

EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: S/4102161/17

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Held in Glasgow on 19 October 2017

Employment Judge: Ms R Sorrell

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Mr Steven Carruthers

**Claimant
In Person**

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City Facilities Management (UK) Limited

**Respondents
Represented by:
Mr S Chegwin -
Solicitor**

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PRELIMINARY HEARING

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Tribunal is that the claim is timebarred and therefore the Tribunal does not have jurisdiction to hear this claim.

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REASONS

Introduction

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1. The claimant lodged a claim for unfair dismissal on 20 July 2017.
2. This Hearing has been scheduled in order to determine whether the claim was lodged within the three month statutory limitation period and the Tribunal has jurisdiction to hear this claim.

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E.T. Z4 (WR)

3. As the claimant is a party litigant, at the outset of proceedings I explained the purpose and procedure for this Hearing.
4. There was a short adjournment during the proceedings in order for confirmation to be sought from the Tribunal Offices as to the date on which the claimant had paid the lodging fee.
5. The respondent lodged a bundle of productions.

Findings in Fact

6. The claimant`s date of birth is 29 December 1963.
7. The claimant commenced employment with the respondent on 22 August 1997 and was employed as an In-store Technician. The claimant was dismissed on 24 March 2017 by reason of gross misconduct.
8. The claimant sought advice from a solicitor after his dismissal and was advised that he should await the outcome of his internal appeal against dismissal. He thereafter made contact with ACAS who advised him of the same.
9. The claimant had previously used the internet to obtain and research information about his suspension by the respondent.
10. The claimant`s internal appeal hearing took place on 2 May 2017. He did not receive the outcome of that appeal until 27 June 2017.
11. After contacting the respondent on 26 June 2017 to find out the outcome of his appeal, the claimant then contacted ACAS who informed him that he was two days out-with the time limit for lodging an Employment Tribunal claim.

12. On 26 June 2017, ACAS further advised the claimant in terms of the Early Conciliation process and a Certificate was issued on 27 June 2017 (R1). This did not extend the time limit to lodge a claim because the process did not commence until after the statutory limitation date of 23 June 2017.

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13. The claimant submitted his ET1 claim form online on 20 July 2017. The lodging fee was also paid on this date (C1).

Submissions

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Respondent's Submissions

14. Mr Chegwin submitted on behalf of the respondent that the claimant's date of dismissal was 24 March 2017. The limitation date was therefore 23 June 2017. The ACAS Early Conciliation process did not begin until 26 June 2017 and it concluded on 27 June 2017. Because that process did not commence until after the limitation date, the claimant did not benefit from an extension of time. Therefore he was required to submit his claim form no later than 23 June 2017.

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15. The ET1 was submitted on 20 July 2017, therefore it was 27 days out of time and the Tribunal do not have jurisdiction to hear this claim unless it was not reasonably practicable for the claim to be presented in time and that it was presented within a further reasonable period. The burden of proof is on the claimant to show that the test is met.

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16. It is submitted that the burden has not been discharged. It was reasonably practicable to present the claim within the 3 month time limit. In evidence, the claimant said that he knew he could bring a claim and that he saw a solicitor and contacted ACAS. When the claimant saw the solicitor, he failed to advise him regarding the process of bringing a claim to the Tribunal and of the time limit within 3 months. The claimant must abide by that advice and therefore any claim is against that solicitor and not the respondents.

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17. A similar point is submitted in respect of ACAS who on three occasions did not advise the claimant of the time limit. Having known he had a right to bring a claim, the claimant did not undertake due diligence and take reasonable steps to establish what the process was and in particular, the time limit to lodge a claim. The claimant had every opportunity to establish what the timeframe was. He had seen a solicitor and could have asked about the process or he could have asked ACAS during the multiple calls that he had with them. When that was put to the claimant in cross-examination he said "*I suppose so.*"
18. The claimant does have access to the Internet. He has an I-Pad and could have done a simple search regarding his employment rights as he had done regarding the suspension issue. Had he done that, he would have established that there was a 3 month time limit in which to lodge a Tribunal claim.
19. The claimant said he was awaiting the outcome of his internal appeal. However, that does not excuse him as to knowing about his rights in bringing a claim, particularly when he had lost all confidence with his employer. The claimant said that the only thing that stopped him from bringing a claim was his lack of knowledge within that timeframe. But he could and should have known that timeframe by his own means or through a solicitor so it was reasonably practicable to bring a claim within the 3 month time limit.
20. In respect of the second limb of this test, if the Tribunal is satisfied that the claimant could not bring the claim within the 3 month time limit, it is submitted that it was not brought within a time that was thereafter reasonable. The claim was clearly not brought until 20 July 2017. That is clear from the claim form and the lodging fee payment record. The claimant`s evidence regarding when the ET1 was submitted was unclear. He first said that he submitted it on 26 June 2017. He then said he couldn't

remember and it could have been 26 or 27 June 2017. When he said it could be 27 June 2017 he gave the reason that this was because it was too late to submit it on 26 June 2017.

5 21. It is submitted that it is impossible for the claimant to submit the ET1 on either 26 or 27 June 2017 because the ACAS Early Conciliation Certificate would not have been dispatched by email on 27 June 2017 until 23:59 hours. Therefore, the claimant would not have had access to the Certificate to record that ACAS number on the claim form and so could not have been
10 submitted it on either 26 or 27 June 2017.

22. The claimant submitted the ET1 form on 20 July 2017. This is 27 days out of time and 25 days after the claimant learnt that his claim was out of time and at a stage when he knew that a further delay could be an issue.

15 23. For these reasons, the ET1 was not completed within a reasonable period thereafter.

Claimant`s Submissions

20 24. It is submitted by the claimant that he was told by ACAS he was 2 days out of time to lodge his claim when he spoke to them on 26 June 2017. He therefore sought the Early Conciliation Certificate straight away and submitted his claim form thereafter. He does not know where the 25 days
25 come from. He was only 2 days out of time in lodging the claim. ACAS never said about the 3 month deadline. He is educated but he is not a solicitor. He feels he has been wronged. He had 20 years of service with the respondents and was accused of theft and has proved them wrong. He has been on anti-depressant medication for the stress this has caused him.

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Relevant Legislation

Complaints to Employment Tribunals

25. In accordance with Section 111 of the Employment Rights Act 1996 (“ERA”), it states:-

5 “Section 111(1)

A complaint may be presented to an Employment Tribunal against an employer by any person that he was unfairly dismissed by the employer.

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111(2)

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 3 months beginning with the effective date of termination, or (b) within such 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 3 months”.

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- 20 26. What is reasonably practicable is a question of fact for the Tribunal to decide. In the well established authority of **Wall’s Meat Company Ltd v Khan (1979) ICR 52, CA** LJ Shaw stated that: “The test is empirical and involves no legal concept. Practical common sense is the key note and legalistic footnotes may have no better result than to introduce a lawyer’s complications into what should be a layman’s pristine province.”

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27. The authority of **Porter v Bandridge Ltd (1978) ICR 943, CA** held that the burden of proving that presentation in time was not reasonably practicable rests on the claimant.

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28. Where the claimant is generally aware of his right, ignorance of the time limit will rarely be acceptable as a reason for delay. This is because a claimant who is aware of his rights will generally be taken to have been on

enquiry as to the time limit. In accordance with the authority of **Trevelyan (Birmingham) Ltd –v- Norton [1991] ICR 488, EAT**, Mr Justice Wood said that when a claimant knows of his right to complain of unfair dismissal, he is under an obligation to seek information and advice about how to enforce that right. Failure to do so will usually lead the Tribunal to reject the claim. It was further held in the case of **Sodexo Healthcare Services Ltd –v- Harmer EATS/0079/08** that the crucial question for the Tribunal was whether in the circumstances, the employee was reasonably ignorant of the time limit. If an employee is reasonably ignorant of the relevant time limit it cannot be said to have been reasonably practicable for him or her to comply with it.

29. In the event the claimant has satisfied the Tribunal that presentation in time was not reasonably practicable, the Tribunal must then go on to decide whether the claim was presented within such further period as the Tribunal considers reasonable.

Issues to be Determined

30. The Tribunal identified the following issues as requiring to be determined:-
- (a) Has the claimant shown that it was not reasonably practicable to present his claim within the 3 month statutory time limit?
 - (b) If so, was the further delay between 24 June and 20 July 2017 in presenting his claim reasonable?
 - (c) Does the Tribunal have jurisdiction to consider the claim of unfair dismissal?

Conclusions

31. It is not in dispute that the claimant sought legal advice after his dismissal and that he also contacted ACAS for advice and was therefore aware of his right to bring an employment tribunal claim. The crucial issue in this case is whether the claimant was reasonably ignorant of the time limit in which to bring a claim.
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32. Having considered all of the evidence in this case, I am satisfied that the claimant's ignorance of the time limit was not reasonable. In reaching this decision I have taken account of the fact that the claimant received legal advice from a solicitor and guidance from ACAS in respect of a bringing a Tribunal claim well before the expiry of the limitation period and that in accordance with *Trevelyan's (Birmingham) Ltd ("supra")*, when a claimant knows of his right to complain of unfair dismissal, he is under an obligation to seek information and advice about how to enforce that right.
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- The fact that 31the claimant was awaiting the outcome of his internal appeal against dismissal before lodging a claim did not preclude him from seeking that information. Indeed in cross-examination, the claimant accepted that he could have asked his solicitor or ACAS about the process. Furthermore, I consider that he could have used the internet to obtain that information, as he had previously done so when suspended by the respondent.
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33. For these reasons, I have concluded that the claimant has not shown that it was not reasonably practicable to lodge his claim within the three month statutory time limit. In these circumstances, I am not required to determine whether the further delay in presenting his claim was reasonable.
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- 30 34. Accordingly and for all of these reasons, I have determined that the claim for unfair dismissal is time-barred and the Tribunal does not have jurisdiction to hear this claim further.

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Employment Judge: Rosie Sorrell
Date of Judgment: 14 November 2017
Entered in register: 17 November 2017
and copied to parties

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