



EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case No: S/4102670/2018

Held in Glasgow on 12 June 2018

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Employment Judge: Laura Doherty

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Mr R Kirkwood

**Claimant
Represented by:-
Mr William McParland –
Solicitor**

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European Metal Recycling Limited

**Respondent
Represented by:-
Mr Byrne –
Solicitor**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

30 The judgment of the Employment Tribunal is that it does not have jurisdiction to consider the claimant's claim of unfair dismissal.

REASONS

1. The claimant presented a claim of unfair dismissal on 15 February 2018. The
35 claim was opposed, and it was identified that there was a preliminary issue in relation to time bar. This Preliminary Hearing (PH) was fixed to determine that issue.

E.T. Z4 (WR)

2. The claimant was represented by his solicitor Mr McParland and the respondents were represented by their solicitor Mr Byrne.

5 3. The claimant gave evidence, and lodged documentary productions.

Findings in Fact

4. From the information and evidence before it the Tribunal made the following findings in fact.

10 5. The claimant, whose date of birth is 8/3/1997 was dismissed from his employment with the respondents on 21 September 2017.

15 6. At the point when he was dismissed the claimant was unaware of his right to present a claim for unfair dismissal, however in discussions with a friend around the end of October/beginning of November 2017 he became aware of the fact that it was open to him to bring a claim of unfair dismissal against his employer in the event he thought his dismissal had been unfair.

20 7. Having spoken to his friend, the claimant went online and looked at a Government website about unfair dismissal. This indicated to him that he required to contact ACAS, and through a link on the website the claimant went on to the ACAS website and completed the relevant notification for the purposes of the issue of an ACAS certificate. The EC notification was submitted by the claimant on 8 of November.

25 8. The claimant contacted ACAS on 15 November when he spoke to an ACAS advisor on the telephone. She told him that a conciliator would be appointed, (a Matthew Murphy), and that claimant would receive a confirmation email.

30 9. The claimant received an email from ACAS on 16 November confirming that Mr Murphy had been appointed as the Conciliator and would contact the claimant within the next five working days to discuss the matter further. The

email also provided a link to a booklet on Early Conciliation which explained the process in detail. The relevant link was attached.

- 5 10. The email advised that if recipient did not hear from the Conciliator within five working days he should contact conciliator directly.
11. The claimant did not look at the website, details of which were provided in the email he received.
- 10 12. ACAS issued the EC certificate on 8 December 2017, which the claimant received by email on that date.

The Certificate States;

- 15 13. *'This Certificate is to confirm that the prospective claimant has complied with the requirement under ETE 1996 s 18A to contact ACAS before instituting proceedings in the Employment Tribunal.*
14. *Please keep this Certificate securely as you will need to quote the reference number (exactly as it appears above) in any Employment Tribunal application concerning this matter.'*
- 20 15. The certificate was accompanied by an email advising the claimant that it was a legal requirement that before lodging and ET1 an ACAS certificate is obtained. The email gave details of a website which provided information about ACAS's role in promoting voluntary settlement.

25 **The E-mail Also Stated;**

16. *"If a prospective claimant then decides to lodge an ET1 with the Employment Tribunal s/he must quote the ACAS reference number on the Certificate when completing the ET1.*
17. *It is it is the prospective claimant's responsibility to ensure that any ET1 lodged is submitted on time, and claimants may wish to consult a competent adviser on this matter".*
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18. The claimant did not look at the websites referred to in that email. He did not seek legal advice.
- 5 19. As the claimant had not heard further from Mr Murphy, he telephoned ACAS 13 December, but received no substantive response to this.
20. The claimant decided not to pursue the matter further over Christmas and New Year, but he contacted ACAS again by email on 27 January asking about
10 the position.
21. The claimant did not receive a response to this email, and sent an email again on 14 February, both to Mr Murphy, and to ACAS's general enquiries address, advising that he had not heard from ACAS.
- 15 22. In response to this email the claimant was contacted by a Mr Andrew Vernon on 15 February. He expressed the view that the claimant had not received the service that he should have received from ACAS.
- 20 23. Mr Vernon explained the relevance of the ACAS certificate, and explained to the claimant that he would have to lodge a claim with the Employment Tribunal. He told the claimant that the claim was probably out of time, but that he should submit it in any event.
- 25 24. The claimant submitted at claim to the Employment Tribunal on 15 February.

SUBMISSIONS

Claimant's Submissions

25. Mr McParland for the claimant urged the Tribunal to exercise its discretion under Section 111 of the Employment Rights Act 1996 (the ERA) and extend
30 time to allow the claim to be received.
26. He submitted that this was an unusual case. The claimant was a young man, and was unaware of his right to bring a claim. After discussing matters with his friend, he contacted ACAS, but did not receive an adequate service.

Despite repeated attempts to contact ACAS, they did not get in touch until 15 February, when the claimant was contacted by Mr Vernon. By that time the claim was out of time, however the claimant acted immediately, and lodged his claim on the same day.

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27. In the absence of any meaningful engagement with ACAS the claimant did not understand the significance of the Early Conciliation certificate.

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28. The claimant accepts there was a degree of ignorance on his part, but Mr McParland submitted that this was reasonable ignorance in the circumstances. The claimant accepted that he received the email which accompanied the Early Conciliation Certificate, however that email did not advise the claimant about time limits, or how to lodge a claim. Nor did it provide any information as to when the claim had to be lodged.

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29. Mr McParland asked the Tribunal to take these relevant factors into account in order to extend the time limit.

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30. In support of his position Mr McParland referred to the case of ***Walls Meet v Khan 1997 CA 52*** in particular page 61, paragraphs B and C, and page 57 paragraphs C and D. Reasonable practicability was a question of fact, and practical common sense was the keynote to this. Provided ignorance was reasonable, then it was an impediment to bringing a claim.

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31. Mr McParland also referred in that case of ***Marks and Spencer v Williams Ryan A2/2004/ 2070*** in support of the proposition that section 111 should be given a liberal interpretation.

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32. Lastly Mr McParland referred to the Case of ***John Lewis Partnership v Mr A. P. Charman UKEAT/0079/11/ZT***. He submitted that parallels could be drawn to this case, in that the employee was very young, and had been advised that he should allow his employer to exhaust the internal appeal procedure.

33. This claimant was young, and was waiting for ACAS to engage with him. He thought they were going to pursue the claim for him. There was a delay on their part, and that was the reason for the delay in the claim being presented.

Respondents Submissions

5 34. Mr Byrne for the respondents submitted that the Tribunal should not extend time to consider the claim. The claimant was aware from at least November of right to present claim, and it was this knowledge which prompted him to contact ACAS. Having done so it could not be said that his ignorance of time limits was reasonable. There was a wealth of information available to him
10 about time limits online, and it was difficult to accept that he had not come across any of that.

35. Furthermore, the email from ACAS enclosing the Early Conciliation Certificate makes it clear that it is the claimant's responsibility to lodge the claim, and
15 having received that the claimant could not rely on reasonable ignorance. Mr Byrne also referred the Tribunal to the case of *Walls Meat* in that connection.

36. Mr Byrne did not accept that the claimant's age was a relevant factor. The claimant had held a responsible job the respondents, and furthermore he had
20 been able to navigate the ACAS website and intimate the requisite notification to ACAS, and thereafter lodge a claim with the Employment Tribunal; there was no good reason why he could not have done this earlier.

37. Mr Byrne also submitted that there was no good reason advanced for the claimant's inactivity after he received ACAS certificate, and he should have
25 been taking steps to pursue his claim then.

38. ACAS is an independent body, and are not responsible for providing advice to the claimant. This case could be distinguished from the case of ***DHL Supply Chain Ltd v Mr S Fazackerly UKEAT/0019/18/JOJ***, in that ACAS
30 have not misdirected this claimant.

39. Mr Byrne submitted that in the event the tribunal was satisfied that it was not reasonably practicable for claim to be lodged in time, then the claim was not lodged within a reasonable period thereafter. The claim is around five weeks out of time, and the submissions which he made in relation to enquiries were relevant in this regard.

Consideration

Section 111 of the ER A 1996 provides;

40. *(1) A complaint may be presented to an employment tribunal against employer by any person that he was unfairly dismissed by the employer.*

(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 a 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.

41. It is accepted in this case that the effective date of termination was 21 of September 2017.

42. It is also accepted that the date of notification of ACAS certificate was 8 November 2017, and the date of issue was 8 December 2017.

43. The effect of the issue of the ACAS Certificate is to extend the time limit for presentation of the claim to 7 of January 2018. The claimant was not lodged until 15 February 2015, and was therefore just over 5 weeks out of time.

44. In considering whether time should be extended, the test which the Tribunal has to apply is twofold. Firstly, it has to consider whether it was not reasonably practicable to bring the claim within the statutory time limit. And secondly, if satisfied on that point it has to go on to consider whether the claim was brought within a reasonable period.

45. As referred to by Mr McParland, what is made clear in *Walls Meet* is that what is reasonably practicable is a question of fact for the tribunal to decide.

46. The onus of proving that presentation in time was not reasonably practicable rests with claimant. The Tribunal also reminded itself that Section 111 should be given a liberal interpretation.

47. Mr McParland's submitted the claimant was unaware of the right to bring a claim of unfair dismissal to the employment tribunal, and thereafter he did not know the time limit within which to lodge his claim. He submitted that the claimant believed the ACAS were going to lodge the claim for him, and given his age, and the contact which he received from ACAS, including the lack of information about time limits this was reasonable ignorance on his part.

48. The Tribunal accepted the claimant was ignorant of his right to bring to an employment tribunal claim until he spoke with his friend in late October / early November 2017, but at that point he became aware of his right, and acted on that knowledge by contacting ACAS.

49. The Tribunal therefore considered whether the claimant was reasonably ignorant of time limits after 8 November.

50. By that time the claimant was aware of the existence of a right to bring a claim of unfair dismissal, and therefore reasonably would have been put on notice to make enquiry as to time limits for presenting a claim.

51. Albeit the claimant did not receive a telephone call from the conciliator Mr Murphy he did receive an email from him 17 November, and significantly, he received an email from ACAS accompanying the ACAS certificate on 8

December, which clearly advised him that it was his responsibility to lodge a claim.

52. In light of this confirmation the Tribunal was not satisfied that it could be said
5 the claimant was ignorant of the fact that with his responsibility, rather than
ACAS's responsibility to present the claim, therefore he reasonably, should
have been on notice to make enquiries about time limits. This is not a case
where the claimant was given incorrect information or advice by ACAS; it was
not suggested to the claimant by ACAS that they were acting on his behalf
10 in the presentation of the claim. Rather ACAS provided him with information
about the Conciliation process via links to relevant websites, which the
claimant chose not to read.

53. The claimant's explanation that when he received the ACAS certificate he
15 thought that this meant ACAS were going ahead with the presentation of the
claim frankly made no sense in light of content of the email.

54. The Tribunal take into account the claimant was young, and relatively
inexperienced, however against that it also takes into account that he was
20 able to navigate the ACAS website in order to lodge the requisite intimation
for early conciliation, and that he was thereafter able to lodge an unfair
dismissal claim. Furthermore, he was able to contact ACAS by telephone and
email, emailing not just Mr Murphy the conciliator, but also by emailing the
general enquiry line in his attempts to pursue this further.

25 55. The fact that the claimant was able to pursue these enquiries is inconsistent
with the notion that he was unable to make the relevant enquiries, or that it
was reasonable for him not to have make enquiry about the time limit for
presenting his claim.

30 56. In the circumstances the tribunal was not satisfied the claimant's ignorance of
time limits was reasonable, and therefore did not conclude that it was not
reasonably practicable for the claimant to have lodged his claim in time.

57. The effect of this conclusion is that the claim is lodged out of time and the tribunal was not satisfied it should exercise its discretion to extend time, and therefore it does not have jurisdiction to consider the claim of unfair dismissal.

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10 Employment Judge: Laura Doherty
Date of Judgment: 14 June 2018
Entered in register: 16 June 2018
and copied to parties

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