



EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case No: 4108031/2020

**Open Preliminary Hearing Held by CVP on Friday 3 December 2021
at 10.00am**

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Employment Judge Russell Bradley

Ms Maria Reina

**Claimant
Represented by
Ms L Campbell
Solicitor**

Occasions Leisure Limited

**Respondent
Not present or represented**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Tribunal is that the ET1 form was presented in time.

REASONS

20 **Introduction**

1. On 30 December 2020 the claimant presented an ET1 in which she makes claims of unfair dismissal and for; a statutory redundancy payment; notice pay; holiday pay and in respect of an alleged failure to provide her with a written statement of her terms and conditions of employment. After various
E.T. Z4 (WR)

steps which I outline below the tribunal issued a notice for this preliminary hearing. It stipulated that the issue for determination was "*If the claim is time-barred and if it is, whether it was reasonably practical for the claim to be presented in time.*"

- 5 2. The claimant was represented by Ms L Campbell who has done so throughout the claim and before it. Prior to the hearing she had lodged an inventory of productions comprising 34 pages.
3. As I note below, no ET3 has been lodged. The respondent was neither present nor represented at this hearing.
- 10 4. I heard no evidence. The claimant was not present. Ms Campbell was content to proceed based on submissions.
5. I indicated that I would reserve my judgment which would follow in writing with reasons.

Findings in Fact

- 15 6. Based on the ET1 and various papers within the tribunal file I found the following facts proved.
7. The claimant is Maria Reina.
8. On 22 August 2020 she was dismissed from her employment with the respondent. Early conciliation began on 16 November 2020. A certificate was issued on 1 December. It named McLagan Inns Ltd as the prospective respondent. On 30 December 2020 the ET1 was presented. It named Occasions Leisure Limited as the respondent.
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9. On or about 6 January 2021 it was rejected under rule 12(1)(f) of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 (the Rules). On or about 8 January the claimant via Ms Campbell made an application for a reconsideration of that rejection under rule 13(1)(b) of the Rules. That application was considered at a Telephone Conference Call hearing on 25 June. The order from that hearing provided that "*it would not be in the interests of justice for the claim to be prevented*
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from proceeding on the basis of the claimant's error, and the claim will therefore be treated as accepted."

10. By letter dated 13 July the tribunal wrote to Ms Campbell. The letter said,
5 *"I refer to your application dated 8 January 2021 for a reconsideration of the decision to reject your claim. Employment Judge B Campbell having reconsidered the decision has decided that your claim can be accepted. The claim will be treated as presented at 30 December 2020. The respondent will now be required to respond to the claim."*

10 11. By letter dated 26 August the tribunal wrote again to Ms Campbell. The letter said, *"Employment Judge R Gall has noted that no acceptable response to your claim has been received. The Employment Judge has directed that we write to seek comments on a Preliminary Hearing being set down to determine if the claim is time-barred and, if it is, whether it was reasonably practical for the claim to be presented in time. Please reply in writing to this office by 2/9/21."*
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Submissions

12. Ms Campbell made a short submission. She agreed with a short chronology which I had prepared and which is reflected in the findings in fact. She made reference to the early conciliation dates. In her submission
20 the claim had been submitted within one calendar month of the issuing of the EC certificate. That being so, she said, the claim had been presented in time.

The Law

13. Section 111(2)(a) of the Employment Rights Act 1996 provides that
25 *"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 before the end of the period of three months beginning with the effective date of termination."*

14. Section 111(2A) provides

“Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (2)(a).”

5 There are equivalent provisions for the claims for notice pay and alleged unlawful deductions from wages. As an aside, I note that the time limit for making a claim for a statutory redundancy payment is more generous (6 months, see section 164 of the 1996 Act).

15. Section 207B of the 1996 Act provides,

10 *“(1) This section applies where this Act provides for it to apply for the purposes of a provision of this Act (a “relevant provision”)*

(2) In this section Day A is the day on which the complainant or applicant concerned complies with the requirement in subsection (1) of section 18A of the Employment Tribunals Act 1996 (requirement to contact ACAS before instituting proceedings) in relation to the matter in respect of which the proceedings are brought, and Day B is the day on which the complainant or applicant concerned receives or, if earlier, is treated as receiving (by virtue of regulations made under subsection (11) of that section) the certificate issued under subsection (4) of that section.

20 *(3) In working out when a time limit set by a relevant provision expires the period beginning with the day after Day A and ending with Day B is not to be counted.*

25 *(4) If a time limit set by a relevant provision would (if not extended by this subsection) expire during the period beginning with Day A and ending one month after Day B, the time limit expires instead at the end of that period.*

(5) Where an employment tribunal has power under this Act to extend a time limit set by a relevant provision, the power is exercisable in relation to the time limit as extended by this section.”

30 **Discussion and decision**

16. In my view the answer to the primary question in the issue (is the claim time-barred?) is “no”. It is answered by a consideration of the dates on which various steps occurred in the context of section 207B. I considered

what was said by Judge Eady QC (as she then was) in the employment appeal tribunal in **Tanveer v East London Bus & Coach Company Ltd** [2016] ICR D11. In that case the key dates were;

- a. The effective date of termination, 20 March 2015.
- 5 b. The relevant notification to ACAS for early conciliation, 18 June 2015.
- c. On 30 June, the EC certificate was emailed to the Claimant's solicitors.
- d. On 31 July, the Claimant's claim (complaining of unfair dismissal and disability discrimination) was lodged with the Employment Tribunal ("ET").
- 10 e. The "*original*" time limit date was 19 June 2015.

17. In the judgment (UKEAT/0022/16/RN) at paragraph 7 she said, "*The purpose of s 207B is undoubtedly to ensure that, with regard to ET time*
15 *limits, a Claimant is not disadvantaged by the amount of time taken during the relevant limitation period for EC compliance. Thus the amount of time spent on EC will not count in calculating the date of expiry of the time limit; the clock simply stops during the EC period.*" And at paragraph 8 she said, "*Stopping the clock for the purposes of EC in this case would, on anyone's*
20 *argument, give rise to a date falling within the period beginning with Day A and ending one month after Day B (s 207B(2)). It thus brought into play s 207B(4). The period in question for sub-s 207B(4) purposes started on 18 June 2015 (Day A) and ended one month after Day B, which was 30 June 2015. The issue was: what was "one month after"?*" While the
25 dates in this case are obviously not the same as in **Tanveer**, section 207B operates in the same way. The period in question for sub-section 207B(4) started on 16 November 2020 (Day A) and ended one month after Day B which was 1 December. Presentation on 30 December was within one month from 1 December. I am fortified in my view having also considered
30 paragraph 5.43 of the IDS Handbook on Employment Tribunal Practice and Procedure which notes that Section 207B(4) "*ensures that a prospective claimant always has at least one month from the end of the early conciliation period in which to bring a claim.*" Finally **Tanveer** is authority for the proposition that "*one month after*" means one "*calendar*

5 *month*” albeit it does so by reference to decision of the House of Lords in ***Dodds v Walker*** [1981] 1 WLR 1027 HL. In this case, one calendar month after Day B was 1 January 2020. For completeness, albeit it is obvious, I do not require to answer the subsidiary question in the issue of this hearing.

18. The case should be listed for a one day final hearing on liability and remedy.

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15 **Employment Judge:**
Date of Judgment:
Date sent to parties:

R Bradley
06 December 2021
08 December 2021