



EMPLOYMENT TRIBUNALS

Claimant: Mr M Crompton

Respondent: Royal Mail Group Plc

Heard at: Manchester

On: 14 September 2018

Before: Employment Judge Ross

REPRESENTATION:

Claimant: Mr S Khan, CWU Trade Union

Respondent: Ms Driffield, Solicitor

JUDGMENT having been sent to the parties on 17 September 2018 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

1. The claimant was dismissed on 28 February 2018. The claimant's claim should have been presented on 27 May 2018, within 3 months of his dismissal. The claimant contacted ACAS within this time period on 15 May 2018 and the certificate was issued on 30 May 2018.

2. When determining whether a time limit has been complied with, the period beginning the day after the EC request is received by Acas up to and including the day when the EC certificate is received or deemed to have been received by the prospective claimant is not counted — [S.207B\(3\) of the Employments Rights Act 1996 \(ERA\)](#). In other words, the clock will stop when Acas receives the EC request and start to run again the day after the prospective claimant receives the EC certificate.

3. If a time limit is due to expire during the period beginning with the day Acas receives the EC request and one month after the prospective claimant receives the EC certificate, the time limit expires instead at the end of that period — [S.207B\(4\) ERA](#). This effectively gives the prospective claimant one month from the date when he or she receives (or is deemed to receive) the EC certificate to present the claim.

4. In this case the certificate was issued on 30 May 2018 he therefore had until 30 June 2018 to present the claim.
5. His claim was not presented to the Tribunal until 6 July 2018, which was 6 days out of time.
6. The claimant was represented throughout by officials from his trade union. I entirely accept the evidence of the claimant and Mr Khan and I thank them both for their integrity in being frank with the Employment Tribunal.
7. Mr Khan explained that the deadline for submitting the claim was missed due to an official being on annual leave when the deadline expired. The claimant said he was aware of the time limit but trusted the union who was acting for him, to present his claim in time.
8. I do have enormous sympathy for the claimant and the union because these were lay trade union representatives and the fact is people do make mistakes. I accept the evidence of Mr Khan that there was a mix up during his annual leave in terms of who was responsible for dealing with the claimant's claim in his absence, but unfortunately for the claimant and the union the law is strict in relation to time limits for unfair dismissal.
9. The test was whether it was reasonably practicable for the claim to be presented in time? If not, was the claim presented within such further time as was reasonable? Although I must look at the facts, I must also have regard to legal principle in *Dedman v British Building and Engineering Appliances Ltd* 1974 ICR 53 which says that where an adviser is acting for the claimant, the claimant can not plead ignorance if the advisor misses the deadline. Ultimately the claimant may have a remedy against his union, potentially, for negligence.
10. A trade union representative is considered to be an adviser and is expected to know the time limit for presenting claims. If the trade union representative misses the deadline, that error is considered to be attributable to the claimant. See *Times Newspapers Ltd v O'Regan* 1977 IRLR101.
11. In this case the union via its representatives made a mistake. The union failed to present the claimant's claim in time because of confusion about who was responsible for the claimant's claim when a union representative was on annual leave. I find the union did not have a robust diary or case management system to alert officials when a deadline was due to expire, particularly when an official was on leave.
12. There are no other relevant extenuating circumstances. I find, for the reasons given above, it was reasonably practicable for the claim to be presented within the timescale and the claim must fail because the Tribunal does not have jurisdiction to hear it.

Employment Judge Ross

Date 5 November 2018

REASONS SENT TO THE PARTIES ON

8 November 2018

FOR THE TRIBUNAL OFFICE

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