



# EMPLOYMENT TRIBUNALS

**Claimant:** Dr G Somerville  
**Respondent:** Rothamsted Research  
**Heard at:** Southampton (VHS) **On:** Friday 13 January 2023  
**Before:** Employment Judge A Matthews

**Representation:**  
**Claimant:** In Person  
**Respondent:** Ms L Warren (Secretary and Head of Legal)

Note: Judgment and Reasons in this case were given orally on 13 January 2023. These written Reasons are provided at the request of both parties made at the hearing.

## JUDGMENT

1. By consent, the Claimant's name is changed to Dr G Somerville.
2. Dr Somerville's complaint of breach of contract by reference to article 3 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 was not presented to an employment tribunal before the end of the period specified in article 7 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994. It is, therefore, dismissed.

## REASONS

### INTRODUCTION

1. This is a Preliminary Hearing listed by Order of Employment Judge Cadney.
2. By a claim form presented on 27 September 2022 Dr Gayle Somerville brought a complaint of breach of contract against the Respondent Charity.
3. The Respondent defends the claim. The Respondent also raises the jurisdictional issue of whether Dr Somerville brought her claim in time.
4. The Tribunal heard from Dr Somerville. No documentation was produced. The Tribunal had access to the employment tribunals' file.
5. The hearing was a remote hearing using the VHS Platform consented to by the parties. Dr Somerville joined by a link from New Zealand. The Tribunal is satisfied that, in this case, the overriding objective of dealing with cases fairly and justly could be met in this way.
6. During the hearing, Dr Somerville clarified that she was not making any claim in respect of a protected disclosure.

## **FACTS**

7. The Tribunal confines itself to the fact finding necessary to address the jurisdictional issue which it must decide.
8. Dr Somerville has always been a citizen of New Zealand. Dr Somerville first visited the United Kingdom in 2015 to meet the Charity and for a holiday. Dr Somerville is educated to post graduate degree level and is conversant with technology.
9. Dr Somerville joined the Respondent as an Agricultural System Modeller based in Okehampton in Devon on 1 January 2020. Dr Somerville resigned from her employment with effect from 25 May 2020. Dr Somerville's claim arises because she is not satisfied that the job she did was the job she was recruited to do and claims some expenses as consequential loss.
10. In her resignation letter Dr Somerville raised the subject of expenses she had incurred, that she felt should be reimbursed by the Respondent. Although the exact dates are not clear, it seems that, shortly afterwards, the Respondent declined to make any payment to Dr Somerville.
11. Not long afterwards, having returned to New Zealand, Dr Somerville investigated legal redress in the United Kingdom. Dr Somerville concluded it was impractical to pursue her claim given her geographical distance and too expensive to engage a lawyer. Dr Somerville decided

to let matters rest. Dr Somerville was not aware of the employment tribunals system in the United Kingdom.

12. There was a change of management at the Respondent and Dr Somerville reopened the issue of her expenses with them, sometime in 2022.
13. That approach also failed. Dr Somerville contacted ACAS for Early Conciliation on 22 September 2022 and ACAS issued an Early Conciliation Certificate on 27 September 2022.
14. Dr Somerville's claim form was presented to the tribunals on 27 September 2022.

### **APPLICABLE LAW**

15. Article 7 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 (the "1994 Order"), as far as it is relevant, provides:

***"7 Time within which proceedings may be brought***

*Subject to articles 8A and 8B, an employment tribunal shall not entertain a complaint in respect of an employee's contract claim unless it is presented-*

*(a) within the period of three months beginning with the effective date of termination of the contract giving rise to the claim, or" ....*

*"(c) where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented within whichever of those periods is applicable, within such further period as the tribunal considers reasonable."*

16. There are statutory provisions that, in many cases, will extend the time limits applicable to bringing claims for breach of contract in the employment tribunals where there has been a period of early conciliation under the auspices of ACAS. The relevant provision here is article 8B of the 1994 Order.

17. The Tribunal was not referred to any case law.

### **CONCLUSIONS**

18. Dr Somerville resigned with effect from 25 May 2020.

19. To be in time, the claim should have been lodged no later than 24 August 2020 with an extension for any period of ACAS conciliation. In fact, ACAS conciliation took place over seven days between 22 September 2022 and 27 September 2022. The claim was not presented until 27 September 2022, over two years out of time.
20. The Tribunal must, therefore, decide whether it was reasonably practicable to present the claim in time and, if it was not, whether it was presented within such further period as the Tribunal considers reasonable. The onus of proving that presentation was not reasonably practicable in time is on Dr Somerville.
21. On the evidence, Dr Somerville's case is that it was not reasonably practicable for her to present the claim in time for two principal reasons. The first was, having looked into the possibility of legal redress in the United Kingdom, Dr Somerville decided it was too expensive and impractical. That was a matter of choice. The second reason was an ignorance of the system of employment tribunals in the United Kingdom and of the time limits applicable when bringing claims.
22. The primary cause of delay was choice. As far as ignorance of rights and time limits is concerned, Dr Somerville is an educated person and technologically aware. It seems to the Tribunal that Dr Somerville had ample opportunity to enquire about her rights and any time limits applicable to exercising them but neglected to do so.
23. Dr Somerville has failed to show that it was not reasonably practicable for her to present her claim within the period allowed by the legislation. Accordingly, an employment tribunal cannot consider that complaint and it is dismissed.

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Employment Judge A Matthews  
Date: 13 January 2023

JUDGMENT AND REASONS SENT TO THE PARTIES ON  
25 January 2023 By Mr J McCormick

FOR THE TRIBUNAL OFFICE