



# EMPLOYMENT TRIBUNALS

*Claimant*  
Mr S Whitaker

*Respondent*  
Asda Stores Limited

## JUDGMENT OF THE EMPLOYMENT TRIBUNAL

**HELD AT MIDDLESBROUGH  
EMPLOYMENT JUDGE GARNON (SITTING ALONE)**

**ON 31<sup>st</sup> May 2017**

### *Appearances*

For Claimant: in person  
For Respondent: Ms M Dunning Solicitor

### **JUDGMENT DISMISSING A CLAIM AT A PUBLIC PRELIMINARY HEARING**

- 1. The name of the respondent is amended to that shown above.**
- 2. The claims were presented outside the time limit prescribed for doing so in circumstances where it was reasonably practicable for them to be presented within time. The Tribunal cannot consider the claims which are hereby dismissed. The Hearing listed for 24<sup>th</sup> July 2017 is vacated.**

### **REASONS**

1. This is a claim of unfair dismissal, wrongful dismissal, compensation for untaken annual leave and unlawful deduction of wages, but not for a redundancy payment ( and if it were it would be misconceived) . The issue to be decided is  
(a) whether the claim was presented before the end of the relevant time limit ?  
(b) if not, was it reasonably practicable for it to have been?  
(c) if not, was it presented within a reasonable time after?  
Rule 53 of the Employment Tribunal Rules of Procedure 2013 ( the Rules) empowers me to issue a final judgment even at a preliminary hearing if the issue I decide is determinative of the whole case. Although different statutory provisions apply to the wrongful dismissal claim under the Employment Tribunals (Extension of Jurisdiction ) Order 1994, the wages claim and the holiday pay claim, the principles and effect are identical to those which govern the unfair dismissal claim, so I will set out only the law relating to that . In the wages and holiday pay claim the time limit could arguably have started on the October monthly pay date, but it makes no difference to the outcome.

2. Section 97 of the Employment Rights Act 1996 ( the Act) defines the “Effective Date of Termination”. It is agreed to be 21<sup>st</sup> October 2016.

3. Section 111 says the Tribunal **shall not consider** a complaint under that 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 it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

4. If this was the only relevant provision, the claim needed to be presented on or before 20<sup>th</sup> January 2017. With effect from 6<sup>th</sup> April 2014 s 207B provides for extension of time limits to facilitate conciliation before institution of proceedings The claimant contacted ACAS on 9<sup>th</sup> December 2016 (Day A). ACAS sent the Early Conciliation Certificate ( ECC) by letter on 13<sup>th</sup> January 2017 ( Day B). The days between then do not count towards the running time limit. The time for presentation would now be 24<sup>th</sup> February 2017. This claim arrived at the Central Tribunal office in Leicester ( Arnhem House) on 15<sup>th</sup> March 2017.

5. There is ample case law eg. Dedman v British Building and Engineering Appliances Ltd 1974 ICR 53, to the effect time limits are just that—limits not loose targets. Reasonably practicable means reasonably “do-able”. The burden of proving it was not reasonably do-able rests on the claimant, see Porter-v- Bandridge 1978 ICR 943.

6. The negative result of an internal appeal was known by 21<sup>st</sup> December 2016. This is not a case of a claimant saying he did not know what to do. He sought advice first from the GMB union , then a CAB and finally ACAS. He knew what the time limit was.

7. It cannot have been reasonably practicable to issue this claim if the claimant reasonably believed he had already issued another claim in time, until such time as the claimant could no longer reasonably believe the earlier claim had been received and accepted. I accept his sworn evidence of what happened in January as it is supported by two Post Office receipts, copies of which I have placed on file. On 4<sup>th</sup> January he sent something, by first class post, to Arnhem House, the Postcode of which was written by the counter clerk on the receipt slip. It cannot have been a fully completed ET1 because at that date he had no EC number to insert in the relevant box. All documents sent, he printed off the internet and completed in manuscript. On 18<sup>th</sup> January he sent something else to Arnhem House. It could have been a properly completed ET1 and I accept his word it was. He says he had telephoned Arnhem House between those two dates and been told the first one had not arrived, which is why he sent the second .

8. In early February, still well within time , the claimant says he telephoned Arnhem House again and was told no form had been received so he filled in yet another which he sent by registered post . He says he telephoned again a few days later and upon

being told no form had been received posted a fourth also by registered post . Those two forms are, he argues, the one I now have date stamped as received at Arnhem House on 15<sup>th</sup> March and another I also have date stamped as received on 24<sup>th</sup> March. He has not produced the recorded delivery slips and cannot recall the date he sent them but says it would have been early to mid February, well in time .

9. The document bundle produced by Ms Dunning contains several e-mails between the claimant and the respondent's Data department in which he is chasing CCTV records . They date from mid February to March. On 1<sup>st</sup> March the claimant wrote “ *proceeds of court actions are **getting closer***”. I agree with Ms Dunning this tends to show proceedings were yet to be issued. The ET1 says on page 12 “ *I have sent these forms out 3 ( altered to 2 or vice versa) months ago. Just been in touch with the office as I have had no reply*”. Neither of the March ET1 forms are dated or signed by the claimant.

10. The most likely explanation which fits these facts is that the claimant became aware in early February the forms he sent in January had not arrived at, or been mislaid at, Arnhem House. He meant to send another in early February but became distracted by the dispute with Asda about CCTV records. The vital step of sending a fully completed ET1 he simply forgot until early to mid March. I can accept Royal Mail are not infallible and neither are Arnhem House, but not that forms sent by registered post in early February took four to five weeks to arrive and be date stamped at Arnhem House.

11. I cannot find it was not reasonable practicable for this claim to have been presented in time. I have no further discretion to exercise. These complaints must be dismissed.

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**EMPLOYMENT JUDGE GARNON**

**JUDGMENT SIGNED BY EMPLOYMENT JUDGE ON 31<sup>st</sup> May 2016**

**SENT TO THE PARTIES ON**

**2 June 2017**

**M Richardson**

**FOR THE TRIBUNAL OFFICE**