



# EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

**Mr R Nahar**

**V Pertemps Recruitment Partnership  
Limited**

## OPEN PRELIMINARY HEARING

**Heard at:** Watford (by hybrid – EJ remote)

**On:** 23 January 2023

**Before:** Employment Judge Wyeth

### Appearances

**For the Claimant:**

No attendance

**For the Respondent:**

Mrs T Dawson, Senior HR Advisor

## JUDGMENT

1. The correct name of the respondent is Pertemps Recruitment Partnership Limited.
2. The claimant's claim is struck out and dismissed in its entirety as the tribunal has no jurisdiction to hear any of his complaints as they are out of time.

## REASONS

1. The respondent is a recruitment business. The claimant was employed by the respondent from 5 June 2019 in the capacity of a Flexible Employee. The respondent says that the claimant commenced an assignment with the respondent's client, Hillingdon Council, as a Spare Passenger Vehicle Driver from 5 June 2019
2. According to the respondent, in the week ending 18 March 2022, the assignment with the client (Hillingdon Council) terminated. Consequently, the claimant was no longer required to undertake the role of Spare Passenger Vehicle Driver for the client. Under the terms of its contract with the claimant, the respondent was entitled to transfer the claimant to a

different assignment at any time and would try to find alternative assignments for the claimant if the one he was working on came to an end. When not on an assignment, the claimant had an obligation to keep in regular contact with respondent. The respondent alleges that the claimant failed to make any contact with it following the ending of the assignment with Hillingdon Council and as such the claimant's employment was terminated on 29 April 2022 as recorded in his P45.

3. By way of a claim form dated 25 August 2022 (following a period of ACAS early conciliation commencing on 17 August 2022 and ending on 25 August 2022) the claimant brought complaints of unfair dismissal, race discrimination and arrears of pay. His claim form contained very little detail but it appears that he was alleging that he was dismissed on 21 March 2022 (an earlier date than the one advanced by the respondent) and that race had something to do with his dismissal. Despite ticking the box at 8.1 of his claim form alleging race discrimination, the claimant fails to specify what his race is for the purposes of any discrimination claim or why he says this had any bearing on his dismissal. Instead in one very short paragraph in box 8.2 the claimant makes reference to being admitted to hospital following a heart attack, subsequently being informed by text that he was not required to work and not being formally informed about his further employment status.
4. The claimant further states in his claim form that he had contact with a solicitor called "Karen" but accepted that he had not contacted her within the time required to bring a claim.
5. On the face of it the three claims are out of time. The claimant should have commenced ACAS early conciliation by no later than 28 July 2022 (taking the respondent's asserted date of termination) but the claimant did not do so until 17 August 2022. The claimant appears to accept in his claim form that his claims are out of time. Need it be said, as part of the respondent's defence (outlined above) the respondent maintains that the claimant's complaints are out of time.
6. On 8 December 2022 at the instruction of EJ Lewis, the tribunal wrote to both parties listing this case for an in person Open Preliminary Hearing today to "*decide if the Tribunal can hear the claim, as it seems to have been brought out of time*". Mrs Dawson who attended on behalf of the respondent this morning confirmed that the respondent had received this correspondence from the tribunal without any issue. There is no reason to suspect, therefore, that there was a problem with this communication being sent out to the parties.
7. Furthermore, Mrs Dawson confirmed to me today that she had also copied the claimant in on an email she sent to the tribunal at 11.14am on 9 January 2023 about the hearing today requesting that it be converted to CVP and heard remotely. She says she used the exact email address given by the claimant on his ET1 form. The tribunal also copied the claimant in using the same email address he provided, in its response to that application (confirming that the hearing would proceed in person as originally listed)

sent at 4.02pm on 20 January 2023. Accordingly, these communications would serve as a reminder to the claimant of the need to attend the hearing today.

8. The hearing was late starting this morning because the allocated Judge was unavailable. The matter was subsequently transferred to my list but as I was undertaking remote hearings it proceeded by way of a hybrid with Mrs Dawson in attendance at the tribunal. A clerk was also present in the room with Mrs Dawson and remained present throughout the hearing.
9. The claimant did not attend the hearing today. My clerk telephoned the claimant twice (shortly after 10am) to make enquiries as to his whereabouts but the claimant did not answer. As a result, my clerk left him two messages to explain that he was due to attend a hearing this morning and to contact the tribunal urgently but he failed to attend or make any contact before the hearing commenced at 11.40am or by the time it concluded.
10. The claimant has failed to give any details of his claim for “arrears of pay”. Nevertheless such claims are generally pursued under Part II of the Employment Rights Act 1996 (“ERA”). Accordingly, similar to claims of unfair dismissal, the process for claims of this kind must be started within three months less one day of the date of payment (or non-payment) of wages from which the deduction was made or the last of these if part of a series. Again, similar to a complaint of unfair dismissal, a tribunal shall not consider a complaint under Part II of the ERA unless it is satisfied that it was not reasonably practicable for a complaint to be presented within that time and that it is presented within a reasonable period thereafter.
11. For a claim of race discrimination the process must also be started within three months less one day starting with the date of the act to which the complaint relates or such other period as the tribunal thinks just and equitable.
12. The claimant has provided no explanation for failing to attend the hearing today. In any event, the claimant has provided no reason or evidence to show why it was not reasonably practical to pursue his claims in time or why it would be just and equitable to extend time in relation to his complaint of race discrimination. I therefore conclude that the claimant’s claims are out of time. Accordingly time should not be extended and the tribunal has no jurisdiction to hear his claim in its entirety.

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Employment Judge Wyeth  
Date: 23 January 2023

Sent to the parties on: 24/2/2023  
NG  
For the Tribunal Office