



EMPLOYMENT TRIBUNALS

Claimants: Mrs C Vigus

Respondents: Cashino Gaming Limited

Heard at: Southampton **On:** 27 March 2018

Before: Employment Judge Jones QC

Representation:

Claimant: Mr King

Respondent: Mr Watson of Peninsula Business Services

JUDGMENT

1. The Claimant's claims for unfair dismissal and unlawful deduction were not commenced timeously. Since, it had been reasonably practicable to commence in time, the application to extend time fails and the claims are dismissed.

REASONS

1. Mrs Vigus brings two claims: a claim for unfair dismissal; and a claim for unlawful deduction from wages. Both claims should have been commenced on or before 12 October 2017, that being one month after Day B (that is the date on which the conciliation period terminated). In fact, the claims were commenced on 16 October 2017 (which is the date stamped by Manchester Employment Tribunal on the form ET1). If a certificate of posting shown to me (which provided for next day delivery)

relates to the submission of these claims, it is possible that they were received at the Leicester Employment Tribunal on 13 October 2017. The reason for the uncertainty will become plain below).

2. On the face of it, the claims are out of time and there was an application before me for extension of time. In order to determine if I had discretion to extend time, I had first to be satisfied that it had not been reasonably practicable to commence timeously.
3. Before me, and throughout, the Claimant has been represented by her friend; Mr King. He is not, as he repeatedly stressed, a legal professional. He has been a good friend and done his best to assist the Claimant.
4. His first argument was that it was not reasonably practicable to commence in time because the Claimant's former employer had lost the first letter of appeal that had been sent to them by the Claimant. The subsequent delay in convening an appeal hearing ate into the time available to the Claimant to commence. That was not a persuasive argument. The internal appeal was concluded by means of an outcome letter dated 2 August 2017. That was three weeks before the Claimant approached ACAS. Sufficient time remained for the claim to be commenced including, specifically, the period of a month post-dating Day B. Confusingly, Mr King first sought to persuade me that the certificate of posting referred to above, which is dated 12 October 2017, related to a further letter of appeal to the Respondent. That cannot be right for at least two reasons. First, there was no further right of appeal and no appeal letter was produced to me. Second, the certificate of posting displays the postcode of the Leicester Employment Tribunal. It is obviously unlikely that Mr King would have sent a letter requesting a further internal appeal to the tribunal.
5. Mr King's alternative argument was that the Claimant had in fact commenced in time. She had sent an ET1 on 4 October 2017, of which there is now no trace. Mr King gave evidence on oath about this. He told me that he approached a security guard working in the Southampton Magistrates Court. The Southampton Employment Tribunal shares a building with the Magistrates Court. Mr King had obtained a copy of the form ET1. His father had downloaded it from the Internet without informing his son that it was possible to submit the form electronically. Mr King asked the security guard to where he should send the form. The guard told him that he should send the form to Manchester or Coventry. For reasons that were not explained, Mr King returned to the Magistrates Court to ask a different security guard the same question. Mr King's evidence was that this guard advised him to send the form to Leicester. Neither guard, on Mr King's account, pointed him in the direction or made any enquiry of the employment tribunal staff. Instead, they offered their own advice. Mr King told me that he posted the application to Leicester.
6. The account given by Mr King differs very substantially from the account set out in his letter of 12 October 2017 under cover of which he submitted the form ET1 ultimately stamped by the Manchester Employment Tribunal on 16 October 2017. That letter

claimed that he had sent the first ET1 to Bristol Employment Tribunal. He now, apparently, denies having done that. He had provided the Tribunal with a document purporting to be a proof delivery to the Bristol Employment Tribunal. The letter had been signed for by someone called "Cann", who the Claimant suggested must be an Employment Tribunal employee. However, the document suggested that the letter had been delivered to "you" or "a neighbour" which seemed to indicate that the letter had been intended for whoever had downloaded the proof of delivery from the Internet. It certainly did not specifically confirm that the letter had been delivered to the Bristol Employment Tribunal and by the date of the hearing before me Mr King was, in any event, denying that he had ever sent the document there.

7. At some point, Mr King told me on oath, he contacted Bristol in order to see whether Leicester had received the ET1. That makes little sense, as he freely accepted. It was that call, he told me, that prompted him to submit a fresh ET1. He did not tell me when the call was made or when he knew he had to send in another form.
8. It is, of course, for the Claimant to establish that it was not reasonably practicable to commence on time. The evidence adduced to me is in such an unsatisfactory state that I cannot conclude with any confidence that the Claimant has discharged that burden. In the circumstances, I find that the tribunal does not have jurisdiction to hear the claims they are dismissed.

Employment Judge Jones QC

05 April 2018

Sent to the parties on:

For the Tribunal