



EMPLOYMENT TRIBUNALS

Claimant: Mr C Stanisel

Respondent: LCV Hire Solutions Limited
t/a Reflex

Heard at: Leicester **On:** Wednesday 31 October 2018

Before: Employment Judge Brewer (sitting alone)

Representatives

Claimant: Mr G Ali, Solicitor

Respondent: Mr J Symons, Solicitor

JUDGMENT

1. The claim was presented outside of the statutory time limit and there was no application for an extension of time. In the circumstances the Employment Tribunal does not have jurisdiction to hear the claim for unfair dismissal which is therefore dismissed.

REASONS

1. The Claimant was employed by the Respondent as a driver from 5 February 2015 to the date of his dismissal on 30 November 2017. The parties agreed that 30 November 2017 was the effective date of termination.

2. The Claimant contacted ACAS on 19 January 2018 for early conciliation. The early conciliation ended on 19 February 2018.

3. The normal time limit for the Claimant submitting a claim for unfair dismissal would have expired on 28 February 2018.

4. For the purposes of Section 207B Employment Rights Act 1996 day A was 19 January 2018 and day B was 19 February 2018.

5. The conciliation period, starting with the day after day A, was 31 days. Therefore on the basis of Section 207B(3) the normal time limit as extended by that subsection ended on 31 March 2018. That means that Section 207B(4) was not engaged in this case.

6. The ET1 was received by the Tribunal on 18 May 2018. The application was therefore submitted more than 6 weeks out of time.

7. There was no application to extend time and indeed the Claimant did not attend the hearing today in any event and could not therefore have given evidence on why it was not reasonably practicable for him to have submitted his claim in time.

8. Given those circumstances it was clear that the Tribunal did not have jurisdiction to hear the unfair dismissal claim and the claim is dismissed.

Costs

9. On behalf of the Respondent Mr Symons made an application for costs under Rule 76 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013. Mr Symons had written a clear letter to the Claimant's solicitors stating that on any reading of the legislation the claim was manifestly out of time. The Claimant had given no reason why the Tribunal should extend time and indeed simply asserted that the claim was in time. Given that, Mr Symons suggested that the continuation of the claim to this hearing was unreasonable conduct within the meaning of Rule 76(1)(a).

10. Mr Ali, perhaps to his credit, said that he was acting under his client's instructions, his client felt that he had 3 months to submit the claim from 19 February 2018 and therefore believed that his claim was one day in time, it being submitted on 18 May 2018. The issue of course was not whether that is what the Claimant believed, but whether he was acting unreasonably and given that he had the benefit of legal advice, in my judgment he was acting unreasonably in pursuing the claim out of time.

11. Solicitors acting for the Respondent were instructed after submission of the ET3 and therefore all of the time spent from that point was recoverable under Rule 76 according to Mr Symons. Mr Ali on behalf of the Claimant did not take issue with this.

12. I reminded the parties of Rule 77 which said that no order for costs on the preparation time basis may be made unless the paying party, in this case the Claimant, has had a reasonable opportunity to make representations either in writing or at a hearing in response to the application. The Claimant not being present, he has not had that opportunity today.

13. In the circumstances I agree that it would be preferable to allow the Claimant time to make written representations should he wish and then I would consider making the order.

14. The amount sought by Mr Symons is £2,661.50 which he broke down in a schedule of costs. Mr Ali did not suggest that that application was in itself unreasonable.

Employment Judge Brewer

Date 12 December 2018

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE