



# EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

v

Mr I Farah

Angard Staffing Solutions Limited

**Heard at:** Watford

**On:** 19 February 2020

**Before:** Employment Judge Jack

## **Appearances**

**For the Claimant:** In person

**For the Respondent:** Miss L Roberts, Legal Executive

## **RECORD OF A PRELIMINARY HEARING**

1. This is a preliminary hearing to determine the issue as to whether the claimant has presented his claim within time and whether the tribunal has jurisdiction to determine the claim of unfair dismissal which has been brought.

### **The facts**

1. The claimant was born on 21 October 1977. He started working for the respondent on 5 October 2015. On 4 May 2018 there was an incident where the claimant asked for a smoking break but was refused it by his line manager. That incident ultimately led to his dismissal. There was a fact-finding meeting on 8 May 2018. There was a disciplinary on 22 May 2018 and on 26 May 2018, the claimant was dismissed. The claimant appealed. There was a hearing of the appeal on 21 June 2018. On 17 July 2018 his appeal was dismissed but the appeal letter says that the dismissal is with effect from 17 July 2018, in other words, the date of the appeal. However, the claimant had not been paid from 26 May and was never paid for the period from 26 May until 17 July. The claimant fairly accepted that he had been aware that 26 May was the date of his dismissal notwithstanding what was said in the appeal letter of 17 July. On that basis, time expired for bringing a claim for unfair dismissal on 26 August 2018.
2. The claimant's sworn evidence was that he asked for the ACAS forms for early conciliation at some point between 21 June 2018 and 17 July 2018. He then returned the forms within 10 days of 17 July 2018 and he learned that the forms had not been received by 17 August or about that date. He said that he had called ACAS in order to discover what was happening and

that he did not delay. He did not have a copy of the forms which he had sent to ACAS. Once he discovered around 17 August 2018 that the forms had gone missing, there was then a delay until 25 October 2018 for early conciliation to be begun again. That period of early conciliation expired on 25 November 2018. The 25 October, was already after the expiry of three months from 17 July 2018, so, even if one took the later date of 17 July as the effective date of dismissal (which I do not), time still expired on 17 October 2018. The ET1 was presented on 25 December 2018. Section 111 of the Employment Rights Act 1996 provides:

“1. A complaint may be presented to an Employment Tribunal against an employer by any person that he was unfairly dismissed by the employer.

2. Subject to the following provisions of this section, an Employment Tribunal shall not consider a complaint under this section unless it is presented to the tribunal (a) before the end of the period of three months beginning with the effective date of termination; or (b) 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 be presented before the end of that period of three months.

2A. Section 207A(3) (extension because of mediation in certain European cross-border disputes) and section 207(B) (extension of time limits to facilitate conciliation before institution of proceedings) apply for the purposes of sub-section 2(a).”

3. Pausing there, I do not need to read the provisions of section 207B. The practical effect is that once the early conciliation process begins there is then a period of up to a month for the parties to conciliate and that period does not count towards the three months. Once the early conciliation period ends, there is an additional one month for presentation of the ET1. However, that does not mean that if the early conciliation has begun out of time that there is any form of extension.
4. On the facts of this case, the time expired on 26 August 2018. The fact that early conciliation was begun on 25 October 2018 does not mean that the question of whether it was reasonably practicable does not have to be determined. On the contrary, it does have to be, because the three months have expired.
5. I turn then to the question of whether it was not reasonably practicable for the claimant to present the ET1 earlier than he did. The position is that he already knew by 17 August that the ACAS procedure had failed, in other words that they had not received the forms which had been sent to him. It was incumbent upon him to resume the early conciliation process. He was clearly able to do that before 26 August because he was able to do it in the usual computer based way on 25 October 2018. In my judgment, it was reasonably practicable for him to present the form within time. He had until 26 August to issue the early conciliation process. He failed to do that. He

only started the process some months later on 25 October, by which time the three month period had expired.

6. In view of my findings that it was reasonably practicable for him to present his ET1 in time, the tribunal has no jurisdiction.

## JUDGMENT

1. The claim of unfair dismissal fails, the tribunal has no jurisdiction to entertain it.

\_\_\_\_\_  
Employment Judge Jack

Date: .....21/2/20.

Sent to the parties on: ....4/3/20.

.....  
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.