



**BARBADOS**

**IN THE EMPLOYMENT RIGHTS TRIBUNAL**

**Case No. ERT/2018/029**

**Donville Jones**

**CLAIMANT**

**AND**

**Bryden Stokes Ltd.**

**RESPONDENT**

**DATES:** 28<sup>th</sup> October, 2019; 11<sup>th</sup> March 2020, June 5<sup>th</sup> 2020 and  
19<sup>th</sup> November, 2020

**BEFORE:** Christopher Blackman Esq, GCM; Q.C                      Chairman  
Dr. Hartley Richards    Member  
Frederick Forde, Esq.    Member

**APPEARANCES:** Mr. K. Collymore Attorney at law, for the Claimant and  
Ms. H. Devonish, Attorney at law for the Respondent

## RULING

1. This ruling is on a preliminary issue as to whether the Tribunal has jurisdiction to hear the claim for unfair dismissal advanced by Mr. Jones (the Claimant) in the circumstance that he was terminated by Bryden Stokes Ltd. (the Respondent) on December 2, 2015. Section 32 (2) of the Employment Rights Act (the Act) required that a complaint be made within 3 months of dismissal, unless it was not practicable. That date would have been March 1, 2016.
2. At a hearing before the Tribunal on October 28, 2019, the parties were directed to file and serve Written Submissions as to whether the matter was filed out of time and whether the Tribunal had jurisdiction to hear the matter.
3. In response to the foregoing directive, the claimant filed a Supplemental Witness Statement on November 29, 2019 which said from paragraphs 3 to 7:

*“3. I received my termination letter from Bryden Stokes on December 2, 2015. After receiving the termination letter, I visited the Labour Department on that same day to challenge my dismissal. I was not aware of any formal process for not submitting a complaint at the time, but I made my complaint to Ms. Gail Grant, Labour Officer.”*

*4. Ms. Grant wrote down what I said to her but I did not request or receive a copy of what she wrote. At the end of my meeting with Ms. Grant, she said that she would arrange a meeting with me and Bryden Stokes to see if the matter could be resolved.*

5. *In the meantime, I retained Ms. Diana Doughlin of George Walton Payne & Co as my Attorney-at-Law and advised her of this. By letter dated August 8, 2016 Ms. Doughlin wrote to the Labour Department confirming that I would be pursuing my complaint against Bryden Stokes.*

6. *By letter dated August 17, 2016 Ms. Doughlin further advised the Labour Department that I had submitted my complaint against Bryden Stokes through Ms. Grant on December 2, 2015.*

7. *In the circumstances, I humbly ask this Tribunal to determine that my complaint was submitted within the time required under the Employment Rights Act.”*

4. The respondent in submissions advanced by Counsel, has stated that the letter of dismissal dated December 2, 2015 informed the claimant of his right to appeal, and that on June 22, 2016 the claimant through his Attorney-at-Law informed the respondent that he wished to appeal his termination and that the decision be reviewed. That request was refused by letter dated July 11, 2016 on the ground that six months had passed and that the claimant had not appealed to the Tribunal within the prescribed time.
5. On June 15<sup>th</sup>, 2020 the Tribunal, gave its ruling in ***Anthony Herbert v. Berger Paints Barbados Ltd***, ERT 44 of 2017, which had been listed and heard concurrently in October 2019 and March, 2020 with this action. Before the Tribunal could render its’ decision on this action, based on the papers then before it, Counsel for the Claimant, Mr. Collymore indicated that the factual matrix of his client’s case was different to that

- in Herbert, and therefore sought an adjournment to present the evidence supportive of his contention.
6. The adjournment was granted and at a later hearing, application was made for a Summons to issue to Miss Gail Grant, Labour Officer, the individual mentioned in Mr. Donville Jones's supplemental witness statement dated November 29, 2019. That Summons was issued and on November 19, 2020 Miss Grant appeared before the Tribunal. In her evidence, the Labour Officer said that she recognised the Claimant and stated that from notes made at the time, she could confirm that Mr. Jones had appeared before her on December 2, 2015 to complain about his dismissal, which she recorded in a file.
  7. Miss Devonish, Counsel for the Respondent did not challenge or dispute Miss Grant's evidence, and consequently Mr. Collymore, Counsel for the Claimant asked the Tribunal to rule that the complaint had been properly made in the time period specified in the **Employment Rights Act**, to the Chief Labour Officer.
  8. The opening paragraph of the letter of referral to the Tribunal dated April 24, 2018 said *"On August 8<sup>th</sup> 2016, in accordance with Sections 8 and 42 (1) of the Employment Rights Act, 2012-9, Ms. Diana Doughlin, Attorney-at-Law for Mr. Jones referred the matter to the Labour Department which dealt with the termination of Mr. Donville Jones."*
  9. The date of August 8, 2016 mentioned in the above letter as the date of referral prompted the Tribunal of its own motion, to raise as a preliminary

issue, whether the Tribunal had jurisdiction to hear the claim for unfair dismissal, as it appeared to be 5 months out of time.

10. In light of the evidence given by Miss Grant as to the receipt of the complaint on the same date of termination, the Tribunal is satisfied that the claim is properly before it, and that indeed there is no need for the exercise of any discretion.
  
11. In the interest of completeness, the Tribunal notes that in December 2015, section 42 (1) of the **Employment Rights Act** provided that an employee who believed that there had been an infringement of any right conferred on him by **the Act**, may present his complaint to the Chief Labour Officer. That section was amended in February 2017 to require that the complaint may be made **in writing**.
  
12. The substantive issue as to the fairness of the dismissal would now be set down for hearing on a date to be fixed.

Dated this 10<sup>th</sup> day of December, 2020

Christopher Blackman

**Chairman**

Dr. Hartley Richards

**Member**

Frederick Forde

**Member**