



# EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

**Mr O Oguntukon**

**SSE Metering Limited**

**Heard at:** Watford

**On:** 24 October 2017

**Before:** Employment Judge Manley

## **Representation**

**For the Claimant:** In person

**For the Respondent:** Ms C Musgrave, counsel

## **RESERVED PRELIMINARY HEARING JUDGMENT**

- 1 The complaint of unfair dismissal was presented out of time and it was reasonably practicable for it to have been presented in time.
- 2 The complaint is dismissed as the tribunal has no jurisdiction to hear it.

## **REASONS**

### ***Introduction and issues***

- 1 This hearing was a preliminary hearing (PH). It was listed on 17 August 2017 at an earlier preliminary hearing which was postponed when the claimant was not in attendance and when various orders were made. The issue before the tribunal is whether the tribunal has jurisdiction to hear the complaint of unfair dismissal if it was not presented within the prescribed time limit.
- 2 If the claim was presented out of time, I must decide whether it was reasonably practicable for the claim to have been presented in time. If it was not reasonably practicable, I must decide whether it was presented within such further period as was reasonable.
- 3 The claimant had sent a letter for the August PH and another document for this hearing and those stood as his evidence in chief.

He was cross examined by the respondent's representative and asked questions by me. A bundle of documents had been prepared by the respondent.

**Facts**

- 4 The following facts are relevant for this issue. The claimant was dismissed on 18 November 2016 for alleged misconduct. He appealed that dismissal and attended an appeal hearing on 13 January 2017. The decision to uphold the dismissal was sent to the claimant on 27 January 2017.
- 5 The claimant had secured alternative employment which commenced on 16 January 2017. Unfortunately, that employment was terminated on 17 February, apparently because that new employer became aware of the claimant's dismissal from the respondent and some of its projects included work for his former employer.
- 6 On the same day, 17 February, the claimant contacted ACAS for early conciliation. He told me that he had looked on the employment tribunal website and had seen that it was a requirement to go to ACAS before bringing a claim. He knew there were time limits for ACAS and the employment tribunal.
- 7 The ACAS certificate was dated 15 March 2017 and it was sent by email to the claimant on that day. The claimant's evidence is that he had a telephone discussion with an ACAS officer who told him that the deadline was 17 April 2017. When I asked the claimant, he said that he was aware that the claim needed to be presented on or before the deadline date. That is the date upon which the claimant presented his claim.
- 8 When the respondent discovered that this was the claimant's case on the out of time point, it contacted the named ACAS officer who declined to give answers to questions about "*confidential discussions*" with the claimant. The ACAS officer did state, in general terms that "*We do not advise on specific deadlines because only the employment tribunal can decide if the claim is in time. However, the normal ACAS procedure is to inform the claimant that, provided the original application for ACAS early conciliation was "in time", there is a minimum of 1 calendar month to lodge a claim from the date the early conciliation certificate is received by the claimant*"
- 9 I asked the claimant about the period from receipt of the ACAS certificate. He told me he was very busy looking for work and dealing with issues of debt. He was very clear that the ACAS officer had given him 17 April 2017 as the deadline date. I find it hard to believe that an ACAS officer would give what is clearly an incorrect date for the deadline. That contradicts what the officer said in his

email when he stated that they do not advise on specific deadlines. It may be that the claimant misheard a date but it is more likely that no date was given at all. I do not accept the claimant's evidence on this point.

***The law and submissions***

- 10 Section 111 of the Employment Rights Act 1996 (ERA) provides that a complaint may be presented to an Employment Tribunal by any person that he was unfairly dismissed by the employer. Such claims cannot be heard by the employment tribunal unless they are presented before the end of a period of three months beginning with the effective date of termination. In a case such as this that means that where the employee is dismissed on 18 November 2016, the claim would have to be submitted by 17 February 2017.
- 11 However, time limits have been altered by the necessity to refer the matter to ACAS for early conciliation under s207B ERA which allows for an extension of time where the matter has been referred to ACAS before the expiry of the time limit. In this matter, there was referral on 17 February 2017. That section allows for the time limit to be extended to the end of the period of "one month after Day B". In this case there is no doubt that Day B was when the certificate was dated and sent to the claimant on 15 March 2017. That meant the last day for presentation was 15 April 2017.
- 12 If the tribunal is satisfied that it was not reasonably practicable for the claim to be presented within that period (usually as in this case, as extended) it may consider the case so long as the claim was submitted within such further period as the tribunal considers reasonable. That is the effect of Section 111(2) ERA.
- 13 In Palmer & Saunders v Southend-on-Sea Borough Council [1984] IRLR 119 it was said by the Court of Appeal that the words "reasonably practicable" mean that the tribunal must ask if it was reasonably feasible to present the complaint to the employment tribunal within the relevant three-month period.
- 14 The respondent's representative, having been referred to cases about skilled and other advisers at the August PH, made reference to Rybak v Jean Sorelle Ltd [1991] ICR 127 and London International College Ltd v Sen [1993] IRLR 333. She submitted that the role of an ACAS officer is more akin to that of a solicitor or CAB adviser than an employment tribunal clerk. In any event, she submitted, the issue is one of fact for me to determine including consideration of the awareness of the claimant of time limits.
- 15 The respondent's representative also referred me to Northamptonshire County Council v Entwistle [2010] IRLR 740 which emphasises the point about the determination being one of

fact and reasonableness on the part of the claimant. She reminded me that the burden of proof rests on the claimant to show it was not reasonably practicable for the claim to be presented in time.

- 16 The claimant submits that he was given this information by ACAS and he relied upon it. He accepts that he is an educated man with an honours degree but submits that he could not necessarily understand the time limit question. He asks me to exercise my discretion to allow his claim to proceed.

**Conclusions**

- 17 I have determined that the tribunal has no jurisdiction to hear this claim. The time limits have been complicated by the extension allowed by early conciliation. However, I do not accept that the claimant was told an incorrect date by the ACAS officer. That seems to me to be so unlikely as to be incorrect.
- 18 The claim had to be presented by 15 April to be in time. That already allowed the extra time because of ACAS referral. The claimant should or could have seen that the time limit ran from the date on the certificate. He is not able to rely upon his recollection of a telephone conversation when all written information would have made the final day of 15 April (one month after the date on the certificate) clear. He really had no explanation for the delay between 15 March when he knew there was no prospect of conciliation and 17 April when he presented the claim.
- 19 I do not think it is necessary for me to decide whether the status of the ACAS officer is that of a skilled adviser or not. The claim was not presented in time. It was reasonably practicable, in the circumstances of this case, for the claim to be presented in time. The tribunal has no jurisdiction to hear the claim and it is dismissed.

\_\_\_\_\_  
Employment Judge Manley

Dated 26 October 2017

Sent to the parties on:  
.....

.....  
For the Secretary to the Tribunals