



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms K Conway

**Respondent:** The Commissioners for HM Revenue and Customs

**HELD AT:** Manchester

**ON:** 15 January 2018

**BEFORE:** Employment Judge Slater  
(sitting alone)

## REPRESENTATION:

**Claimant:** In person

**Respondent:** Mr James Hurd of Counsel

## JUDGMENT

1. The name of the respondent is amended by consent to The Commissioners for HM Revenue and Customs.
2. The Tribunal does not have jurisdiction to consider the claimant's complaint of unfair dismissal since it was presented out of time and it was reasonably practicable to have presented it within the time limit. The complaint is therefore dismissed.

## REASONS

### The Facts

1. The claimant was dismissed on 19 April 2017. The primary time limit expired on 18 July 2017. It is a requirement to obtain an ACAS early conciliation certificate before presenting a claim of unfair dismissal. If ACAS had been contacted within the primary time limit, time would have been extended in accordance with the early conciliation provisions. In this case no notification to ACAS was made within the primary time limit and, therefore, there was no extension of time under the early conciliation provisions.
2. Instead, the claimant's trade union representative, on the claimant's behalf, attempted to present a claim on the last day of the primary time limit, that is 18 July 2017. This claim was rejected in August 2017 since the early conciliation provisions

had not been followed. The claimant then took prompt steps to try to remedy the position.

3. The claimant took advice from her trade union representative from a time shortly after her dismissal. The claimant's evidence is that she relied on her trade union representative and did not do any independent research prior to August 2017 when she received a letter from the Tribunal rejecting her claim.

4. The claimant says that her trade union representative did not inform her about the need to approach ACAS before bringing a Tribunal claim, and did not tell her about the time limit for presenting a claim. The claimant says she learned about the time limit from someone else a few days before expiry of the primary time limit and then contacted her trade union representative who put in the claim online on the claimant's behalf, having taken details from the claimant over the phone. The claimant says that the representative made a number of errors on the form, including naming her employer as the appeal officer, rather than HMRC.

5. The claimant had an awareness of Employment Tribunals and the right to bring a complaint of unfair dismissal at the time of her dismissal but did not know about time limits from bringing a claim until she was told about this a few days before the time limit expired. She had not done any independent research. She remained unaware of the need to contact ACAS before presentation of her claim until she received the Tribunal's letter rejecting her claim. The claimant relied on her representative to present her claim properly but took action herself when she realised mistakes had been made, on receipt of the rejection letter from the tribunal.

6. The claim form completed online on 18 July 2017 did not include an ACAS early conciliation number. Instead, a box was ticked to indicate that the exception relating to interim relief applied. This was clearly not a case where an application for interim relief could be made and no such application was made.

## **The Law**

7. A complaint of unfair dismissal must be presented before the end of the period of three months beginning with the effective date of termination unless it was not reasonably practicable to present the claim within that timeframe, in which case it must have been presented within a reasonable time thereafter.

8. Notification must be given to ACAS under the early conciliation provisions and a certificate issued before a complaint of unfair dismissal can be presented to the employment tribunal. Notification to ACAS became compulsory with effect from 6 May 2014.

9. Where notification to ACAS has been made within the primary time limit, there are provisions which extend time, but these are not applicable here since ACAS was not contacted within the primary time limit.

10. In most cases, a claimant who relies on an adviser will be bound by any failings on the part of the adviser in not presenting a claim correctly in time. This principle applies to professional legal advisers and has been held also to apply to trade union representatives e.g. *Times Newspapers Ltd v O'Regan* 1977 IRLR 101, *EAT* and *London Borough of Islington v Brown* EAT 0155/08.

## Conclusion

11. The reason given by the claimant for not presenting the claim correctly on time is that she relied on her trade union representative. The claimant is fixed with the actions of her trade union representative. The actions of her trade union representative have to be attributed to the claimant. If it was reasonably practicable for the trade union representative to present the claim on time, it was reasonably practicable for the claimant to do so.

12. I conclude that it was reasonably practicable to present the claim in time. An attempt was made at presentation of the claim on the last day of the primary time limit. The claimant could have notified ACAS on that day and the early conciliation provisions would then have given her an extension of time which would have allowed her to present her claim to the Tribunal in time. If there was a failure on the part of the trade union representative to advise correctly and this led to a failure in presentation, this failure is attributed to the claimant.

13. I conclude it was reasonably practicable to present the claim on time. The Tribunal, therefore, has no jurisdiction to consider the complaint of unfair dismissal and this is dismissed.

14. If the claimant feels she has been badly advised by her trade union representative she may have a claim of negligence against the union which would be pursued in the Civil Courts.

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Employment Judge Slater

Date: 15 January 2018

JUDGMENT AND REASONS SENT TO THE PARTIES ON

17 January 2018

FOR THE TRIBUNAL OFFICE