

EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: S/4104822/17

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Held in Glasgow on 21 February 2018

Employment Judge: Robert Gall

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Mr David Murphy

**Claimant
In Person**

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Vipond Fire Protection Limited

**Respondents
Represented by:
Ms K Swan -
Solicitor**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

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The Judgement of the Tribunal is that the claims are brought out of time. It was not not reasonably practicable to present the claims in time. The claims therefore cannot proceed.

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As stated at the hearing, in terms of Rule 62 of the Employment (Constitution & Rules of Procedure) Regulations 2013, written reasons will not be provided unless they are asked for by any party at the hearing itself or by written request presented by any party within 14 days of the sending of the written record of the decision. No request for written reasons was made at the hearing. The following sets out what was said, after adjournment, at the conclusion of the hearing. It is provided for the convenience of parties.

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REASONS

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E.T. Z4 (WR)

1. The claims which are brought are claims of unfair dismissal and of wages said to be due to the claimant by the respondents. It is accepted by Mr Murphy, the claimant, that the claims have been presented late. There is a possible argument over the last date for lodging of the unfair dismissal claim.
5 Looked at on the basis most favourable from the point of view of the claimant, the last date for presentation of that element of claim was 6 September 2017. The last date for presentation of the claim for non-payment of wages was 6 September 2017. The claims were presented on 30 September 2017.
- 10 2. At the hearing on 21 February 2017 Mr Murphy gave evidence. He struck me as very honest. He was open in his evidence and prepared to give evidence to the best of his recollection, even where that evidence was not entirely favourable to his position.
- 15 3. Within two or three weeks of dismissal, Mr Murphy had spoken with ACAS regarding his situation and a possible claim to the Employment Tribunal. Early Conciliation had been discussed, he recalls. He cannot recall if a time limit for presentation of the claim was covered during that discussion.
- 20 4. Within the same time. Mr Murphy had consultation with a solicitor regarding a possible claim to the Employment Tribunal. The evidence from Mr Murphy was that the time limit for lodging of a claim to the Employment Tribunal was discussed during that meeting. It would be unusual if the time limit for presentation of a claim was not raised during this meeting. Mr Murphy's wife
25 was present during the meeting.
- 30 5. Mr Murphy also spoke with his union around this time. He was unable to obtain the benefit of any advice as he had only recently joined the union.

6. Notice of the potential claim was given to ACAS on 6 July 2017 as part of the Early Conciliation procedure. The ACAS certificate was issued on 6 August 2017.
- 5 7. Over the next period. Mr Murphy remained in contact with ACAS. There were discussions through ACAS with the respondents.
8. Ultimately on 27 September 2017, it became clear that there was to be no settlement of the case through these discussions.
- 10 9. Mr Murphy had assumed that the time period within which his claim required to be presented was extended by the clock stopping whilst discussions were taking place. This was his own assumption. It was not based on any advice given to him.
- 15 10. After 27 September Mr Murphy spoke to Unite. He obtained help in completing form ET1. He submitted that online on 30 September 2017.
- 20 11. In the period between May 2017 and September 2017. Mr Murphy had, very unfortunately, extremely sad family circumstances. His brother had died in January 2017. His father was seriously ill with Parkinson's disease. Sadly he died in January 2018. Mr Murphy's mother was also ill during this time with cancer. She was going through chemotherapy treatment. Very unfortunately secondary cancer was then diagnosed.
- 25 12. These tragic circumstances made it very difficult for Mr Murphy to concentrate on dealing with his potential Employment Tribunal claim.
- 30 13. Mr Murphy is not particularly great with operation of computers. He can use a computer to a degree. His wife deals with computer matters in general. There is family access to a computer. Mr Murphy accepted that he or his wife could have done research on the computer in relation to Employment Tribunal claims and time limits.

14. Mr Murphy and his wife are not familiar with Employment Tribunals. They have never before brought a claim to an Employment Tribunal.
- 5 15. Ultimately, the explanation given by Mr Murphy for the claim being presented late was his belief that negotiation or discussion meant that the clock had stopped on the period within which a claim required to be presented.
16. Where claims of this type are presented late the onus is on the claimant to persuade the Tribunal that the claims should be permitted to proceed. The test for these claims is whether it was not reasonably practicable for them to be presented in time.
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17. The terms of the statute are to be applied. Cases suggest that whether it was or was not reasonably practicable to present a claim in time may be aided by consideration of whether it was reasonably feasible to present the claim in time. A Tribunal should ask itself whether there was anything preventing presentation in time.
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18. In this case, what was said to have prevented presentation in time was the erroneous or mistaken belief that discussion and negotiation meant that time was "*frozen*" with the clock being stopped.
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19. Ignorance of a position in law is a possible basis for extension of time. That ignorance, however, requires to be reasonable.
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20. Here, there was an assumption by Mr Murphy that the clock had stopped. There was no basis however, for that assumption. The context is important. That context was that Mr Murphy was aware of there being a time limit. The solicitor with whom he had spoken had informed him of this. Mr Murphy was in discussion with ACAS. He could have raised the question with them when discussions commenced. He had computer access. He could have checked the position through that route.
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21. Mr Murphy did not take the steps in circumstances where he was aware of there being a time limit for the bringing of the claim.

5 22. I have considered the tragic family circumstances in which Mr Murphy found himself around this time. I appreciate that this must have been very difficult for him. Despite these family severe illnesses, Mr Murphy remained able to take advice. He took advice from different sources. He was able to approach ACAS for the Early Conciliation Certificate. Clearly the issue of time crossed
10 his mind in that he made an assumption that time had stopped given the discussion ongoing.

23. It was very unfortunate that Mr Murphy made the assumption which he did as to the clock stopping due to the discussions which were ongoing.

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24. Looking at the authorities and the test under statute, I require to come to a view.

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25. The basis of my decision is not to be whether it is fair to allow the claim to proceed. It is not to be whether allowing the case to proceed may or may cause difficulty or hardship for Mr Murphy. My decision does not turn upon whether I have sympathy on a personal level from Mr Murphy, given in particular his family circumstances.

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26. The basis of my decision requires to be whether or not I am persuaded that it was not reasonably practicable to present the claim within the three month period permitted by statute for presentation of such a claim. That period is extended by the provisions in terms of the Early Conciliation Certificate which requires to be issued by ACAS prior to a claim being brought.

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27. I have come to the view that I am not so persuaded. The claims are timebarred. I am not persuaded that grounds exist to meet the statutory test for extension of time. The case cannot therefore proceed.

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10 **Employment Judge: Robert Gall**
Date of Judgment: 22 February 2018
Entered in register: 23 February 2018
and copied to parties