# THE EMPLOYMENT TRIBUNALS

| **Claimant** | | **Respondent** |
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| **David Winstone** | **v** | **Footballco Media Ltd** |

**Heard at**: London Central (via CVP) **On**: 12 June 2023

**Before:** Employment Judge Heydon

**Representation:**

**Claimant:** Represented himself

**Respondent:** Jesse Crozier (Counsel)

# JUDGMENT

1. The Claim was presented outside the statutory time limit, and it was reasonably practicable for the complaint to have been presented within that time limit.

2. Consequently, the application for extension of time to file the Claim is refused. Therefore, the Tribunal cannot consider the Claim, and so it is dismissed.

# REASONS

**Claim and Issues**

1. The Claimant in this case is Mr David Winstone, and the Respondent is Footballco Media Ltd.

2. Mr Winstone has brought a claim for constructive unfair dismissal, and for unpaid notice pay. A preliminary hearing was listed for 12 June 2022 to decide an application by the Claimant for an extension of time to file his ET1 Claim form.

**Procedure**

3. Although he had been represented up to that point by Keystone Law, Mr Winstone represented himself at the hearing. The Respondent was represented by Mr Jesse Crozier of Counsel. Mr Winstone provided a witness statement, and also gave oral evidence.

**Facts**

4. Mr Winstone was an employee of Footballco Media. His employment ended on 21 October 2022 when he notified his employer through a letter sent from his solicitors, Keystone Law, that his employment as at an end with immediate effect. He claims his employer was in breach of contract, and that he was constructively dismissed. The Respondents deny this. For the latter part of his employment, Mr Winstone had been advised and represented by Keystone Law who are known for their expertise in Employment law, amongst other things.

5. Following the end of his employment, Mr Winstone contacted ACAS on 28 October to trigger their early conciliation process. He received an email back saying that he had 6 weeks to reach a conciliated settlement. A similar email was sent to Keystone on the same day. On 31 October, ACAS sent an email to Keystone with the early conciliation certificate. The date on the certificate is a crucial piece of information, and was required to calculate the final deadline for Mr Winstone to submit his Tribunal claim. The deadline for doing so was 23 January 2023.

6. Unfortunately, non-one at Keystone saw either of these emails from ACAS. The Tribunal has not been told why, but we can assume that they were received on the Keystone servers because in the Particulars of Claim (drafted by Keystone) they say that they managed to "locate it" some months later.

7. Presumably realising that the maximum 6 weeks' time for conciliation would be finishing shortly, Keystone emailed ACAS on 8 December. ACAS replied resending the certificate. Again, for some reason no-one at Keystone saw the email, but again we can assume that it was received for the same reason as before. Despite not having seen a certificate, Keystone appear to have calculated that Mr Winstone had until 3 March 2023 to file his claim. This calculation was based on the original ACAS email sent to Mr Winstone saying that he had 6 weeks for conciliation. Keystone seem to have assumed that the certificate was being issued after 6 weeks (i.e. around 9 December), but took no further steps to ascertain where the certificate was, or what the precise date contained in it was.

8. On 31 January, concerned about the lack of correspondence from ACAS, Mr Winstone took matters into his own hands and contacted ACAS himself, whereupon they forwarded to him the certificate dated 31 October, and the emails sent to his solicitors. At that point, he contacted his solicitors and they realised that his claim was out of time. He filed his claim and application for an extension of time three days later, on 3 February 2023, around 12 days late.

**Law**

9. The discretion available to a Tribunal to allow a Claim to be filed late is limited. I may only permit an extension of time if it was not reasonably practicable for the claim to have been brought in time. The Claimant must show why it was not reasonably practicable.

10. Each case will turn on its own facts, but previous judgments of the Court of Appeal and Employment Appeal Tribunal give guidance on how to determine whether or not it was reasonably practicable. A Claimant who is aware of his or her rights to bring a claim is generally under an obligation to seek information on how to enforce it. If they are not aware of the time limits, the question is whether that lack of awareness was reasonable. Several Court of Appeal decisions have made it clear that mistakes on the part of legal advisers (for example *Wall's Meat Co Ltd v Khan 1979 ICR 52*) will not make delay reasonable if it is caused by solicitors not giving their client such information as they should reasonably in all the circumstances have given.

**Conclusion**

11. The only reason why Mr Winstone did not present his claim in time was because of a mistaken understanding over when the proper deadline was. He and his solicitors had probably long known that they wanted to bring a claim, possibly even before the employment was terminated. Once they realised that the deadline had passed, he and his solicitors were able to prepare and file his Claim and an application for extension of time within 3 days. On the evidence I have heard, it would have been perfectly possible for them to have done this (and would not have needed to draft the application for an extension) two weeks earlier.

12. Was his lack of awareness of the time limits reasonable? In this case Mr Winstone was aware that there were time limits and that they were reasonably short. He was therefore on notice to make inquiries as to the deadline.

13. Mr Winstone gave evidence that in his final few months employed by the Respondent was stressful had had caused him some health problems which made it difficult for him to actively engage with the claim. I also accept that the first email sent to Mr Winstone by ACAS (saying that he had 6 weeks to reach a conciliated settlement) could have been confusing to him.

14. However, Mr Winstone was – entirely reasonably – relying upon the advice of his solicitors, who had been acting for him in this matter for some months. It is clear that he did make inquiries with them as to the deadline for presenting his claim. It is obviously unfortunate that, for whatever reason, Keystone did not see any of the three emails sent to them by ACAS. Had they seen the second or third emails, it should have been immediately clear to them, as experienced employment law practitioners, when the deadline was.

15. But even putting the email problem to one side, Keystone would have known that an early conciliation certificate should have been received by the middle of December, that they could not assume what the date on it would be, and that the date on the certificate was crucial to determining the deadline. When they did not see the email reply from ACAS, following their email of 8 December, they

were on notice to make further inquiries (as, indeed, Mr Winstone himself did on 31 January which, unfortunately for him, was too late).

16. In my view, Keystone had ample opportunity to ascertain the correct time limit, to inform Mr Winstone, and to prepare the Claim on time. Following the Court of Appeal authorities, it is not reasonable to be able to rely on their failure to make those inquiries. Had they done so, I have no doubt that the claim would have been brought in time.

17. I conclude therefore that I must find that it was reasonably practicable to bring the claim within the time limit, and therefore I must refuse the application to permit the Claim to be filed late. It is very unfortunate for Mr Winstone who is completely blameless in all of this, but that is not sufficient grounds to allow the extension of time. If he has any recourse against anyone, it will be against his solicitors.

Employment Judge Heydon

Dated: 14 June 2023

Judgment sent to the parties on:

17/07/2023

For the Tribunal Office

Note

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.