

**EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: S/4102267/2018**

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**Heard in Glasgow on 8 May 2018**

**Employment Judge: Laura Doherty**

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**Mr G Mullaney**

**Claimant  
Represented by:  
In Person**

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**St Andrews Hospice**

**Respondent  
Represented by:  
Ms M Dalziel -  
Solicitor**

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**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

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

**REASONS**

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1. The claimant presented a claim of unfair dismissal to the Employment Tribunal on 31 January 2018.

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2. It is not in dispute that the claimant's employment with the respondents came to an end on 30 September 2017. The date of receipt by ACAS of the Early

**E.T. Z4 (WR)**

Conciliation notification was 8 January 2018 and the date of issue by ACAS of the Early Conciliation certificate was 11 January 2018.

3. There is therefore an issue of time bar in this case, and this Preliminary Hearing (PH) was fixed to consider whether the Tribunal had jurisdiction to determine the claimant's claim of unfair dismissal.
4. The claimant appeared in person, and the respondents were represented by their Solicitor Ms Dalziel.
5. The claimant give evidence on his own behalf, and productions were lodged.
6. It is not in issue that the claim is lodged out with the statutory three-month time limit, and the issue for the Tribunal at this Preliminary Hearing is to determine if time should be extended under Section **111 (2) (b)** of the Employment Rights Act 1996 (the E R A) to allow the claim to proceed.

### **Findings in Fact**

7. The Claimant was employed by the respondents as a Food Service Manager from 6 January 2014 until 30 September 2017.
8. When the claimant left his employment, he was unhappy at the way in which he had been treated. He wanted the respondents to acknowledge this, and to hold the individual he considered responsible for his treatment to account, and for this individual to acknowledge and apologise for his treatment of the claimant.
9. The claimant raised some of his concerns with the respondent's management just before he left that employment on 30 September. He was not happy with the response which he received, and decided to take matters further by contacting one of the respondent's Board Members, Sister Rita, to explain his concerns.

10. The claimant met with Sister Rita around mid-October 2017. In the course of that meeting Sister Rita asked the claimant if he intended to pursue an Employment Tribunal claim, and the claimant answered no, and said that he did not want any financial gain. Further to their meeting Sister Rita asked the claimant to put some of his concerns in writing.
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11. By around mid-October the claimant has started his new employment. The claimant's mother also became very ill around this time, suffering a serious heart attack. On account of these matters pursuing his concerns with the respondents was not a priority for the claimant at this point. He did however send Sister Rita an email on 24 November (page 23 to 26). It was not the claimant's intention to pursue an Employment Tribunal claim at this time, however he ended the email stating '*Constructive Dismissal is the legal term I would use*'.
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12. Albeit the claimant did not intend to pursue a claim against the respondents when his employment came to an end, he was aware of the existence of Employment Tribunal's, and their function generally in dealing with employment disputes.
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13. The claimant was aware that he had the right to bring a claim against his employer, and when he wrote to Sister Rita in November he had a broad understanding of constructive dismissal, albeit he did not have any specialist knowledge, and had no awareness of time limits for presenting a claim to the Employment Tribunal.
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14. Sister Rita forwarded the claimant's email to a Mr Bruce High, who is the respondents Chief Executive Officer. Because of diary commitments it took some time for a meeting to be organised between the claimant and Mr High, however eventually the claimant attended a meeting with Mr High on 7 December 2017.
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15. At the conclusion of the meeting the claimant asked Mr High to confirm the outcome of the meeting, and suggested that he might hear from Mr High in

around 3 weeks' time, (by around the end of December). Mr High told the claimant that because the claimant was no longer an employee of the respondents, he would not be privy to the outcome of the meeting.

5 16. The claimant had no real expectation of hearing from Mr High after this, however he waited until the end of December before considering doing anything further.

10 17. Mr High did not contact the claimant, and at some point, around the beginning of January the claimant contacted the Cit. He understood from them that he required to contact ACAS, and he also understood that there may be an issue with time bar in relation to his Employment Tribunal claim. The claimant contacted ACAS on 8 January.

15 18. He waited for a further appointment with the Citizens Advice Bureau, which took place approximately a week and a half after his first appointment, before lodging his claim to the Employment Tribunal on 31 January.

### **Submissions**

20 19. The claimant submitted that it was never his intention to bring an Employment Tribunal claim. He was not looking for financial gain. The respondents could have resolved this matter at an earlier stage. All the claimant was looking for was an acknowledgement of how he had been treated.

25 20. The respondents had delayed in dealing with this. The claimant did not have access to specialist legal advice, and had no knowledge of the time limits which applied. The claimant had to wait for appointments with the Citizens Advice Bureau, and he was dependent on the availability of others.

30 21. For the respondents Ms Dalziel submitted that there was no basis on which the Tribunal could include that it was not reasonably practicable for the claimant to present his claim within 3 months. He knew he could claim constructive dismissal in November 2017, and it was his choice not to do so.

22. There was nothing to prevent the claimant lodging his claimant time, and again it was his choice to prioritise matters in the way in which he did.

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**Consideration**

23. Section 111 of the E R A states;

10 (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.*

15 (a) *Before the end of the period of 3 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 3 months.*

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24. Consideration of this section involves the Tribunal in applying a two stage test. Firstly, it requires to consider whether it was not reasonably practicable to lodge the claim within the three month period, and secondly, if it is satisfied on that point, it has to go on to consider whether the claim was lodged within a reasonable period thereafter.

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25. The onus of proving it was not reasonably practicable to present the claim within three months rests with the claimant.

30 26. In the context of section 111 (2) (b) '*reasonably practicable*' means something like '*reasonably feasible*.'

27. There were no significant issues of credibility in this case; the claimant accepted that he was aware of the existence of Employment Tribunals and his right to bring a claim. Albeit initially it was not the claimant's intention to bring a claim against the respondent's he accepted that he was aware that he could have.
28. While the Tribunal was satisfied that the claimant was unaware of the time limits for bringing a claim, it could not be said in this case that he was unaware of the right to present claim, or that he was unaware of the facts upon which he could present his claim. The claimant set out the basis, or at least some of the basis, on which he felt aggrieved at his treatment at the hands of the respondents in his email of 24 November.
29. Where a claimant is generally aware of his right to claim, ignorance of time limit is rarely acceptable as a reason for delay, because a claimant who is aware of his right to claim, will generally be taken to have been put on enquiry about time limits, and is under an obligation to seek information and advice about how to enforce that right. There was no evidence upon which the Tribunal could conclude that the claimant was prevented from obtaining advice about his position. The fact that he wanted the respondents to sort matters out, out with the ambit of the Employment Tribunal was not a factor which prevented him, or rendered it not feasible for him to make enquiry about time limits.
30. The Tribunal considered whether the fact that the claimant's mother became very ill, and he was taken up with starting his new employment were factors which rendered it not reasonably practicable for him to present his claim within the three-month time limit. The claimant was however able to engage with Sister Rita in October and November, and attend a meeting with Mr High in December, and therefore there was no basis upon which the Tribunal could conclude that the factors which the claimant spoke of, although significant, were factors which rendered it not reasonably practicable for him to engage with the Employment Tribunal process.

31. Nor was the fact that the claimant did not intend initially to present an Employment Tribunal claim a factor which rendered it not reasonably practicable for the claim to be lodged in time. The claimant was clearly aggrieved at the treatment he received while in employment, and he was aware that he had a right to complain about this to an Employment Tribunal, even if he wished the respondents to resolve things without his bringing a claim in the first instance.

32. There was no basis upon which the Tribunal could conclude that it was not reasonably practicable the claim to be presented within the statutory three-month time limit, and that being the case the Tribunal does not require to go on to consider the second limb of the test in Section **111 (2) (b)**.

33. Having reached this conclusion, there was no basis for the Tribunal to extend time to consider the claim of unfair dismissal under section **111 (2) (b)** and therefore the Tribunal concluded it has no jurisdiction to consider this claim.

Employment Judge: Laura Doherty  
Date of Judgment: 11 May 2018  
Entered in register: 17 May 2018  
and copied to parties

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