



## Establishing the date of dismissal

### Introduction

The Employment Rights Act 1996 (“ERA”) states that an Employment Tribunal is only able to hear a complaint of unfair dismissal where it has been brought within 3 months from the effective date of termination (“EDT”).

The ERA defines the EDT as being the date on which notice expires or alternatively where notice is not given, the date on which the termination takes effect.

In view of the above, it is important to establish the correct EDT for the purposes of checking whether an unfair dismissal claim has been made within the 3 month limitation period.

Quite often however, employers seek to terminate an individual’s employment before they have accrued 12 months’ continuous service in order to avoid liability for an unfair dismissal claim. On occasions however, confusion surrounds the EDT due to the way the employer handles the dismissal which can leave the door open to a claim when it could easily have been avoided by adopting a simple practice when terminating the individual’s employment.

In a recent decision of the Court of Appeal in *Gisda Cyf -v- Barratt*, the Court reconfirmed the longstanding rule regarding the point at which the 3 month limitation period commences.

### Facts of the case

Mrs Barratt who was employed by a charity, was suspended pending an investigation into inappropriate conduct at a private party which was witnessed by one of the employer’s service users. At the conclusion of a disciplinary hearing Mrs Barratt was informed she could expect to receive a letter confirming the employer’s decision on Thursday 30<sup>th</sup> November 2006. On Wednesday 29<sup>th</sup> November 2006 the employer posted a letter to Mrs Barratt by recorded delivery to

her home address confirming its decision to summarily terminate her employment.

At the time however, Mrs Barratt was not at home due to having travelled to London to visit her sister who had recently given birth. As a result of this, Mrs Barratt did not return home until late Sunday evening and only read the dismissal letter on Monday 4<sup>th</sup> December 2006 after enquiring into whether any post had arrived and being informed by her boyfriend’s son who had found the dismissal letter amongst his homework papers.

Following an appeal, Mrs Barratt lodged applications for both unfair dismissal and sex discrimination with the Employment Tribunal on 2<sup>nd</sup> March 2007. In response to this, her employer raised the issue as to whether her unfair dismissal claim had been brought within the 3 month time limit.

### Employer’s Argument

The employer argued that the EDT had been 29<sup>th</sup> November 2006 on the grounds that:-

- this was the date the dismissal letter was written and sent by post to Mrs Barratt;
- it was the date referred to by Mrs Barratt (incorrectly) in her claim form as being the termination date; and
- this was the last day on which Mrs Barratt had been paid.

In the alternative, the employer argued that the termination took effect when Mrs Barratt had a reasonable opportunity to learn of her dismissal. The employer argued that this was before 3<sup>rd</sup> December 2006 given that Mrs Barratt could have phoned from London to enquire whether the letter had been received.

## Glaisyers Solicitors LLP

One St James’s Square, Manchester M2 6DN

Email: manchester@glaisyers.com Telephone: 0161 832 4666 Fax: 0161 832 1981

www.glaisyers.com

## Employment Tribunal Decision

The Tribunal held that the EDT was 4<sup>th</sup> December 2006, this being the date Mrs Barratt read the letter and the dismissal was communicated to her. This followed an earlier decision of the Employment Appeals Tribunal which held that where an employee is informed of their summary dismissal by letter, the EDT is the date when they actually read the letter and knew of the decision or had a reasonable opportunity of reading it (to cover situations where an employee deliberately fails to open the letter or moves away to avoid reading it).

The Tribunal held that Mrs Barratt did not have a reasonable opportunity to read the letter until Monday 4<sup>th</sup> December 2006 and had not gone away deliberately in order to avoid doing so given that the reason for her absence was legitimate and that furthermore there was no obligation on her to request someone read the contents of the letter to her over the telephone. The employer subsequently appealed against this decision.

## Court of Appeal Decision

The Court of Appeal rejected the employer's appeal. In doing so, the Court of Appeal noted that the act triggering the time limit (ie, the dismissal) was controlled by the employer and the suggestion that the time period could begin to run before the employee knew she had been dismissed was considered unfair. It is interesting to see how this contrasts with the situation where an employee accepts an employer's repudiatory breach (resigns and claims constructive dismissal) in which a faxed letter of resignation was held to be received when the transmission was complete even where this was late on a Friday evening and no one was expected in the office until the following Monday.

### Conclusion

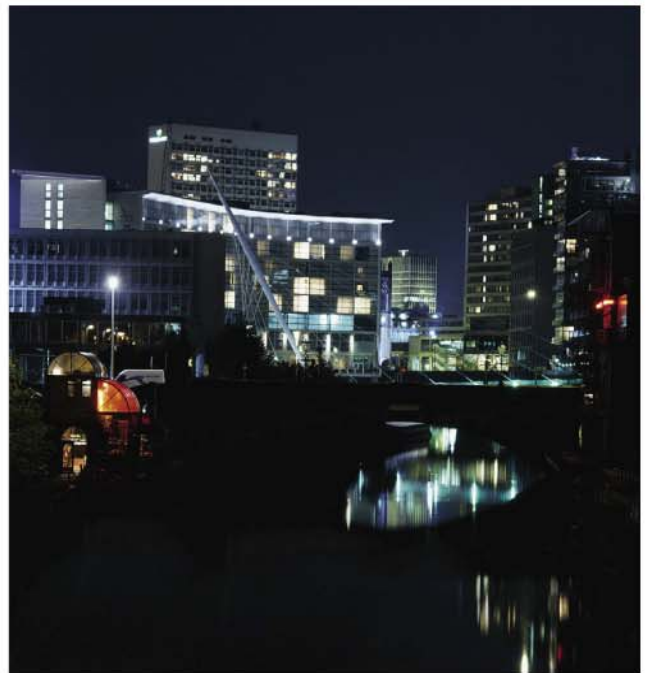
The decision should serve as a reminder to employers of the need to notify an employee of the decision to terminate their employment verbally and then confirm this decision in writing (by registered post where appropriate). By doing so, this will help to avoid a scenario arising where an employee claims not to have been informed of the decision to dismiss particularly where the dismissal is taking place close to an employee's first anniversary of employment.

If you would like to receive more information regarding the contents of this newsletter or information on any other employment law related matters then please contact **Russell Brown** at Glaisyers Solicitors LLP, One St James's Square, Manchester M2 6DN. Tel: 0161 832 4666; Fax: 0161 832 1981; Email: [rwb@glaisyers.com](mailto:rwb@glaisyers.com)

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