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# EMPLOYMENT TRIBUNALS

**Claimant:** Mr T Gbade  
**Respondent:** Uber London Limited  
**Heard at:** East London Hearing Centre (by CVP)  
**On:** 2 November 2022  
**Before:** Employment Judge Byrne

## Representation

**Claimant:** In Person  
**Respondent:** Mr Navid Pourghazi (Counsel)

**JUDGMENT** having been sent to the parties on **7 November 2022** and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013.

# REASONS

## Background

1. The Claimant worked as a driver for the Respondent from 28 March 2019 to 16 October 2021 and it was agreed between the parties that 16 October 2021 was the effective date of termination.
2. At the outset of the hearing, it was confirmed that the Claimant brings two separate claims, one for unfair dismissal and a second claim for breach of contract concerning a sum of £3,513 that the Claimant says fell due to him on 16 October 2021.
3. The matter was listed for an open preliminary hearing to determine whether the relevant time limits for the presentation of those claims had been complied with. The relevant test for the time limits concerning the unfair dismissal is to be found in s.111(2) of the Employment Rights Act 1996 and, by virtue of Article 7 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 SI 1994/1623, an essentially similar test concerning time limits applies to the breach of contract claim.
4. In the course of the hearing reference was made to a 56 page hearing bundle. The Tribunal heard evidence from the Claimant and also heard closing submissions on behalf of both the Respondent and the Claimant.

## Findings of fact

5. I move on to find the findings of fact relevant to the claims and I wish to make it clear that I am only making findings of fact that are material to the issues in this preliminary hearing.

6. The Claimant worked as a driver for the Respondent from 28 March 2019 until the 16 October 2021. He was dismissed on 16 October 2021, ostensibly for reasons relating to conduct.

7. The Claimant was immediately aware of the fact of his dismissal and of his entitlement to seek some sort of legal redress in relation to that dismissal.

8. On 18 October 2021, the Claimant went to the GMB union for assistance having been prompted to do so by an associate of his. His focus and their focus in the next number of months was on the obtaining of further details and material from the Respondent concerning the Claimant's dismissal on 16 October 2021.

9. The Claimant was in contact with the GMB union on a regular basis and, on the evidence I have heard, on at least a weekly basis on average in relation to this matter. The Claimant left most of the communication with the Respondent to the GMB union, although he did on at least one occasion make direct contact with the Respondent in order to advance a system access request. He had to make this request himself as opposed to through the GMB union.

10. During this entire period, the Claimant was ignorant of time limits concerning his claim and of the requirement to apply to ACAS. The Claimant only became aware of the requirement to apply to ACAS shortly before he was advised to do so by an official in the GMB union in or about 19 April 2022, which is when he contacted ACAS and, even at that point in time, the Claimant was ignorant of relevant time limits concerning his claims.

11. Given the effective date of termination, the primary time limit for the Claimant to bring his claim expired on 15 January 2022.

12. The Claimant started the ACAS early conciliation process on 19 April 2022. Since he initiated the process after expiry of the primary time limit, it follows that this process had no effect on the deadline for the Claimant to present his claim.

13. The Claimant's ET1 was presented on 21 April 2022. The Claimant's claim was therefore presented 3 months and 6 days late.

## The Law

14. By Section 111(2) of the Employment Rights Act 1996 a Tribunal shall not consider a complaint unless it is presented to a Tribunal:

- Before the end of the period of 3 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 have been presented before the end of that period of 3 months

15. As regards the breach of contract claim, Article 7 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 SI 1994/1623 provides that a claim must be brought '(a) within the period of three months beginning with the effective date of termination of the contract giving rise to the claim, or (b) where there is no effective date of termination, within the period of three months beginning with the last day upon which the employee worked in the employment which has terminated', unless the tribunal is satisfied that it was not reasonably practicable for the claim to be brought within the time limit.

16. The burden of proof in showing that it was not reasonably practicable to present the claim in time rests upon the Claimant; see Porter v Bandridge Ltd [1978] ICR 943 CA. If the Claimant does succeed in doing so then the Tribunal must also be satisfied that the time in which the claim was in fact presented was in itself reasonable. One of the leading cases is Palmer and Saunders v Southend-on-Sea Borough Council [1984] IRLR 119 CA in which May LJ referred to the test as being in effect one of "reasonable feasibility" (in other words somewhere between the physical possibility and pure reasonableness).

17. In Adsa Stores Ltd v Kauser EAT 0165/07 Lady Smith described the reasonably practicable test as follows: "the relevant test is not simply 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".

18. A number of factors may need to be considered. The list of factors is non-exhaustive but may include:

- The manner and reason for the dismissal;
- The extent to which the internal grievance process was in use;
- Physical or mental impairment (including illness – see Shultz v Esso [1999] IRLR 488 CA, a case concerning a claimant suffering from a depressive illness, as to the approach for the Tribunal to adopt when determining the "reasonably practicability" question).
- Whether the Claimant knew of his rights. Ignorance of the right to make a claim may make it not reasonably practicable to present a claim in time, but the claimant's ignorance must itself be reasonable. In such cases the Tribunal must ask: what were the claimant's opportunities for finding out that he had rights? Did he take them? If not, why not? Was he misled or deceived? See Dedman v British Building and Engineering Appliances Ltd 1974 ICR 54 CA. In other words, ought the claimant to have known of his rights? Ignorance of time limits will rarely be acceptable as a reason for delay and a claimant who is aware of his rights will generally be taken to have been put on enquiry as to the time limits.
- Any misrepresentation on the part of the Respondent;
- Reasonable ignorance of fact;

- Any advice given by professional and other advisors. A Claimant's remedy for incorrect advice will usually lead to a remedy against the advisors and the incorrect advice unlikely to have made it not reasonably practicable to have presented the claim within the statutory time limit. See for example: Dedman (cited above); Wall's Meat Co Ltd v Khan 1979 ICR 52 CA.
- Postal delays/losses
- The substantive cause of the Claimant's failure to comply.

## **Conclusions**

19. The relevant law is to be borne in mind in addressing three key questions.

20. The first question is whether the claims were brought outside the relevant time limits. Secondly, was it reasonably practicable to bring the claims within those time limit? And then thirdly (if applicable) if it was not reasonably practicable to bring the claims within the relevant time limits, were they brought within such further period of time as the Tribunal considers reasonable?

21. So, turning to the first question, were the claims outside the time limits? It is clear on the evidence that the claims were not presented within the relevant time limits. They were brought some three months and six days late.

22. The next question for consideration is whether it reasonably practicable to bring the claims within time. Looking at the evidence in the round, I find that it was reasonably practicable to do so. The Claimant was of the view on 16 October 2021 that he had been unfairly dismissed and that there was a breach of contract on the part of the Respondent in relation to the sum of some £3,513. The evidence does not show any particular impediments to the Claimant bringing his claims. On the contrary, the Claimant was in active and regular communication with the GMB union and in both direct and indirect contact with the Respondent.

23. On a consideration of all of the evidence, I conclude that the ignorance of time limits on the part of the Claimant cannot be seen as reasonable. In the first place, the Claimant knew about his dismissal and his entitlement to some kind of legal redress in relation to that from the point in time when he was dismissed on 16 October 2021. Secondly, he had plenty of time to advance his claims after he became aware, in a general sense, of his right to seek legal redress. Finally, he was being advised from 18 October 2021 by skilled advisers.

24. The evidence in its totality and looked at it in the round shows that the Claimant and the GMB were focused on overturning the Claimant's dismissal and on obtaining material evidence that helped to advance that position but this is not, in the view of the Tribunal, sufficient to demonstrate that it was not reasonably practicable for the Claimant to bring his claims within the relevant time limits.

25. Those being the findings of the Tribunal, the third question does not arise for consideration and, given the conclusions the Tribunal has reached, the judgment of the Tribunal is that the claims were not brought within time and must therefore be dismissed.

**Employment Judge Byrne**

**27 February 2023**