



EMPLOYMENT TRIBUNALS

Claimant: Mrs K Butcher

Respondent: Suffolk County Council

RECORD OF A PRELIMINARY HEARING

Heard at: Bury St Edmunds (by Cloud Video Platform) **On:** 05 March 2025

Before: Employment Judge T Brown

Appearances

For the claimant: In person
For the respondent: Mr M Harris, counsel

REASONS

1. There is no dispute that the claimant was employed by the respondent as a teaching assistant from autumn 2011 (the parties differ as to whether employment had started in late October or early November 2011), and dismissed by the respondent, the decision to dismiss having been communicated to her on 05 December 2023. I will have to return to the effective date of termination of the claimant's employment.
2. On 02 June 2024, following Acas early conciliation between 03 April 2024 and 15 May 2024, the claimant presented a complaint of unfair dismissal to the Employment Tribunals.
3. Since the claimant said in her claim that her employment had ended on 05 December 2023, the complaint of unfair dismissal appeared to be out of time, and what had been due to be a final hearing of the claim (by a notice of final hearing dated 25 November 2024) was converted on the direction of Employment Judge Laidler, on 09 January 2025, into a public preliminary hearing to consider issue of time limits.
4. No case management orders were made for the preliminary hearing, but the revised notice of hearing said: "You must have a copy of the claim form, the

response form and any other relevant documents with you when you take part in the hearing.”

5. The first hour of the hearing was lost to technical difficulties (the claimant was not able to join the hearing), after which both sides were able to see and hear and be seen and heard.
6. I had a bundle of documents of 164 pages.
7. I initially heard submissions from the parties on the basis that the issue was whether the claimant had not been reasonably able to start her claim because she had been going through an internal appeal process which took, on any view, a very long time to be determined.
8. The premise of this issue was that the effective date of termination of the claimant’s employment had been 05 December 2023.
9. In her ET1, the claimant had said that she had worked or been paid for 1 month’s notice. Box 6.3 of an ET1 form does not differentiate between working notice and being paid for it. In its response, the respondent said that the claimant had been paid for 12 weeks in lieu of notice.
10. On that basis, the respondent did not seek to cross-examine the claimant, because there were no factual disputes about the effective date of termination or the factual basis on which the claimant said it had not been reasonably practicable for her to present her claim in time.
11. However, in reply, the claimant submitted that in fact she had started ACAS early conciliation within 3 months less one day of the end of her notice period because she had been dismissed *with notice*.
12. Surprisingly, the bundle of documents before me had not included from either side the written notice by which the claimant was dismissed.
13. The words by which dismissal was communicated to the claimant were agreed between the parties to have been as follows (emphases added):

*The hearing panel decided that you should be dismissed from your post at the school **with notice** and you should cease to work at the school therefore your last day of employment is 05 December 23. Your final salary will include your notice period and any outstanding holiday pay and will be paid in December 2023 pay. By copy of this letter, **I am instructing the local authority to effect your dismissal with notice.***

14. Counsel for the respondent accepted that this communication of dismissal was ambiguous. There is no reference in this paragraph to dismissal with pay in lieu of notice. There are two references to this being a dismissal *with notice*. Ceasing to work is equally consistent with dismissal with notice, without a requirement that the employee works—often known as gardening leave—and dismissal with pay

in lieu of notice, so this does not resolve the ambiguity either way. The reference to the “last day of employment” being the date of the notification of dismissal is inconsistent with dismissal on notice, unless this is interpreted as meaning the last day of work. But assuming this to be inconsistent with dismissal with notice, this just means that the letter just contradicts itself and therefore is nonsensical. The claimant did not write this letter; the respondent’s agents did, and it was always open to the respondent to express itself to the claimant clearly. The respondent could control that. The claimant could not. I consider that I should construe the ambiguity against the respondent, since it was able to avoid that ambiguity and chose instead (on one view) to tie itself in a legal knot, although because of the two clear references to dismissal with notice, I would prefer an interpretation of the letter that it was dismissing the claimant on notice, because there is no clear communication that the dismissal is not on notice, and in context, the reference to ceasing work, and the last day of employment are more consistent with dismissal with notice, and placement on garden leave than they are with a summary dismissal with pay in lieu of notice. In particular, both dismissal on notice with garden leave and summary dismissal was pay in lieu of notice are normal ways to effect dismissal, and the communication of dismissal appeared to be the former from the language used and not the latter. The respondent had an election to make as to whether it was dismissing on notice or dismissing without notice. It could do only one; it could not do both, and in my judgment, its written communication of dismissal was that it was electing to dismiss on notice. The intentions of its author are not relevant. The letter must be construed objectively in light of the surrounding circumstances. Payment to the claimant was after communication of termination and so that cannot have affected whether the dismissal was summary or on notice, because the communication happened on 05 December 2023. In any event, payment to the claimant of the sums that she would earn during her notice period would not have resolved any ambiguity against this being a dismissal on notice.

15. So, the fact that payment of 12 weeks’ pay was made in one go on 29 December 2023 does not affect this position. That is exactly what the letter said the respondent would do, while dismissing the claimant *on notice*, and it was open to the respondent to pay the claimant’s pay during her notice period as a single lump sum if it wished to. The respondent’s payment of 12 weeks’ pay did not affect what it had said it was doing: dismissing on notice. In any event, this was done 24 days after the communication of dismissal to the claimant and it could not affect what that communication on 05 December 2023 meant, because that communication took effect at one time only. The respondent could not say that it was dismissing on notice and then by making a payment in lieu of notice 24 days later retrospectively convert that dismissal with notice into an immediate dismissal with pay in lieu of notice on 05 December 2023. It had to make an election at the time of dismissal. I therefore reject the submission that the fact of a lump sum payment had any bearing on what had been communicated on 05 December 2023. Whether or not the dismissal was with notice or summary had to be judged as at 05 December 2023 on the basis of what the respondent said it was doing. About that it was clear.

16. It follows in my judgment that the respondent was saying that to the claimant on 05 December 2023 that she was dismissed with notice. Therefore, the effective date of termination of her employment was 12 weeks after 05 Dec 23, and her complaint of unfair dismissal was started in time. No question of reasonable practicability of starting a claim late arises.
17. In any event, if I am wrong in that analysis of the objective effect of the respondent's letter of dismissal, I am satisfied that the claimant believed that she was being dismissed on notice and that in light of the letter that this was a reasonable belief for her to hold. There was no obligation on her to seek to clarify the position with the respondent, again, because the respondent had but a single opportunity to decide how it was dismissing the claimant, and there was no obligation on the claimant to invite the respondent to take again (or communicate again) a decision which it had taken and communicated. On the basis of that belief, it would have been reasonable for the claimant to consider that she had longer to start a claim because the guidance, including the ACAS guidance, to which claimant said she had regard (and which I accept as a fact she had regard to), says:

When to make a claim

There are strict time limits for making a claim to an employment tribunal. Someone has 3 months minus 1 day from the date their employment ended.

In almost all cases, the date someone's employment ends is either:

- *the last day of their notice period*
- *the day they were dismissed if the employer did not give notice*

18. If (as I find as a fact she did) the claimant believed (reasonably, I find as a fact) that she had been dismissed on 05 December *with one month's notice* - in fact less notice than she was entitled to - that notice would expire by 04 January 2024, and the claimant contacted ACAS on 03 April 24, notably the latest possible date on which she could, on the basis of a belief that she had been dismissed with one month's notice on 05 December 2023. In other words, the ACAS guidance, in light of the communication to the claimant that she was being dismissed on notice is entirely consistent with how the claimant then acted.
19. In those circumstances, the claimant's belief that she had one month after receipt of an ACAS early conciliation certificate to start her claim would have been equally reasonable, and so I am satisfied that the claim would have been presented within a reasonable time thereafter.
20. Accordingly, I am satisfied that the Employment Tribunals have jurisdiction to consider the claimant's complaint of unfair dismissal, principally because I am satisfied that the claim was in fact presented in time, because the effective date of termination was the 84th day after 05 December 2023 (or 26 February 2024), but in any event. I would have been satisfied that it was not reasonably practicable for the claim to be presented in time (assuming the effective date of termination to have been 05 December 2023) because of the claimant's

reasonable belief that time had yet to expire as a result of the letter of dismissal which told her that she was being dismissed on notice.

21. Had the letter of dismissal communicated clearly that the claimant was being summarily dismissed, and had the sole issue been whether it had not been reasonably practicable for the complaint to be presented within 3 months of 05 December 2023 because the claimant was exercising her right to appeal against her dismissal, I would not have held that this made it not reasonably practicable to present the claim in time, and until the issue of the claimant's notice of dismissal was raised, I had reached the provisional view that the Employment Tribunals did not have jurisdiction. It is surprising that this point arose so late in the course of the hearing, and it has altered the result, but the claimant is a litigant in person, and these are technical issues. I am satisfied that both sides had had sufficient opportunity to prepare for and to address at the hearing the matters on which the preliminary issue has ultimately been determined.
22. Therefore the claim will proceed to a final hearing.

Approved by:

Employment Judge T Brown

05 May 2025

Sent to the parties on:

14 May 2025

For the Tribunal: