented in the case and said a postponement would be a waste of tribunal and the respondent's resources.

2. I refused the application to postpone. It was clear from the claimant's evidence that although she had hoped someone from Haringey Law Centre would attend the hearing, this was not to speak on her behalf. Having questioned the claimant about her application I had no concerns that she was other than equipped to advocate on her own behalf.

### **Strike Out Application**

3. The Respondent applied on 19 May 2022 for the claim to be struck out on the ground that it was filed out of time and the tribunal had no jurisdiction to hear it. The claimant made no written reply to the application.
4. The claimant was dismissed by the respondent on 3 September 2021. She was notified at the same time that she had a right of appeal against the dismissal. She appealed and the appeal hearing was listed for 24 September 2021. It was postponed so the claimant's trade union representative could attend. The hearing took place on 22 October 2021. The claimant was advised in a letter she received on 17 November 2021 that her dismissal had been upheld. She said today that she believed that dismissal took effect on the date that she received that letter.
5. The claimant said that she requested advice from her union representative about next steps, but it was not forthcoming. She contacted the Citizen's Advice Bureau around 30 December 2021 who referred her to ACAS. ACAS was closed until 6 January 2022. When it re-opened early conciliation was initiated. This ended on 16 February 2022. At some point between 6 January and 25 February 2022 the claimant said she was referred by ACAS to Haringey Law Centre who have since been providing her with some assistance, though not full representation. The claimant said she understood from ACAS that she had four weeks from the end of early conciliation in which to file her claim and that she waited the four weeks as she was still negotiating with the respondent.
6. The claimant relied on the case of *Drage v Governing Body of Greenford High School 2000 ICR 899 CA* to show that a dismissal does not take place until after an appeal decision is given. She referred to s97(3)(a) Employment Rights Act 1996, which section is not relevant to this case.
7. Ms Moss for the respondent said that the claimant had contact with a union representative before her appeal hearing and at it, that waiting for an appeal outcome is not a reason why filing a claim in time is impracticable and there was no real explanation as to why ACAS had not been contacted by 2 December 2021 (being the final day for issuing a claim). The claimant had not said that she was advised wrongly, and even if she had, that would not have made the filing of her claim in time impracticable.
8. A claim for unfair dismissal or wrongful dismissal must be filed before the end of three months beginning with the effective date of termination or 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 within that time (s111(2) Employment Rights Act 1996). The

claimant was dismissed on 3 September 2021. This is what she has written in her ET1. There is no evidence before me which suggests that she was dismissed on 17 November 2021. On that date the claimant received notification that her appeal against dismissal was not upheld. An appeal process does not stop the clock running for the purposes of filing a claim in the tribunal. There are certain limited circumstances where a tribunal has decided, on a particular set of facts, that it was reasonable for a claimant to rely on the end of an appeal process as the effective date of termination. This is what was considered in the case of *Drage* which was raised by the claimant. The claimant's case is not such a case. No submissions have been made or evidence presented that the dismissal on 3 September 2021 was conditional or not actually a dismissal, and I accept that the effective date of termination was 3 September 2021. The claim was therefore filed out of time.

9. The other explanation given by the claimant for her late claim is, essentially, that she was ignorant of her rights, or the limitation on those rights. Ignorance of rights is not a defence in itself. The test to be applied here is not whether the claimant knew of her rights but whether she ought to have known about them (*Porter v Bandridge Ltd 1978 ICR 943 CA*). The claimant had a union representative during her appeal when a claim could still have been made in time. After receiving the appeal decision there was a further two-week period in which an in time appeal could have been issued but was not. The claimant said she was waiting to speak to her union representative. Advice was not sought from the Citizen's Advice Bureau until 30 December 2021. The claimant was eloquent in her evidence and is obviously an intelligent person. Whilst she may not have been aware of the full extent and limitations of her rights to make an application to the employment tribunal, I can see no reason why she could not have obtained the necessary information much sooner than she did and have issued a timely claim, or indeed a claim that was less delayed. In conclusion I am not satisfied that it was not reasonably practicable for the claimant to issue a claim in time, and I do not extend time for the filing of the claim.
10. As the claim was filed out of time the tribunal has no jurisdiction to hear it and it is struck out.

### **Costs Application**

11. The respondent applied for an order for costs of £1000 plus VAT in respect of Ms Moss's attendance today. The respondent relied on an e-mail it sent to the claimant on 1 August 2022 in which it said that if the claim was pursued then costs would be sought. The e-mail is clearly addressed to the claimant, at the correct e-mail address. The claimant said that she had not received the e-mail.
12. Under rule 76 of Schedule 1 to the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013 a tribunal may make a costs order and shall consider whether do so where it considers that a party has acted unreasonably or a claim had no reasonable prospects of success.

13. Ms Moss said that the claim had no reasonable prospect of success and if it had the claimant would have responded to the respondent's application to strike out the claim in writing. She did not because it was reasonably practicable for her to have filed her claim. It was unreasonable of her to continue to pursue the claim. The claimant referred to negotiations with the respondent to settle the claim and said that she had left the matter in the hands of Haringey Law Centre and ACAS.
14. I declined to make a costs order. It was not clear to me that the claimant understood that continuing with the claim may be deemed to be unreasonable or that she understood the claim to have no reasonable prospect of success, as she seemed to have relied, whether ill-advisedly or not on legal assistance to settle the claim from Haringey Law Centre and ACAS, without considering the matter herself. The tribunal is generally a no costs jurisdiction and I do not think that in this particular case, considering the claimants lack of experience in tribunal litigation, that a costs order is warranted.

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Employment Judge Anderson

Date: 21 November 2022

Sent to the parties on: 11.12.2022

GDJ  
For the Tribunal Office