



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr D Taylor

**Respondent:** Stagecoach Devon Ltd t/a Stagecoach Southwest

**Heard at:** Exeter **On:** 20 November 2020  
Employment Tribunal by CVP

**Before:** Employment Judge Smail sitting alone

**Representation**  
**Claimant:** In Person  
**Respondent:** Mrs Hornblower, of Counsel

## JUDGMENT

1. It was not reasonably practicable to present this claim (i.e. the second claim) in time.
2. It is reasonable to extend time for the presentation of this claim to the factual date of presentation.
3. Accordingly, the claim is not dismissed: it continues.

## PRELIMINARY HEARING REASONS

1. Mr Taylor brought a claim of unfair dismissal under case number 1401564/2020 on 27 March 2020. The Respondent named was Stagecoach South West. That is the trading name of the corporate Respondent, Stagecoach Devon Limited. The full correct title of the Respondent is Stagecoach Devon Limited trading as Stagecoach South West.

2. There was an ACAS certificate dated 29 February 2020. The ACAS conciliator recorded the Respondent as the Stagecoach Group. An EC notification, it seems, also must have had the name Stagecoach Group. That was dated 29 January 2020. Often ACAS establish the precise identity of the employer, but not so here.
3. The effective date of termination was 2 January 2020. The Claimant had waited less than a month to approach ACAS in the first place. Indeed it has not been suggested, nor could it be, that ACAS was frustrated in its attempt to conciliate by being given wholly the wrong Respondent.
4. Because the claim form was against Stagecoach South West, i.e. the trading name, and because the ACAS certificate was against the Stagecoach Group, an Employment Judge thought that was more than a minor difference and rejected the claim form.
5. The Claimant was told that on 1 April 2020 which happened to be the expiry of the primary limitation period.
6. On 3 April 2020 the Claimant started the process of instructing solicitors to sort matters out. They wanted identification under the money laundering rules (passport, etc.) and they wanted an upfront payment of £200. The Claimant had to get the papers off his work colleague Mr Owen who had been representing him on an informal basis and send them off to solicitors. We were in lockdown of course over this period. The solicitors were not in position to give advice until 15 April 2020. The day after receiving the advice, the Claimant got a new ACAS certificate - a same day one with no further conciliation period - and issued this claim as well as applying for a reconsideration of the original rejection. In the event, the Claimant decided to withdraw the first claim and persist with this claim.
7. Section 111 subsection (2)(b) of the Employment Rights Act 1996 provides as follows:

“An Employment Tribunal shall not consider a complaint under this section unless it is presented to the Tribunal before the end of the period of three months beginning with the effective date of termination or 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”.
8. Following Adams v British Telecommunications Plc [2017] ICR 382 EAT we are to consider time limits in respect of the second claim form - not the first - and we are not to confuse considerations in relation to the first when considering the second. I made sure this authority was circulated to the parties before proceeding far into the hearing.
9. Plainly, it was not reasonably practicable to get this claim form in on time because the Claimant was told his first claim was rejected on the last day of the primary limitation period. No one has suggested he must have got a new claim form in in that day. Of necessity then, I am considering the phrase “within such further period as the Tribunal considers reasonable”.

10. I accept that the Claimant believed throughout that he had submitted a valid claim. He had sued the trading name, Claimants do that all the time up and down the country for entirely understandable reasons.
11. Mrs Hornblower submits that the new claim should have gone in within a few days of the communication of the rejection and anything beyond that is unreasonable. I acknowledge that it might have been done that the claim was put in that quickly. However, Mr Taylor decided he needed legal advice. This was lockdown it took two weeks to get the advice and he acted upon that within 24 hours. It is a question of fact in all the circumstances of the case and I do not consider that two weeks is an unreasonable period of time given the circumstances. I consider that period indeed, entirely reasonable.
12. The original claim was rejected for wholly technical reasons. Having believed he had presented a valid claim in the first place, in my judgment it was not unreasonable for the Claimant to consult solicitors and for it to take two weeks for him to rectify the problem by getting the legal advice and then acting immediately upon it.
13. Accordingly, I extend time to the date of presentation and the case continues.

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Employment Judge Smail

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Date: 1 December 2020

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