

mf



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr H J Ortiz Ararat

**Respondent:** Principle Cleaning Services Ltd

**Heard at:** East London Hearing Centre **On: 19 October 2017**

**Before:** Employment Judge O'Brien (sitting alone)

## Representation

**Claimant:** Mr A Durango (Trades Union Representative)

**Respondent:** Miss C Lord (Counsel)

## JUDGMENT

**The Claimant brought his claim of unfair dismissal out of time and it is therefore dismissed.**

## REASONS

1 The Claimant is a Spanish national. However, he confirmed at the end of proceedings that he had understood the proceedings.

2 The Claimant presented a claim for unfair dismissal plus other "money claims" on 14 July 2017. The Respondent presented its own response out of time.

3 It would have been necessary, if the Claimant's claim had gone forward to decide whether to extend time. However, in the first instance it was necessary to consider whether the Employment Tribunal had jurisdiction to hear the claim because of the following chronology.

4 The Employment Tribunal had the benefit of a small bundle of documents comprising the minutes of a disciplinary meeting on 27 February 2017, a letter dated 2 March 2017 confirming the outcome of that disciplinary hearing and invitation letters to an appeal hearing and a rescheduled appeal hearing dated 11 April and 3 May 2017 respectively, a copy of an email dated 11 March 2017 with the appellant's grounds of appeal and finally written representations on behalf of the Respondent with associated authorities.

5 I also heard oral evidence from the Claimant and also from Mr Durango, both of whom were subject to questions from me and also cross-examination by Miss Lord.

6 I took into account all of the evidence to which I was taken whether or not referred to in these reasons

***The facts***

7 The Claimant was dismissed by the Respondent at a disciplinary meeting on 27 February 2017 at which he was told he was being dismissed with immediate effect. A letter confirming that was sent to the Claimant on 2 March 2017 and was received by him on 3 March 2017 along with a copy of the disciplinary minutes. The Claimant had a friend whose skills in English and reading were better than his to confirm to him what both of those documents said.

8 Between 3 and 11 March 2017, the Claimant instructed Mr Durango of the Cleaners and Allied Independent Workers Union (CAIWU) and on 11 March Mr Durango submitted grounds of appeal on behalf of the Claimant.

9 The Claimant was invited to an appeal by letter dated 11 April and then subsequently on 3 May to a rescheduled appeal to take place on 22 May 2017. The appeal was unsuccessful.

10 On 3 June 2017, the Claimant commenced early conciliation and an early conciliation certificate was issued by ACAS on 19 June 2017. On 14 July 2017, the Claimant submitted his ET1.

11 The Claimant accepts that, on 22 February 2017, he was told that he was going to be dismissed. He says that he did not know when the dismissal would take effect and so asked for the Respondent to put the dismissal and reasons for dismissal in writing. It was, and the letter that was sent on 2 March made it clear beyond doubt that dismissal had occurred on 27 February 2017. Subsequent appeal invitation letters also expressly stated that dismissal had taken place on 27 February 2017.

12 I am satisfied, therefore, that dismissal was communicated to the Claimant on 27 February 2017 and that he understood or ought to have understood that to have been the case upon receipt of the dismissal letter and certainly by no later than 11 April 2017.

13 Unfortunately, the Claimant told Mr Durango that he had been dismissed on 3 March 2017 and Mr Durango did not ask to see the letter of dismissal for himself.

14 The Claimant says that early conciliation was not commenced earlier than 3 June 2017 because of issues with his wife's pregnancy. I have no doubt that the Claimant and his wife were suffering some difficulties at that point. However, he also says that he relied on his union and Mr Durango for advice. Mr Durango told me today that early conciliation commenced on 3 June 2017 because that was three months after dismissal (three months being the deadline in accordance with Mr Durango's understanding of employment law). I accept all that to be the case.

### **The law**

15 In respect of claims for unfair dismissal, pursuant to section 111(2) of the Employment Rights Act 1996:

“an employment tribunal shall not consider a complaint under this section unless it is presented to the tribunal –

- (a) before the end of the period of three months beginning with the effective date of termination, or
- (b) 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) makes provision for the extension of time because of early conciliation.

16 In that respect, section 18A of the Employment Tribunals Act 1996 makes it a necessary step before presentation of a claim that early conciliation must have been undertaken and an early conciliation certificate issued by ACAS. Where early conciliation is undertaken during the ordinary limitation period, the effect of section 207B is that limitation expires no earlier than one month after issue of an early conciliation certificate.

17 Analogous provisions apply to the claimant’s other ‘money’ claims.

18 The phrase not reasonably practicable has been held to mean not reasonably feasible, see **Palmer and another v Southend on Sea BC [1984] I.R.L.R. 119**. This is a question of fact which must be judged taking into account all of the relevant circumstances of the case which include as also set out in the same case such matters as knowledge of rights, any misrepresentations made by the employer to the employee, advice given to the employee and any substantial failure made by the employee or his or her representative.

19 It has been held in a number of cases, including **Dedman v British Building and Engineering Appliances Ltd [1973] IRLR 379** that the mistake of skilled adviser does not excuse the Claimant in respect of the time limit for unfair dismissal claims. In **The Times v O’Regan [1977] IRLR 101**, amongst other cases, it was held that a union representative is such a skilled adviser and therefore that the fault of a union representative does not excuse the Claimant from observing time limits.

### **Conclusions**

20 The claimant commenced early conciliation on 3 June 2017, which is outside the primary time for his claims, whether the effective date of termination was 27 February 2017 (as argued by the respondent) or 3 March 2017 (as contended by the claimant). The claimant does not, therefore, benefit from an extension of time to complete early conciliation. His claim was presented on 14 July 2017 and so the Tribunal lacks jurisdiction unless he can show that it was not reasonably practicable to present his

claim within the primary time limit.

21 There are effectively two excuses being advanced for why this claim was not brought in time. Firstly, that the Claimant understood his date of termination to have been 3 March 2017 and secondly, that the trade union representative believe that that gave the Claimant until 3 June in which to commence early conciliation.

22 I accept that the claimant was told face-to-face on 27 February that he was being summarily dismissed. I have been taken to no authority to say that a dismissal does not take effect until the employee understands what he has been told. Instead, I consider that it is a factor which ought properly to be taken into account when deciding whether it would have been reasonably practicable to bring a claim within the primary time limit. In the latter regard, I am satisfied that the claimant understood that he had been dismissed without notice on 27 February at the very least when his friend confirmed on 3 March what the respondent's letter of 2 March said. Therefore, I am satisfied that the claimant's effective date of termination was 27 February 2017.

23 Thereafter, the claimant relied on his trade union representative to submit a claim to the Employment Tribunal on his behalf. The trade union representative, however, made two mistakes which I consider to be unreasonable. First, the trade union representative had failed to confirm the actual effective date of termination (for instance by asking to see the respondent's letter of 2 March) and secondly, had made a fundamental mistake as to the time on which time began. These were mistakes that a reasonably competent union official would not have made, and are mistakes for which the claimant must ultimately bear responsibility.

24 Given that the claimant had placed his case in the hands of a union representative, I am not satisfied that any problems arising from the claimant's partner's pregnancy have any bearing on whether it was reasonably practicable to bring the claim in time. I note, in particular, that the claim would have been a day late even had the Claimant's understanding of his date of termination been correct.

25 In the circumstances, I find that it would have been reasonably practicable to bring the claim in time and therefore the Employment Tribunal has no jurisdiction to hear the claim.

26 It follows that the claim must be dismissed.

Employment Judge O'Brien

14 November 2017