



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr G Hough

**Respondent:** West Ham United Football Club Limited

**Heard at:** East London Hearing Centre

**On:** 23 February 2022

**Before:** Employment Judge Jones

**Representation**

Claimant: no attendance and no representation  
Respondent: Ms L Truscott, solicitor

## JUDGMENT

*The claim was not presented in time despite it being reasonably practicable to do so and is dismissed.*

## REASONS

1. This was a complaint of unfair dismissal and of failure to pay commission payments. It was not clear from the ET1 complaint form and the grounds of claim whether the money claim was made as a breach of contract or a complaint of unlawful deduction of wages.

### ***Facts***

2. The Claimant was employed by the Respondent from 2015 until his resignation on 9 June 2021. In his resignation letter the Claimant asked to be released from the requirement to give a month's notice as he had found new employment which he wished to start on 14 June. The Respondent agreed to this. It is agreed between the parties that the Claimant's last day of employment was 9 June 2021.

3. The Claimant provided a statement for today's hearing which he sent to the Tribunal on 12 January 2022. The Claimant did not attend today's hearing and attempts to contact him by phone were unsuccessful as he did not answer the

phone. The Claimant was aware of today's hearing and the Tribunal file shows that he had been sent the notice of hearing on 9 November 2021, with instructions for joining the hearing at 10am.

4. In coming to a decision today, in the Claimant's absence, the Tribunal had regard to the documents the Claimant sent to the Tribunal on 12 October 2021 and 12 January 2022, which included his statement. He also copied correspondence between his solicitor and the Respondent in August 2021.

5. In the statement, the Claimant confirmed that he sought advice from a solicitor on 17 June 2021. He also stated that during the consultation process, the lawyer informed him of a three-month deadline but '*provided little context*' to that.

6. The Claimant sent his early conciliation notification to ACAS on 10 September 2021 and his ACAS certificate was issued on 13 September 2021. The Claimant issued his ET1 claim form to the Tribunal on 13 September 2021.

7. In the claim form, the Claimant ticked the '*unfair dismissal*' box and the box claiming, '*other payments*'. There was no explanation of the unfair dismissal claim. In the box at 9.2, which asks '*what compensation or remedy are you seeking?*' The Claimant referred to outstanding commission and accumulated solicitor's fees to date.

8. On 5 October 2021 the Tribunal wrote to the Claimant to ask him to provide the ET1 summary referred to at section 8.2 of the form. He was to provide this by 12 October. On 12 October the Claimant provided the ET1 summary. He stated that this had failed to attach to the original ET1. The Respondent submitted its Grounds of resistance and completed ET3 form on 29 October. The Claimant's summary was forwarded to the Respondent on 4 November 2021.

## **Law**

9. Section 111(2) of the Employment Rights Act 1996 stipulates that Employment Tribunal shall not consider a complaint of unfair dismissal 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. Subsection 2(A) provides for an extension of time limits to facilitate conciliation before institution of proceedings under the ACAS early conciliation process. However, in this case, the Claimant does not benefit from that extension as he began the early conciliation process on 10 September, after the three-month primary time period had expired on 8 September.

10. If the claim for outstanding commission is made as an unlawful deduction of wages complaint then that also has to be issued within three months of the date of which it became payable; as stipulated in section 23(2) of the same Act. The Claimant does not benefit from any extension of time limits to facilitate conciliation that may have applied under the ACAS early conciliation process, as he started that process after the initial three-month time period had expired on 8 September 2021. Where the Tribunal is satisfied that it was not reasonably practicable for a complaint under section 23 to be presented before the end of the relevant period

of three months, the Tribunal may consider the complaint if it is presented within such further period as the Claimant considers reasonable.

11. If the complaint of outstanding commission is brought as a complaint of a breach of contract that is governed by the Employment Tribunal's Extension of Jurisdiction (England and Wales) Order 1994 which stipulates at Article 7 that the complaint must be brought to the Employment Tribunal within the period of three months beginning with the date of termination of the contract giving rise to the claim, unless the Tribunal is satisfied that it was not reasonably practicable for the claim to be presented within the applicable period.

12. The Tribunal has considered the guidance on what is considered *reasonably practicable* in the cases referred to by the Respondent in its submissions.

13. In the case of *Dedman v British Building and Engineering Appliances Ltd* [1973] IRLR 379, the Court of Appeal held that in a case where the claimant is receiving legal advice by skilled advisers, it will be reasonably practicable for him to present his claim within the time limit. In that case, as in the instant case, the Claimant knew that he had rights and was being advised by solicitors, well before the expiry of the time. The court held that it was not impracticable for him to present his claim in time. The fault of his advisers did not excuse the claimant for issuing his claim late as by exercising reasonable diligence, the complaint could have been presented in time. It was the Court's judgment that in those circumstances, the claimant's remedy lay against his legal advisers.

14. That decision was confirmed in the later judgment in the case of *Wall's Meat Co Ltd v Khan* [1978] IRLR 499.

15. That continues to be the law to date.

### ***Decision***

16. It is this Tribunal's judgment that the Claimant's effective date of termination was 9 June 2021. The deadline for issuing his complaints of unfair dismissal and either unlawful deduction of wages or breach of contract in respect of alleged outstanding commission payments was 8 September, which is the end of the period of three months less one day, following the date of dismissal.

17. The Claimant's ET1 was issued on 13 September 2021, which was five days after the deadline had passed.

18. It is also this Tribunal's judgment that the reason for the late submission of the ET1 claim form was the Claimant's reliance on advice from skilled legal advisers. The reason for the late filing of his claim was not because the Claimant was waiting for the completion of any internal procedures. He was clear on his effective date of termination. It would appear from correspondence between the Respondent and the Claimant's advisers that he was always clear that he was entitled to outstanding commission. This is indicated by the Claimant's solicitors' letters to the Respondent in August 2021.

19. In the circumstances, it is this Tribunal's judgment that it was reasonably practicable for the Claimant to have issued his complaints of unlawful deduction of wages/breach of contract and unfair dismissal within the relevant statutory time limits. As he has failed to do so, the Tribunal has no jurisdiction to hear his complaints. The Tribunal cannot hear his claim.

20. The Claimant's case is struck out and any future hearing dates are vacated.

Employment Judge Jones  
Date: 24 February 2022