

**EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No S/4106854/2017**

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**Held in Glasgow on 21 March 2018**

**Employment Judge: Ms L Doherty**

**Mr Douglas MacDonald**

**Claimant  
In Person**

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**Argyll and Bute Council**

**Respondent  
Represented by:  
Ms J Dunlop -  
Solicitor**

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**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The Judgment of the Employment Tribunal is that time should not be extended under  
20 section **111 (2)** of the Employment Rights Act 1996 (the ERA) to consider the claim  
of unfair dismissal, and the Tribunal does not have jurisdiction to consider the claim.

**REASONS**

1 This was a Preliminary Hearing (PH) to consider whether the Tribunal had  
25 jurisdiction to consider the claimant's claim of unfair dismissal.

2 The claimant appeared in person and the respondents were represented by  
their solicitor, Ms Dunlop.

3 The respondents made an application for strikeout of the claim on 15 March; Ms Dunlop accepted that this application had been intimated to the claimant's solicitor who withdrew from acting on behalf the claimant shortly before the PH, and in the circumstances, she did not pursue the application for strikeout.

5 4 The claimant give evidence on his own behalf, and both parties lodged documentary productions

**Findings in Fact**

5 The claimant was employed by the respondents as a LETS operative for around 13 years. He had a clean disciplinary record.

10 6 The claimant was asked to attend a disciplinary hearing on 11 May 2017 on the grounds of alleged gross misconduct. The claimant attended the Hearing unaccompanied. The claimant did not have the support of a trade union in dealing with the disciplinary proceedings against him.

15 7 The claimant received a letter dated 18 May advising that he had been summarily dismissed, with effect from 18 May.

8 The claimant understood when he received the letter of 18 May that he had been dismissed as of that date.

9 The claimant was advised of his right of appeal, and he appealed against the decision to dismiss him.

20 10 The respondents wrote to the claimant on 16 June 2017 asking him to attend an appeal hearing on 22 June 2017. The claimant was unable to attend on that date because he required to attend court to answer charges arising out of an alleged road traffic offence, which was also the cause of the disciplinary action against him.

11 The claimant was acquitted of the road traffic offence. The claimant had the benefit of legal advice and was represented by a solicitor in connection with the criminal charges.

5 12 The respondents rearranged the appeal meeting for 27 June 2017. The claimant attended the appeal hearing and provided the respondents with a letter, which he had obtained via his solicitor, confirming that he had been acquitted of the criminal offence.

13 The claimant received his P45 at the end of June. This confirmed that the date of termination of his employment was 18 May.

10 14 The respondents wrote to the claimant on 2 August 2017 inviting him to submit further information via his legal representative to explain why he had been found not guilty. The appeal officer indicated he was unable to make a final decision at that stage

15 15 The claimant provided the respondents with his solicitors' details, and contacted his solicitor advising him that the respondents would be in touch with him.

16 The respondent's Ms Mair wrote to the claimant's solicitor on 21 August 2017 stating;

20 *'I was wanting to have a word with you if possible in relation to your above named client who was employed by the Council until his dismissal with effect from 18 May 2017.'*

17 The claimant's solicitor responded to that email on 23 August confirming the claimant was acquitted.

25 18 On 1 September 2017 the respondents wrote to the claimant confirming that the decision to dismiss him had been upheld and that consequently it's decision to dismiss him without notice stood.

19 The claimant wrote to the respondents on 5 September stating;

*'Please address all and any future correspondence to my lawyer. I have already provided details for you to contact. I assume you already have provided him with this document, as I already sent this to my lawyer.*

5 *For your information, which you seem to be unaware of, I am no longer employed by Argyll and Bute Council. I fully intend for my lawyer to pursue this claim, and libellous allegations made against me by Mr Robertson.'*

20 The claimant was aware of the existence of Employment Tribunals.

21 The claimant believed that his solicitor was dealing with his claim arising from  
the termination of his employment on his behalf, although when he spoke to  
10 his solicitor about this at some point after he received his appeal outcome  
letter, his solicitor advised him that this was not the case.

22 Notwithstanding this, prior to the conclusion of the appeal, the claimant made  
his own enquiries as to how to pursue a claim against his employer.

23 The claimant did research online, as a result of which he discovered there  
15 was a time limit for bringing an Employment Tribunal claim for unfair  
dismissal.

24 The claimant also contacted ACAS, at some point prior to 15 August 2017.  
The claimant understood having spoken to ACAS that the time limit which  
applied was three months less a day.

20 25 It was also the claimant's understanding that in order to bring a claim to the  
employment tribunal he had to submit a certificate to ACAS, and that he had  
to do that within a period of three-months less a day.

26 The claimant was prompted to carry out these enquiries, because he  
suspected that his employers were dragging out the appeal process and he  
25 became concerned about missing the time limit to pursue a claim.

27 The claimant presented notification to ACAS on 15 August 2017 and ACAS issued their certificate on 30 August 2017.

28 When the claimant received the letter of 1 September from the respondents stating that the appeal was refused and the decision to dismiss upheld, he spoke to his solicitor who advised him that the date from which the three-month time limit for presenting a claim ran from 1 September. He then thought that the three-month time limit ran from 1 September.

29 The claimant also thought that in line with ACAS guidance, he should allow his employer to try to resolve matters before lodging a claim with the Employment Tribunal.

30 The claimant presented his claim to the Employment Tribunal on 30 November 2017. The ET1 at box 11 contains details of the claimant's solicitor.

**Note on Evidence.**

31 The Tribunal formed the impression that the claimant's evidence was in the main credible and reliable. He accepted that he knew he was dismissed from 18 May, and was candid enough to accept that he had carried out online research about time limits for presenting a claim, and that he had spoken with ACAS about this. He explained he did this because he was concerned about the respondents dragging out the appeal process, and that this might mean he would come up against a time limit for pursuing a claim.

32 The Tribunal was satisfied that the claimant was aware that there was a three-month time limit for presenting a claim, and that he was aware of the necessity of presenting notification to ACAS within a three month period.

33 The Tribunal was also satisfied that albeit it may have inadvertent, the claimant believed his solicitor was acting for him in connection with his employment dispute; after he received the respondents letter of 1 September

and spoke with his solicitor he thought that the three-month time limit ran from 1 September.

## **Submissions**

### **5 Claimants Submissions**

34 The claimant took the Tribunal to the history of the disciplinary and appeal procedure and the fact that there was considerable delay between the respondents advising him of the decision to dismiss him, and the outcome of the appeal.

10 35 The claimants submitted that he had held off lodging the ET1 because of this delay, and that he took into account that his employer may have taken him back after the appeal. He also referred to the ACAS guidance which suggested that an employee should give his employer an opportunity to resolve matters before lodging a claim.

15 36 The claimants submitted that he had been a good employee for 13 years and felt that he had been treated unfairly.

### **Respondents Submissions**

37 Miss Dunlop helpfully provided written submissions which she supplemented with oral submissions. She took the Tribunal to the background to the claim and the relevant legislation.  
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38 Miss Dunlop submitted it and rested with the claimant to establish that it was not reasonably practicable to present the claimant time, and that he had failed to discharge that burden.

39 The time-limit existed for a reason and it was only in exceptional  
25 circumstances the Tribunal can exercise discretion to allow a claim presented late.

40 Miss Dunlop also referred to the claimant's knowledge of time limits (*Marks and Spencer plc against Williams-Ryan (2005) IRLR 562*).

41 She submitted that the claimant had access to legal advice from his  
5 representative who dealt with his criminal charge. Further at appeal the  
claimant argued that account should be taken of the fact that he was not found  
guilty of an associated criminal charge on 22 June, and the respondent should  
contact his representatives for clarification for the reasons for this outcome.  
The respondents did so on 21 August, and confirmed an email to the  
claimant's representative that the claimant was dismissed as of 18 May 2017.  
10 The claimant's representative responded to this email.

42 Miss Dunlop also referred to the fact that after receiving the letter 1 September  
2017 the claimant emailed the respondents stating that all future  
correspondence should be sent to the representative and he advised that he  
intended his representative to pursue a claim against the respondents. This  
15 she said, highlights the claimant had instructed his representative by 1  
September well within the expiry of the time limit which expired on 30  
September 2017. The claimant's representative was aware of the claimant's  
effective date of termination as it had been confirmed to him in the  
respondents' email of 21 August.

20 43 Miss Dunlop referred to the case of *London International College v Sen (1993)*  
*IRLR 333*. She submitted that the evidence indicated that during the period  
within the time limit, the claimant was aware of the possibility of raising  
Employment Tribunal proceedings, and of the relevant time limits.  
Furthermore, the claimant ought to have been aware of the statutory deadline  
25 for presenting his claim to the Tribunal.

44 Ms Dunlop submitted that in addition it had not been shown that the claim was  
presented within such further period as was reasonable. Time expired on 30  
September 2017, and the claimants submitted his claim on 30 November  
2017, 60 days after the expiry of the time limit. She referred in this connection  
30 to the case of *The Royal Bank of Scotland plc v Theobald UKEAT/0444/06*.

**Consideration**

45 Under section **94** of the ERA an employee has the right not to be unfairly  
dismissed.

46 Under section **111 (2)** of the ERA an unfair dismissal complaint must be  
5 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  
10 complaint to be presented before the end of that three months.*

47 The Tribunal was satisfied that the effective date of termination was 18 May  
2017. That was clearly stated in the letter dismissing the claimant, and it was  
reiterated in an email from the respondents to the claimant's solicitor in August  
2017.

15 48 It is clear from the terms of section **111(2)** that time runs from that date, and  
not from the date of the outcome of the appeal.

49 For the purposes of calculating whether the claim was presented in time, the  
relevant date is therefore 18 May.

50 The time limit in section **111 (2)** is capable of being extended under section  
20 **207B** of the ERA.

51 Section **18 A(1)** of the Employment Tribunal's Act 1996 provides that;

*Before a person ('the prospective claimant') presents an application to  
institute relevant proceedings relating to any matter, the prospective  
claimant must provide to ACAS prescribed information, in the prescribed  
25 manner, about the matter.*



52 Section **207 B** of the ERA sets out the operation of the extension of time limits in connection with ACAS early conciliation. It provides;

(2) *In this section –*

5 (a) *Day A is the day on which the complainant or applicant concerned complies with the requirement in subsection (1) of section 18 A of the Employment Tribunal's Act 1996 (requirement to contact ACAS before instituting proceedings) in relation to the matter in respect of which the proceedings are brought, and*

10 (B) *The B is the day on which the complainant or applicant concerns receives or, if earlier, is treated as receiving (by virtue of regulations made under subsection (11) of that section) the certificate issued under subsection (4) of that section.*

15 (3) *In working out when a time limit set by a relevant provision expires the period beginning with the day after Day A and ending with Day B is not to be counted.*

20 (4) *If a time limit set by a relevant provision would (if not extended by this subsection) expire during the period beginning with Day A and ending one month after Day B, the time limit expires instead at the end of that period.*

53 The claimant presented notification to ACAS on 15 August and received his ACAS certificate on 30 August 2017.

54 The application of section **207 B (4)** has the effect of extending the time limit within which the claimant had to present his claim to 30 September 2017.

25 55 The claim was not presented until 30 November, and therefore is presented out of time.

56 In those circumstances the Tribunal had to consider whether it should exercise its discretion under section **111 (2) (b)** to extend the time limit in order to consider the claim of unfair dismissal.

57 The Tribunal firstly considered whether it was not reasonably practicable for the claimant to present the claim within the 3-month time limit.

58 As referred to by Ms Dunlop it was said in the case of *Palmer and Saunders v So send on Sea Borough Council (1984) IRLR 119*; 'reasonably practicable' can be thought of as *reasonably feasible*.

59 The Tribunal considered whether it was reasonably practicable or feasible for the claimant to present his claim prior to 30 September.

60 The Tribunal was satisfied that the claimant was aware of the existence of Employment Tribunal's. This is implicit from the fact that he carried out research about lodging a claim. He had access to legal advice, and he had contact with his solicitor about the ongoing internal appeal process with his employer.

61 The claimant's solicitor was advised by the respondents that the effective date of the claimant's dismissal was 18 May.

62 Although the claimant believed that his solicitor was acting for him in connection with his employment dispute, he took the precaution of researching matters himself and of contacting ACAS. From that research he understood that to be a time limit of 3 months less a day.

63 Albeit the claimant, at the point when he lodged his claim, considered that time ran from 1 September when he received the outcome of the appeal, it could not be said against this background that it was not reasonably feasible for him to have lodged his claim in time. He had the benefit of legal advice and had carried out his own research which alerted him to the relevant time limit.

64 The Tribunal did not consider that the fact that the claimant had regard to  
ACAS guidance to the effect that parties should attempt to resolve disputes  
before proceeding with a claim rendered it not practicable for him to lodge his  
claim on time, in circumstances where he was aware of a time limit for  
5 presenting a claim, and had access to a solicitor.

65 The Tribunal also took into account the claimant's understanding of when the  
time limit was triggered after he spoke to his solicitor on receiving the outcome  
of the appeal letter on 1 September.

66 In the *London International College* case, it was said that where the claimant  
10 has consulted a solicitor, he can no longer say it was not reasonably  
practicable for him to comply with the time limit even if he was advised  
wrongly. The Tribunal was satisfied that the claimant's understanding of  
matters after discussing them with his solicitor in September was not a factor  
which rendered it not reasonably practical for him to present his claim on time.

15 67 The Tribunal was not satisfied that it was not reasonably practicable for the  
claim to be lodged within the statutory time limit, and therefore it did not have  
to go on to consider the second limb of the test in section **111(2) (b)**.

68 The effect of this conclusion is that the claim is lodged out of time and the  
Tribunal does not have jurisdiction to consider it.

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**Employment Judge: L Doherty**  
**Date of Judgment: 23 March 2018**  
**Entered in register: 26 March 2018**  
25 **and copied to parties**

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