



# EMPLOYMENT TRIBUNALS

**Claimants:** Mr F Worthington & Mr L Worthington

**Respondent:** Livsey Contracting & Maintenance Ltd

**HELD AT:** Manchester

**ON:** 25 March 2019

**BEFORE:** Employment Judge Tom Ryan

**Appearances:**

**Claimant:** No attendance

**Respondent:** No attendance

## JUDGMENT

The judgment of the tribunal is that:

1. The tribunal does not have jurisdiction to consider the complaints of unfair dismissal and breach of contract.
2. The claim of entitlement to redundancy payment has no reasonable prospect of success and is therefore struck out pursuant to rule of the Employment Tribunal Rules of Procedure 2013.

## REASONS

1. By a claim presented to the tribunal on 25 September 2018 the claimants made complaints of unfair dismissal, breach of contract by failure to pay notice pay and for a redundancy payment. The claim form asserted that the effective date of termination was 31 May 2018.
2. The respondent presented a response disputing the claims in their entirety. The respondent asserted that the effective date of termination was 30 May 2018.
3. The claimants had entered early conciliation on 16 July 2018 and the certificate was issued on 7 August 2018.

4. The time limit for complaints of unfair dismissal and breach of contract is 3 months. This is provided for in section 111 of the Employment Rights Act 1996 for unfair dismissal. An identical provision provides for the same time limit for claims of breach of contract.
5. These require that a claim is presented to the tribunal no later than 3 calendar months less one day after the effective date of termination. In this case, assuming in the claimants' favour that the date of 31 May 2018 is correct, the original time limit would expire on 30 August 2018. However, because the claimants entered into conciliation, time is extended by the operation of section 207B of the Act. Sub-sections (3) and (4) provide two possible ways of calculating the extension of time.
6. In the case of **Luton Borough Council v Haque** UKEAT/0180/17/J OJ the Employment Appeal Tribunal held that the employment tribunal is to consider those subsections sequentially. If, as in that case and in this, the operation of sub-section (3) grant a more advantageous extension of time than sub-section (4) the tribunal can proceed on the basis of the first sub-section. In that case the claimant's complaint was in time on the basis of sub-section (3) but not in the case of sub-section (4).
7. In this case I am compelled to find that the claims of the claimants are out of time on either approach.
8. Applying sub-section (3) the original time limit would be extended by the number of days, 22, spent in conciliation. Adding 22 days to 30 August 2018 would extend the time limit for presentation to 20 September 2018. Thus the claim was presented 5 days out of time.
9. Applying sub-section (4) the extension of time would be for one month after the date of the issue of the certificate. That would extend time to 7 September 2018 and thus the claim is even further out of time.
10. Where a complaint of unfair dismissal is not presented within the extended time limit the tribunal has power to grant an extension of time such period as it considers reasonable but only if it is first satisfied that it was not "reasonably practicable" for the claim to be presented within the time limit. In such a case it is for the claimant by evidence and/or argument to satisfy the tribunal of that matter.
11. In the absence of any evidence or written documentation from either claimant which might form the basis for such an argument the tribunal is unable to consider extending time. For that reason the complaint of unfair dismissal is not one which the tribunal can determine. By identical reasoning the complaint of breach of contract for unpaid notice pay is also one which the tribunal cannot determine.
12. The complaint for a redundancy payment is subject to different provisions. The original time limit is one of 6 months not 3 months and that claim was presented within time.
13. However, it is clear from both the matters set out in the claim form and the response that the dismissal of these claimants was not because they were redundant. The circumstances which led initially to the respondent giving the claimants a written

warning was because it was alleged that they were electricians who were working at height without wearing safety harnesses. It does not appear to be significantly in dispute that the refusal of the claimants, for whatever reason, to sign, i.e. to acknowledge that they had received, those warnings led directly to their dismissals.

14. Furthermore, no facts are pleaded in the claim form which begin to suggest that redundancy i.e. any cessation or diminution in the requirements for persons to carry out the work that the claimants were employed to carry out was in any way the reason for the dismissal.
15. The tribunal has power by reason of rule 37 of the Employment Tribunal Rules of Procedure 2013 to strike out any claim or complaint which does not appear to have any reasonable prospect of success. I recognise that no application has been made by the respondent to strike out on that basis and that disposing of the complaint in respect redundancy payment in that way was not one that the claimants would have anticipated without notice in advance. However, this case was listed for a final hearing. The claimants did not attend. Had they done so it would have been within the tribunal's power to consider the complaint for a redundancy payment in this way.
16. That said, by operation of rule 47 the tribunal also has power to dismiss a complaint where a claimant does not appear at the hearing. The tribunal staff spoke to Mr Worthington by telephone. Although initially saying that he did not have the "paperwork", he then informed the tribunal that he had forgotten the hearing was listed for today and asked if it could proceed in his absence.
17. In these circumstances I am satisfied that the claimants have had a reasonable opportunity to advance their case and that it is in accordance with the overriding objective in rule 2 to determine the complaint in this way. I therefore dismiss the complaint in respect of a redundancy payment also.

---

Employment Judge

Dated 25 March 2019

JUDGMENT SENT TO THE PARTIES ON

29 March 2019  
FOR THE TRIBUNAL OFFICE

**Note**

**Public access to employment tribunal decisions**

Judgments and reasons for the judgments are published, in full, online at [www.gov.uk/employment-tribunal-decisions](http://www.gov.uk/employment-tribunal-decisions) shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.