



# EMPLOYMENT TRIBUNALS

**Claimant:** T Dhaliwal

**Respondent:** British Airways Plc

**Heard at:** Reading by video      **On:** 29 May 2024

**Before:** Employment Judge Skehan

## Appearances

For the claimant: No attendance

For the respondent: Ms Cairney, solicitor.

## Judgment

1. The claimant's claims of unfair dismissal and unauthorised deduction from wages were not presented within the applicable time limit. It was reasonably practicable to do so. Tribunal does not have jurisdiction to consider these claims and the claims are therefore dismissed.

## Reasons

1. This matter was listed for public preliminary hearing this morning at 10am. The parties had been informed of this hearing by letter from the Employment Tribunal (ET) dated 6 February 2024. Shortly before commencement of the hearing I was passed an email from the claimant sent at 9.09am that stated:

Good Morning,

As discussed on the telephone with you just now, I would like my case adjourned as my mother is disabled and my father burnt his back and is in ealing hospital and has been there the last 7 days and i am having difficulty being in two places at once as i have to look after both of them. My mother is 84 years old.

I would be very appreciative and grateful if we could please adjourn this to further down the line.

2. The claimant's request for a postponement was refused and the claimant was informed that he may ask for the postponement application to be reconsidered at the hearing. The reasons for refusal of the postponement request prior to the hearing were because:
  - a. the claimant's application was made as a very late stage;
  - b. the application was not copied to the respondent as required by the ET rules;
  - c. the application was not supported by medical evidence;
  - d. there appeared to be significant non-compliance with previous tribunal Orders on the claimant's part that required explanation.
3. The hearing proceeded. At the commencement of the hearing I requested that the tribunal clerk contact the claimant to ensure that he was aware that the hearing was proceeding. I note for the sake of completeness that the tribunal clerk was informed by the claimant that his father had been in hospital for 4 weeks with broken ribs and had recently burned his back. The tribunal clerk was informed that the claimant would not be joining the hearing.
4. I considered the claimant's non-attendance in accordance with the provisions of Rule 47 of the ET Rules. I noted the information provided by the claimant within his request for a postponement this morning. While the tribunal has empathy with the personal circumstances and caring responsibilities of the claimant, this is not a situation whereby an unexpected emergency has occurred on the morning of the hearing. There was no explanation for the last minute nature of this application. Further, this was a video hearing and any inconvenience caused to the claimant was minimised as no travelling was required. The respondent's representative was present at the hearing. In the circumstances, I considered it in line with the overriding objective to proceed with the hearing in the absence of the claimant. I was provided with and had the opportunity to read a bundle of documentation prior to the hearing.
5. The hearing was listed to determine the following preliminary issue :
  - a. Was the unfair dismissal complaint presented outside the time limits in sections 111(2)(a) & (b) of the Employment Rights Act 1996 and if so should it be dismissed on the basis that the Tribunal has no jurisdiction to hear it? Further or alternatively, because of those time limits (and not for any other reason), should the unfair dismissal complaint be struck out under rule 37 on the basis that it has no reasonable prospects of success and/or should a deposit order be made under rule 39 on the basis of little reasonable prospects of success? Dealing with these issues may involve consideration of subsidiary issues including: whether it was "not reasonably practicable" for the unfair dismissal complaint to be presented within the primary time limit; what the effective date of termination was.
  - b. Was any complaint presented outside the time limits in [sections 23(2) to (4) / 48(3)(a) & (b)] of the Employment Rights Act 1996 and if so should it be dismissed on the basis that the Tribunal has no jurisdiction to hear it? Further or alternatively, because of those time limits (and not for any other reason), should any complaint be struck out under rule 37 on the basis that it has no reasonable prospects of success and/or should one or more deposit orders be made under rule 39 on the basis of little reasonable prospects of success?

Dealing with these issues may involve consideration of subsidiary issues including: whether there was a relevant “series”; whether it was “not reasonably practicable” for a complaint to be presented within the primary time limit.

6. The background to this matter may be summarised as follows:
  - a. The claimant was employed by the respondent between 19 May 1995 and 6 October 2022. It is common ground between the parties that the effective date of termination of the claimant’s employment was 6 October 2022.
  - b. The primary three-month time limit expired on 5 January 2023.
  - c. The claimant commenced the ACAS process on 20 August 2023 and concluded on 22 August 2023. As the claim was presented outside of the primary time limits, there is no statutory extension of time by reference to the ACAS process.
  - d. The claimant presented his ET1 on 22 September 2023.
  - e. The unauthorised deduction from wages claim is stated to relate to unpaid holiday pay. Any such entitlement will have crystallised as of the claimant’s final day of employment being 6 October 2022.
  - f. That this is a case where the respondent’s internal process that consisted of two appeals continued, following the termination of the claimant’s employment, until 29 September 2023.
  - g. The claimant was accompanied by a trade union representative at the disciplinary hearing on 1 September 2022, at the first appeal hearing on 27 January 2023 and the second appeal hearing on 12 September 2023.
7. Both the unfair dismissal claim and the unauthorised deduction from wages claims are subject to similar limitation provisions and the ‘reasonably practicable’ extension and they are dealt with together within this judgment. There is no discrimination element to this litigation.
8. The tribunal previously had made Orders within this letter dated 6 February 2024 to allow parties to properly prepare for today’s hearing. These consisted of:
  - a. By **5 March 2024**
    - i. The claimant is to send to the respondent a copy of any documents relevant to the issue of why the claim was not started within the 3 month time limit, (as extended by ACAS Early Conciliation);
    - ii. The claimant is to prepare and send to the respondent a typed statement with paragraph numbers explaining why it was not possible to have issued the claim within the 3 month time limit, (as extended by ACAS Early Conciliation); and the reason for any further delay after that time limit...
9. The claimant did not comply with the tribunal orders. It can be seen from the documentation produced within the bundle that the respondent chased the claimant for his compliance with the Orders on 12 March 2024. The claimant responded on the same day stating:

‘Thanks for your email. I am away in another country on a family emergency and

have remote access to my emails. I will be back in the uk on Tuesday 19th can we extend this please.'

10. The respondent agreed, by email of 13 March 2024, to the claimant's request to extend the time for him to comply and asked him, '.. How long do you think you will need?' No response was received from the claimant. The respondent emailed the claimant again on 21 March 2024 stating that if they did not receive a substantive response indicating when the claimant could comply with the Orders by Monday, 25 May 2024, they would make an application to the Tribunal to strike out the claim. Again, no response was received from the claimant. The respondent made an application to strike out the claim on 28 March 2024 on the basis that the claimant had not complied with the Order and does not appear to be actively pursuing his claim. The claimant was copied to this application. No further communication was received from the claimant until his request to postpone today's hearing, sent this morning.
11. The claimant, has failed to comply with the employment tribunal directions and has provided no evidence to explain why it was not possible for him to have issued his claim within the initial three-month time limit or if this was the case, what the reason for any further delay after that time limit was. This is a claim where the claimant had the benefit of union assistance during the internal process and during the appeal process. Regardless of the claimant's actual knowledge, which is unknown, this is a scenario where it is difficult to escape the conclusion that the claimant ought to have known about the applicable statutory limitation periods. There is nothing before me that would allow me to conclude that it was not reasonably practicable for the claimant to comply with the primary limitation period.
12. In these circumstances, I conclude that the claimant has presented neither his unfair dismissal claim nor his unauthorised deduction from wages claim within the applicable primary time limit. It was reasonably practicable for him to do so.
13. I note that even if the claimant could raise an argument that it was not reasonably practicable for him to comply with the primary three-month period, the claimant has provided no evidence to suggest any reason for the further substantial delay in presenting this claim.
14. For the sake of completeness I note that should I have not struck out the claim on the above grounds, it would have been struck out on the alternative grounds that:
  - a. under rule 37 on the basis that the claimant's arguments that his claim has been brought within the limitation period has no reasonable prospects of success; and/or
  - b. Rule 37 (c) on the basis that the claimant has failed without any explanation to comply with the above-mentioned Orders of the employment tribunal;

and/or

- c. Rule 37 (d) on the basis that the claimant's claims have not been actively pursued; and/or
- d. Rule 37 (e) on the basis that the claimant's failure to comply with the tribunal Orders have resulted in a situation where it was not possible to have a fair hearing during this morning's listed hearing.

15. The claimant's claims of unfair dismissal and unauthorised deduction from wages were not presented within the applicable time limit. It was reasonably practicable to do so. Tribunal does not have jurisdiction to consider these claims and the claims are therefore dismissed.

Employment Judge Skehan  
29 May 2024

Sent to the parties on:

.....5 July 2024.....  
For the Tribunal Office:

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