EMPLOYMENT TRIBUNALS

Claimants: Mrs D Parkinson
Mrs D Brown
Miss D Higginbotham

Respondent: Brassingtons Bakery Limited

Heard at: Manchester **On:** 4 January 2019

Before: Employment Judge Franey
(sitting alone)

REPRESENTATION:

Claimants: In person
Respondent: Did not attend

JUDGMENT

The complaints of unfair dismissal, notice pay, a failure to pay holiday pay and of unlawful deductions from pay are dismissed because they were presented outside the applicable time limits when it was reasonably practicable for them to have been presented within time. The proceedings are therefore at an end.

REASONS

Introduction

1. The three claimants were employed by the respondent bakery with premises in Macclesfield and Bollington which ceased to trade on 22 January 2018. They each lodged a claim form in June and July 2018, bringing various complaints including unfair dismissal, failure to pay a redundancy payment and complaints in relation to money due to them.

2. No response form was lodged by the respondent. The proceedings against it were uncontested.

3. The claims were also brought against Mr Sellars, who had been the proprietor of the bakery, but all complaints against him personally were dismissed on withdrawal at a preliminary hearing on 28 September 2018.

4. At that hearing judgment was given in favour of the claimants against the respondent under rule 21 in relation to their complaints concerning a redundancy payment, for which the applicable time limit is six months from the relevant date. It was identified, however, that the remaining complaints were subject to a three month time limit and on the face of it were out of time. The Tribunal has to deal with time limits even in undefended cases because it has no jurisdiction to deal with out of time cases.

5. The matter was listed for a preliminary hearing today to determine the time limit issue. Mrs Parkinson's brother, Mr Broster, helped her present her case.

Relevant Legal Principles

6. The time limit for an unfair dismissal complaint appears in section 111(2) of the Employment Rights Act 1996 :

> **(2) Subject to the following provisions of this section, 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 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.**

7. The provisions of section 207B provide for an extension to that period where the claimant undergoes early conciliation with ACAS. In effect initiating early conciliation "stops the clock" until the ACAS certificate is issued, and if the claimant has contacted ACAS within time, she will have at least a month from the date of the certificate to present her claim.

8. There are equivalent provisions applicable to complaints of breach of contract, holiday pay and of unlawful deductions from pay.

9. Two issues may therefore arise: firstly whether it was not reasonably practicable for the claimant to present the complaint before the time limit expired, and, if not, secondly whether it was presented within such further period as is reasonable.

10. Something is "reasonably practicable" if it is "reasonably feasible" (see **Palmer v Southend-on-Sea Borough Council [1984] ICR 372,** Court of Appeal). Ignorance of one's rights can make it not reasonably practicable to present a claim within time as long as that ignorance is itself reasonable. An employee aware of the right to bring a claim can reasonably be expected to make enquiries about time limits: **Trevelyans (Birmingham) Ltd v Norton [1991] ICR 488** Employment Appeal Tribunal ("EAT").

11. In **Marks and Spencer Plc v Williams-Ryan [2005] ICR 1293** the Court of Appeal reviewed some of the authorities and confirmed in paragraph 20 that a liberal approach in favour of the employee was still appropriate. What is reasonably practicable and what further period might be reasonable are ultimately questions of fact for the Tribunal.

12. The position where an employee relies on advice from a professional adviser has been the subject of a number of decided cases. They were reviewed by the EAT in **Northamptonshire County Council v Entwhistle UKEAT /0540/02** in May 2010**.** The position is in summary that if during the three month period a person consults a skilled adviser and the adviser makes a mistake about time limits, or fails to advise on them, it will have been reasonably practicable for the claim to have been presented within time. This is known as the "Dedman Principle" after the decision of the Court of Appeal in **Dedman v British Building and Engineering Appliances Ltd [1974] ICR 53.**

13. There is an exception if the adviser's mistake was itself reasonable, or if the adviser could not reasonably have ascertained the correct position (e.g. if the employer has misled the claimant or the adviser about the date employment ended).

Relevant Findings of Fact

14. I had before me the Tribunal files and also a witness statement and supporting documents from each of the three claimants. I heard evidence on oath from each claimant. I found the relevant facts to be as follows.

15. Mrs Parkinson had been employed since 2005 as a Shop Assistant at the main premises in Macclesfield where the bakery was also situated. Miss Higginbotham and Mrs Brown had been employed since 2004 and 2008 respectively at a standalone shop in Bollington.

16. On Monday 22 January 2018 both shops were closed and the claimants could not get access. It was clear the business had ceased to trade.

17. That same afternoon Miss Higginbotham and Mrs Brown visited the Citizens Advice Bureau ("CAB") in Macclesfield. They explained what had happened. They were told to contact ACAS and explain the situation. They were advised that in order to make any claim against the Insolvency Service they would need a reference number if their employer had gone into insolvency. They were not given any advice about the right to go to an Employment Tribunal or about the time limit for doing so.

18. Mrs Parkinson went to the CAB on 25 January 2018. She explained what had happened in her case and was also advised to contact ACAS. She was not given any advice about Employment Tribunals or time limits. Around this time she spoke to Miss Higginbotham who confirmed the advice that she had been given by the CAB.

19. Contact with ACAS in the week after dismissal was made by Miss Higginbotham and Mrs Brown on the telephone, not by Mrs Parkinson. They explained to the ACAS adviser what had happened and were told that there should be a joint initiation of early conciliation. The early conciliation paperwork was sent to Miss Higginbotham. She completed it and returned it swiftly on behalf of all three

claimants. The prospective respondent was identified as Mr Sellars. There was then some confusion about whether there should be individual conciliation as well. Ultimately the position was as follows:

(a) Early conciliation against Mr Sellars on behalf of Miss Higginbotham and the other two claimants began on 21 February 2018, and ACAS issued its certificate by letter on 19 March 2018.

(b) Early conciliation against the respondent began for Mrs Parkinson alone on 7 March 2018, and the certificate was issued by letter by ACAS on 7 April 2018.

20. All three claimants explained, however, that in this period they had no contact from the ACAS conciliator. Calls to her were unsuccessful and not returned when messages were left. They did not know about any time limits for bringing an Employment Tribunal claim. That remained the case even when the early conciliation certificates were issued.

21. In mid-May Mr Broster was helping his sister and he learned that there was a proposal to strike off the respondent and became involved in communication with Companies House objecting to that proposal. That caused him to make contact with ACAS as well, and on 23 May 2018 the conciliator emailed him the early conciliation certificate for Mrs Parkinson, which had been issued on 7 April 2018. The email provided a link to the Government website for bringing an Employment Tribunal complaint and said:

> **"You will see that you can either do it online or print it off and fill it in as a hard copy. You should do this as soon as possible as there are strict time limits for submitting a claim."**

22. This was the first information they had about time limits. Mrs Parkinson herself did not have internet access but Mr Broster helped her over the next week or so to fill in the claim and present it. It was presented on 2 June 2018.

23. Miss Higginbotham and Mrs Brown were not aware of this at the time, but there was a change of conciliator in early July 2018 as a consequence of contact by Mr Broster with ACAS. The new conciliator, Mr Worthington, contacted Miss Higginbotham and Mrs Brown and explained the position to them in early July. That resulted in them presenting claims on 9 and 15 July 2018 respectively. Miss Higginbotham named the respondent as Mr Sellars, whilst Mrs Brown named the respondent as Mr Sellars but put the name of the company in brackets. On 2 August 2018 Employment Judge Sherratt ordered that those claims be amended so that they were brought against the respondent not simply against Mr Sellars.

Submissions

24. At the end of the evidence the claimants summarised their case with the assistance of Mr Broster. They emphasised that they had had no knowledge of Employment Tribunal procedures or time limits and had not been given any advice by the CAB or by ACAS. They felt that they had been let down by ACAS in the period between February and May 2018 because they had had no information about what was happening. It was only when the conciliator sent an email to Mr Broster on

23 May 2018 that any information was given about time limits, and Mrs Parkinson had acted quickly to lodge her claim after that. Similarly, Miss Higginbotham and Mrs Brown had acted quickly once the new conciliator, Mr Worthington, informed them of the correct position in early July 2018. It was submitted that it had not been reasonably practicable for the claims to have been lodged any earlier.

Conclusions

25. I reminded myself of the legal framework summarised above. The burden was on the claimants to show that it was not reasonably practicable for their claims to have been presented within time. The primary time limit in each case expired on 21 April 2018, although time spent in early conciliation would not count. If time were due to expire within one month of the date of issue of the certificate by ACAS, the claimant would have a month after that certificate to bring a claim. Even with the benefit of the extensions from early conciliation, however, the claims were brought out of time.

26. It is clear that an employee aware that there may be a claim can reasonably be expected to make enquiries about time limits. That was established by the Employment Appeal Tribunal in **Trevelyans (Birmingham) Ltd v Norton**.

27. In this case the claimants were plainly aware that there might be a claim. That was the reason they went to the CAB. That was an opportunity for the CAB to provide basic advice about time limits but it did not do so. Instead the claimants were referred to ACAS.

28. Their contact with ACAS later in the week of dismissal was another opportunity for advice about time limits to be provided. I accepted the evidence of the claimants that they did not expressly ask for any such advice, but they did explain the position to both the CAB and ACAS. They could have asked for advice about bringing a claim or time limits if they had thought to do so. There was nothing to prevent them making that enquiry. It would have been reasonably practicable, therefore, for the claimants to have made that enquiry and to have ensured that their Tribunal complaints were presented within time once early conciliation had ended.

29. In reaching that conclusion I was effectively applying the **Dedman** principle, in in line with the decision of the Court of Appeal in **Williams-Ryan**. This was not a case which might fall within the exception to that principle, where the failure to give advice about time limits was itself reasonable. Based on the evidence of the claimants it must have been apparent to both the CAB and ACAS that the claimants were potentially looking at an Employment Tribunal complaint and advice about time limits could reasonably have been given.

30. For those reasons I concluded that the claimants had failed to show that it was not reasonably practicable for their complaints to be presented within time, and they were therefore dismissed.

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Employment Judge Franey

4 January 2019

JUDGMENT AND REASONS SENT TO THE PARTIES ON

9 January 2019

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