



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr M Faraz

**Respondent:** Dogbot Technology Limited

**Heard via Cloud Video Platform (London Central) On:** 5 December 2023

**Before:** Employment Judge Davidson

## Representation

**Claimant:** in person

**Respondent:** Mr S Ayurteliya, Director

## PRELIMINARY HEARING IN PUBLIC JUDGMENT

**Judgment** having been given orally at the hearing and written reasons having been requested by the claimant in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013 by email dated 17 December 2023, the reasons are provided below.

## JUDGMENT

1. The correct respondent is Dogbot Technology Limited, which is the entity to which the claimant provided services.
2. The complaint of unlawful deduction from wages was not presented within the applicable time limit. It was reasonably practicable to do so. Even if it had not been reasonably practicable to do so, the claim was not presented within a further reasonable period. The claim is therefore dismissed.
3. The complaint of race discrimination was not presented within the applicable time limit. It is not just and equitable to extend the time limit. The claim is therefore dismissed.

# REASONS

## Issues and background

1. Following a case management preliminary hearing on 19 September 2023, EJ J S Burns listed this hearing as a public preliminary hearing to deal with the following issues:
  - 1.1. whether time should be extended for the claimant's claim of breach of contract/unlawful deduction from wages or whether the claim should be struck out as being out of time;
  - 1.2. whether time should be extended for the claimant's claim of direct race discrimination or whether the claim should be struck out as being out of time;
  - 1.3. whether Dogbot Technology Limited should be added as a respondent;
  - 1.4. to make any case management orders as necessary if any of the claims proceed.
2. The respondent named in the claim form was 'Senake Atureliya', who is CEO of Xcavate Robotics and Dogbot Technology Limited. Xcavate Robotics is a trading name. The company is called Dogbot Technology Limited.
3. The claim relates to work performed between 1 April 2020 and 19 February 2021. The claimant notified ACAS on 25 May 2023 and the period of early conciliation ended on 7 June 2023. The claim form was submitted on 7 June 2023.
4. The claimant had been informed at the hearing on 19 September 2023 that, if he wished to give live evidence on oath from India at any hearing, he will have to show that he is permitted to do so or, alternatively, he can rely on written material. The claimant did not show that he was permitted to give live evidence from India and he relied on the written material he had submitted.

## Evidence

5. The tribunal relied on the claimant's written materials and heard from Senake Atureliya on behalf of the respondents. The tribunal also had sight of a bundle of documents prepared by the claimant, which included the claimant's case, some contemporary documents and emails between the parties regarding payment of the unpaid invoice.

## Facts

6. The following is a summary of the relevant facts.
7. The claimant lives and works in Hyderabad, India providing freelance services to various companies which he finds via a freelancer website. He was engaged by Senake Atureliya to provide services to Dogbot Technology, a company based in the UK. It is accepted that he was not an employee.

8. He had previously worked on a freelance basis for Senake Atureliya, without problem, and been paid for his work.
9. The services which are the subject of this claim were provided from 1 April 2020 to 19 February 2021. The claimant says he worked for 900 hours at an agreed rate of US\$15 per hour (totalling £10,856), for which he has not been paid. He states that the original agreement was that he would be paid partly in cash and partly in shares.
10. The respondent's position is that the work was provided at the claimant's suggestion when he had no other work due to COVID restrictions on the basis that he would be remunerated when the business could afford it and that the claimant would be remunerated in shares. He subsequently requested that half of the remuneration be paid in cash but the respondent refused as it did not have sufficient funds to pay out cash. The respondent accepts that the invoice is unpaid but is only in a position to pay once there are available funds.
11. There was an unsigned draft consultancy agreement between Dogbot Technology Limited and the claimant before the tribunal, which provides some evidence of the parties' intentions although it was not finalised and not all elements were agreed. The agreement stipulates that the claimant will be an independent contractor and not an employee, worker, agent or partner.
12. The claimant also alleges that he was discriminated against because he was not included in the web page of the business he was providing services to. He believes this is because he was a worker from another country.
13. It is agreed that the claimant ceased providing services on 19 February 2021. He submitted an invoice addressed to Dogbot Technology Limited dated 7 May 2021. It is accepted that this invoice has not been paid. There is a dispute regarding the claimant's entitlement.
14. The claimant appears to have chased payment in May 2022 and again in February/March 2023. The respondent indicated that payment would be made once investment funding had been received.

Law

15. The relevant law is as follows:

- 15.1. The test for extending time to allow the unlawful deductions from wages claim to proceed is whether the tribunal considers that it was not reasonably practicable for the claim to have been brought within the statutory time limit. If the claim was submitted late, the tribunal must consider whether it was brought within a reasonable period thereafter. This is a strict test and it is for the claimant to show it was not reasonably practicable to bring the claim in time.

15.2. The test for extending time to allow the discrimination claim to proceed is whether the tribunal considers it would be 'just and equitable' to do so. It is for the claimant to satisfy the tribunal that it is just and equitable to extend time. It is the exception rather than the rule. The tribunal will consider the prejudice which each party would suffer as the result of refusing or granting an extension, having regard to the length and reasons for the delay and the extent to which the delay affects the cogency of evidence.

16. The claimant is unable to pursue a breach of contract claim in the employment tribunal as he was not an employee of the respondent.

*Determination of the issues*

*Identity of the respondent*

17. I find that the claimant provided his services to Dogbot Technology Limited. This is supported by the paperwork before me including the draft agreement and the invoice.

*Unlawful deductions from wages*

18. I find that the claimant has failed to show that it was not reasonably practicable to present his claim within the statutory time limit. His only explanation was that he was ignorant of the relevant time limits. Ignorance has to be reasonable. The claimant is a sophisticated internet researcher and would have had access to the information he needed in order to pursue his claim.

19. He has failed to explain why the steps he finally took could not have been taken sooner.

20. Even if I had found that it was not reasonably practicable to have brought the claim within the primary three month time period, I find that the further delay until June 2023, a period of over two years, is unreasonable.

*Race discrimination*

21. I find that it would not be just and equitable to extend time to allow the claimant's race discrimination claim to proceed. The length of delay of over two years is significant and the claimant has not given a full explanation for the delay. The allegations of race discrimination were not raised at the time and this would prejudice the respondent in defending the claim so long after the event. The claimant has not identified any comparators and there is no evidence that any other contractors were treated better than him due to his race.

22. Although not directly issues before me, I have also taken into account the fact that the claimant will have to show:

22.1. that the tribunal has territorial jurisdiction over his complaint, given that he lives and works exclusively in India, and

22.2. that he has worker status and is not in business on his own account as an independent contractor.

23. From the information before me, I find that the claimant will have difficulties in establishing that the tribunal has jurisdiction to hear his complaints. This is a further reason why it would not be just and equitable to extend time. The prejudice to the claimant in not extending time is unlikely to be significant as there are other considerable jurisdictional hurdles he will have to overcome before his claim could be heard. The prejudice to the respondent is considerable as it will have to spend time and money in defending claims with little prospect of success due to the jurisdictional issues.

24. In conclusion, the claimant's complaints are dismissed.

Employment Judge Davidson

Date 10 January 2024

JUDGMENT SENT TO THE PARTIES ON

10/01/2024

FOR EMPLOYMENT TRIBUNALS

Notes

published, in full, online at [www.gov.uk/employment-tribunal-decisions](http://www.gov.uk/employment-tribunal-decisions) shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

CVP hearing

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was Cloud Video Platform (CVP). A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing