



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr A Williams

**Respondent:** North West Boroughs Healthcare Trust

**Heard at:** Manchester

**On:** 3 December 2018

**Before:** Regional Employment Judge Parkin

## REPRESENTATION:

**Claimant:** In person

**Respondent:** No attendance or representation

## JUDGMENT AT A RECONSIDERATION HEARING

Upon reconsideration, the judgment of the Tribunal is that the original judgment made on 5 September 2018 is confirmed.

## REASONS

### 1. The claim

By a claim presented on 20 April 2018, the claimant claimed unfair dismissal by the respondent from his employment as a bank Registered Mental Health Nurse. He contended that following allegations relating to conduct made against him there was a lengthy and extended investigation and disciplinary procedure against him which only concluded on 5 January 2018, when he was dismissed in circumstances he contended were unfair. The claimant's application was accompanied by emails dated 22 April and 23 April 2018 relating to the late submission of the claim, stating:

“Firstly I was informed by the NHS HR Department that I had to wait for my outcome letter from the NHS before I could make my appeal. The outcome letter arrived approximately two weeks after my disciplinary hearing on 5 January, and this was only because I continued to chase this up on a regular basis. Once my appeal had been lodged I was advised that it would not take too long to reach a date for the hearing. As of today, the hearing has still not been organised despite all my efforts in pursuing the relevant departments concerned. I would like to point out that it took eight months for the disciplinary hearing to be arranged. I was suspended from duties on 20 April 2017 and the disciplinary hearing was held on 5 January 2018...”

## **2. Notice of Claim and Hearing**

Following presentation, the claim was listed for a final hearing at service and a Notice of Claim and Notice of Hearing for hearing on 5 September 2018 was sent, together with Case Management Orders with a set timetable, by a letter dated 18 June 2018. That letter was sent to the respondent and to the claimant's named representative, Mark Grimshaw of Unite, at an address “Tennyson Unit, Hollins Park, Winwick, Warrington, Cheshire”. As is the Tribunal's practice, the notice was sent to the representative named by the claimant in his claim form rather than to the claimant himself.

## **3. Initial Consideration and Notice of Preliminary Hearing**

No response was presented by the respondent by the due date, 16 July 2018, and the file was then referred to Employment Judge Porter who directed that the final hearing should be converted to a Preliminary Hearing to consider whether the claim was presented in time and if not whether the Tribunal should make an extension to allow the claim to proceed. Notice of that Preliminary Hearing was sent to the parties, again to the claimant's union representative, by a letter dated 15 August 2018, the same date as a “No Response received” letter was sent to the respondent.

## **4. Preliminary Hearing**

Accordingly, the Preliminary Hearing proceeded on 5 September 2018, but by 11.00am there had been no attendance by or on behalf of the claimant or the respondent. On a consideration of the papers and the timeframe, Regional Employment Judge Parkin concluded that the claimant had not satisfied the Tribunal that his unfair dismissal claim was presented in time or that it had not been reasonably practicable for him so to present it, but that he had done so within a reasonable further period. His claim was therefore dismissed for lack of jurisdiction, being out of time. The Tribunal's Judgment and Reasons was sent to the parties on 7 September 2018.

## **5. Claimant's application for Reconsideration**

The claimant made a very swift response to the Tribunal that day:

“Good afternoon. Firstly, I would like to express my disbelief in the decision I have just received from yourselves. I have not received any notifications

whatsoever via email, telephone or letter informing me of the hearing on 5 September 2018. Therefore, how was I able to attend when I knew nothing of the said hearing?”.

6. Subsequent correspondence from the claimant confirmed that he maintained his trade union representative had likewise received no correspondence from the Tribunal in connection with the hearing which took place on 5 September 2018. The Tribunal confirmed that letters dated 18 June and 15 August 2018 had been sent to the named representative at the address the claimant had given, but the matter was then listed for this reconsideration hearing.

## **7. Reconsideration Hearing and fact-finding**

The claimant attended in person and gave oral evidence on oath, providing as documentary evidence only upon his appeal outcome letter. His evidence was fully accepted by the Tribunal which made the following findings of facts. Although he had some awareness of the right to claim unfair dismissal, the claimant was unaware of the three month time limit or indeed of ACAS early conciliation procedures. When dismissed on 5 January 2018, following a protracted investigatory and disciplinary procedure by the respondent, his representative, Mark Grimshaw, told him an appeal should be heard swiftly, even within two weeks. The claimant was a Unison trade union member but was not assisted during the internal disciplinary process by his own trade union, and indeed had sought the assistance of Mr Grimshaw, a Unite trade union representative, who was a former work colleague and voluntarily assisted him at the internal disciplinary hearing, but has played no part of any kind within the Employment Tribunal proceedings despite being named by the claimant as his representative. The claimant only had Mr Grimshaw's work address, being the Tennyson Unit, a ward at Winwick Hospital where by 2018 Mr Grimshaw was working, and a mobile telephone number; he was assured by Mr Grimshaw that no correspondence sent by the Tribunal to Mr Grimshaw's work address had in fact arrived. Mr Grimshaw was unavailable to attend the reconsideration hearing, being on holiday.

8. The claimant had needed to chase the respondent to pursue his right of appeal, and that appeal hearing was only ultimately held on 1 November 2018 with the outcome unsuccessful for the claimant, which was confirmed by a letter dated 19 November 2018. The claimant was thoroughly dissatisfied with the respondent's delay in proceeding with the disciplinary procedures and then with the appeal, but took the view that he could wait for the appeal outcome before deciding whether to proceed with a Tribunal claim or not. When there was further delay with the appeal, in April 2018 he, assisted by his wife, a former civil servant, made enquiries firstly with ACAS, then completed early conciliation notification on 19 April 2018 with ACAS and received confirmation of the issue of his ACAS early conciliation certificate again on 19 April 2018. His online claim was presented with his wife's assistance the next day, on 20 April 2018. He only learnt of the time limit for bringing an unfair dismissal claim from ACAS. Whilst the claimant was unaware of the time limit for bringing an unfair dismissal claim, he had been waiting for the appeal outcome confident that, if he was successful, there would be no need to apply to the Tribunal because he would have been reinstated. He confirmed in evidence that nobody at the respondent or on behalf of it told him he could not bring an unfair dismissal claim

until the appeal outcome was known, and nor did his representative, Mr Grimshaw, tell him this.

## 9. Claimant's submissions

In his closing submissions, the claimant contended that the respondent had acted totally unreasonably in spite of his best efforts in view of the delay from 20 April 2017 when the first allegations of conduct were raised against him, up to the final outcome of appeal on 1 November 2018 confirmed by letter of 19 November 2018. He contended this was an employer paying scant regard to the whole process, pointing to the fact it had not even sent a representative for two hearings. He had been entirely unaware of the earlier hearing but would have attended had he been aware and referred to his prompt reaction when the claim was dismissed.

## 10. The Law

Since this was a Reconsideration Hearing, the Tribunal applied the procedural rules at rules 70-72 of the Employment Tribunals Rules of Procedure Regulations 2013, in particular at rule 72. In the circumstances, the claimant's reconsideration application proceeded to a further hearing which was a renewed consideration of the preliminary issue which should have been determined on 5 September 2018, again without any participation or representations made by the respondent. To the facts found, the Tribunal applied the law which is to be found variously at Part X and in particular at section 111 and then at section 207B of the Employment Rights Act 1996. By section 111(2):

“... an employment tribunal shall not consider a complaint...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.”

11. The general time limit is revised in certain circumstances as a result of the early conciliation procedures by virtue of section 207B; this means in effect the time taken during early conciliation is not counted in relation to time limits, and if the normal time limit would expire during the period of early conciliation or up to one month after the early conciliation certificate is issued, the time limit actually expires one month after the issue of certificate. As at the initial Preliminary Hearing and irrespective of the fact that the claimant received no support or assistance from his named representative, it remained the case that the claimant had to satisfy the Tribunal that it had not been reasonably practicable to present his claim in time, but that it was presented within such further period as was considered reasonable.

12. The protections relating to unfair dismissal have been in force for many years and the Tribunal had regard to higher courts' authorities giving guidance upon the application of the time limits such as Palmer and Saunders v Southend-on-Sea

Borough Council (CA) [1984] IRLR 119 and Marks and Spencers v Williams-Ryan (CA) [2005] IRLR 562. The authorities establish that unreasonable ignorance of the law and time limits or the fact of an ongoing appeal does not in itself make it not reasonably practicable to present the claim in time; ultimately, each case turns upon the application of the legal provisions to its own facts.

### 13. Conclusion

Albeit not assisted by his own trade union, the claimant was a union member who had trade union assistance from a colleague from another trade union in internal processes, and he showed that when he was concerned at lack of progress in his internal appeal in April 2018, with the assistance of his wife, he was well able to establish and complete the procedure for both notifying ACAS and presenting an online Employment Tribunal claim. It has never been the law that a dismissed employee needed to wait for the appeal outcome before claiming unfair dismissal, and the claimant's decision to do so unfortunately meant that he missed the time limit even for commencing early conciliation through the ACAS process.

14. Having regard to the burden upon him, the claimant has not established that it was not reasonably practicable for him to present his claim of unfair dismissal in time, which meant before or by 4 April 2018 since the statutory non-counting of time of extension of time did not apply and assist him here.

15. In these circumstances, the Tribunal confirms the decision made at the Preliminary Hearing that his claim is dismissed since the Tribunal cannot consider it for lack of jurisdiction having regard to Section 111(2).

Regional Employment Judge Parkin

5 December 2018

JUDGMENT AND REASONS SENT TO THE PARTIES ON

11<sup>th</sup> December 2018

FOR THE TRIBUNAL OFFICE

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