

**EMPLOYMENT APPEAL TRIBUNAL**  
FLEETBANK HOUSE, 2-6 SALISBURY SQUARE, LONDON EC4Y 8AE

At the Tribunal  
On 19 February 2019

**Before**

**THE HONOURABLE MRS JUSTICE SLADE DBE**

**(SITTING ALONE)**

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MR R PORA

APPELLANT

CAPE INDUSTRIAL SERVICES LTD

RESPONDENT

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Transcript of Proceedings

JUDGMENT

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## APPEARANCES

For the Appellant

MR ABOU KAMARA  
(of Counsel)  
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For the Respondent

MR PHILIP CROWE  
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## **SUMMARY**

### **JURISDICTIONAL POINTS – Extension of time: reasonably practicable**

The Employment Judge did not err in holding that it was reasonably practicable for the Claimant to present his claim for unfair dismissal in time when the date for presentation was missed due to the fault of his solicitor. A questionable observation that the Claimant could have sought advice elsewhere when he had been told his claim was being dealt with did not affect the basis of the decision of the Employment Judge.

**A** THE HONOURABLE MRS JUSTICE SLADE

**B** 1. Mr Pora (“the Claimant”) was dismissed by Cape Industrial Services Ltd (“the Respondent”). The effective date of termination of his employment was 12 May 2017. Unfortunately, due to a series of events which were no fault of his, his claim was only presented to the Employment Tribunal (“ET”) on 23 March 2018. He claimed unfair dismissal and race discrimination. The Claimant is Polish.

**C** 2. By a Judgment with Reasons sent to the parties on 24 July 2018, Employment Judge Slater held that the ET did not have jurisdiction to consider the complaint of unfair dismissal as it was presented out of time. The presentation for such a claim expired on 11 August 2017. The complaint of unfair dismissal was dismissed. The Employment Judge (“EJ”) also held that the complaint of race discrimination in respect of matters up to and including 2 June 2016 were presented out of time and that claim was dismissed.

**D** 3. A complaint that the dismissal of the Claimant was an act of race discrimination was ordered to proceed to a Full Hearing at which it was to be determined whether it was just and equitable to consider that complaint notwithstanding that it was presented out of time. The difference in the decisions reached on whether the out of time claims for unfair dismissal and of direct race discrimination based on the dismissal, result from the different statutory provisions applying to extension of time limits for unfair dismissal and for discrimination claims.

**E** 4. On the sift Mrs Justice Elisabeth Laing decided that there were no arguable grounds of appeal from the decision of the ET that the race discrimination claim based on events leading up to 2 June 2016 were presented out of time. However, Laing J considered it arguable that the ET

A erred in law in its approach to the unfair dismissal claim (see Judgment paragraph 32). The  
decision of the EJ recounted that the Appellant put his case in Merseyside Employment Law’s  
B (“MEL”) hands and relied on them to present his claim. They assured him that all was in hand,  
yet the EJ decided that it was reasonably practicable at the same time for the Appellant to go to  
another advisor.

C 5. The EJ applied the **Employment Rights Act 1996** (“ERA”) section 111. Section 111 of  
the ERA provides as follows:

“(1) A complaint may be presented to an [employment tribunal] against an 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—

D (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.

.....”

E 6. The ET made findings of fact as follows in paragraphs 22 and 23:

“22. I find that, on 16 May 2017, the claimant went to Citizens Advice North Liverpool. They  
referred him to “Merseyside Law Centre”, [that is referred to as MEL], giving him the  
telephone number for this organisation, which is known as Merseyside Employment Law. The  
F claimant phoned Merseyside Employment Law and was given an appointment which he  
attended on 19 or 20 May 2017. The claimant saw someone called “Peter” and filled in some  
forms. The claimant understood that Merseyside Employment Law were going to take his case  
forward. The claimant visited the offices of Merseyside Employment Law a number of times  
over the next few months and was assured that everything was up to date. The claimant was  
not given anything in writing from Merseyside Employment Law at this time. In February  
2019, the claimant went to Merseyside Employment Law and saw a different person, Melanie,  
who told the claimant that Peter had left. The claimant’s evidence is that Melanie told him that  
Merseyside Employment Law could not do anything for him. It is not necessary for me to make  
findings about what else Melanie said to the claimant and I do not do so.”

G The EJ continued:

“The claimant says he complained to Merseyside Employment Law. The claimant was told that  
no claim for unfair dismissal had been presented to the tribunal and that it was now too late to  
make a claim. On 6 March 2018 the claimant wrote a letter of complaint to the Legal  
H Ombudsman about Merseyside Employment Law.

23. The claimant went in March to Justyna McMahon, who works for Polish Community UK,  
dealing with vulnerable clients whenever they meet language barriers. The claimant was told  
about Justyna McMahon by friends. She wrote on the claimant’s behalf to Merseyside

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Employment Law on 15 March 2018 and helped the claimant complete the claim to the employment tribunal.”

7. The material before the EJ included the ET1 which included the following:

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I was seeking help from Employment Law Merseyside right away after my dismissal and they confirmed that they will help me with my case, but all they did was they gave me the reference number and said that I don't have to do anything. Because of this, my claim is late. I was promised by Merseyside Employment Law's solicitors that they will deal with my claim on my behalf. I gave them my authorisation and I was waiting for the Tribunal to contact me, but I know that the solicitors did not make any claim on my behalf. Therefore I would like to ask the Judge to look into my case as the delay is caused by the solicitor's negligence.”

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8. Further on in the ET1 the Claimant wrote this:

“15. The solicitors from Merseyside Employment Law took my case and said it will go to Tribunal. I was not aware of their negligence until now. I have a paperwork to prove it. My every attempt at contacting solicitors regarding my case was ignored. Therefore, I know that my claim is late, but I would like to ask the judge to deal with it anyway as I was personally not at fault.”

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9. The EJ also had in the bundle the complaint form the Claimant submitted to the Legal Services Ombudsman on 6 March 2018. The complaint form includes the following material passages:

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“[I went to Merseyside Law Employment in Liverpool]. I went there in June 2017. I got sacked in May 2017. I was advised by CAB in North Green Liverpool. I spoke face to face with Peter, [that is at MEL]. I gave him all the paperwork and I filled in two forms. Peter assured me that he will give all the paperwork to James, Solicitor and everything is under control...”

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10. Further, the Claimant wrote in the Legal Ombudsman complaint form, “...I lost my case about unfair dismissal. They did not tell me what to do step by step. That is why I visited them in June few times then in July, August, September. They told me everything is okay. Case is going through....”.

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11. On the evidence before him, the EJ concluded in paragraph 32:

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“32. The claimant placed his claim in the hands of Merseyside Employment Law, which provides skilled advice in matters including unfair dismissal and discrimination claims. He relied on them to present his claim for him and he understood that they were assuring him that all was in hand. The claimant sought their advice well within the time limit for bringing a complaint of unfair dismissal. He was not prevented from seeking advice by his illness. If he had not relied on their advice, I consider he could have taken other steps which would have

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resulted in him presenting his claim on time. For example, he may have sought out the help of Justyna McMahon at an earlier stage.

33. I conclude that it was reasonably practicable for the claimant to present his complaint of unfair dismissal within the relevant time period. The tribunal, therefore, does not have jurisdiction to consider the complaint of unfair dismissal.”

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12. Mr Abou Kamara, appearing under the auspices of the Free Representation Unit for the Claimant, submitted that the EJ erred in law. He contended that the Claimant was confused that he was mistaken because he thought Merseyside Employment Law were dealing with his case.

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Applying the Judgment of the Court of Appeal in **Marks & Spencer Plc v William-Ryan** [2005]

IRLR 562, it was submitted that the EJ should have held that it was not reasonably practicable for the Claimant to present his claim in time. Counsel further contended that the observation at the end of paragraph 32 of his Judgment that the Claimant could have taken other steps than going to Merseyside Employment Law which would have resulted in him presenting his claim in time, showed an error in approach by the EJ.

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13. Mr Crowe for the Respondent submitted that this is a classic case of it being reasonably practicable for a Claimant to present a claim for unfair dismissal in time. All the Court of Appeal authorities since **Dedman v British Building and Engineering Appliances Ltd** [1973] IRLR

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379 establish that if a Claimant retains a solicitor to act for him and authorises a solicitor to pursue a claim but the claim is not presented in time because of fault of a solicitor, it is clear that it was reasonably practicable for the Claimant to present a claim in time.

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### **Discussion and conclusion**

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14. The question of whether it was reasonably practicable to present a claim for unfair dismissal in time is a question of fact. That determination is not to be interfered with unless perverse or reached in error of law. The evidence before the EJ in the ET1 and in the complaint to the Ombudsman clearly established that well within the limitation period, on the correct advice

**A** of the CAB, the Claimant went to Merseyside Employment Law who had solicitors who were experts in the field.

**B** 15. In the ET1 which is at pages 64 and 69 of the bundle, the Claimant stated that he authorised the solicitors at Merseyside Employment Law to pursue his claim on his behalf. He wrote:

**C** **“...I was promised by Merseyside Employment Law solicitors that they will deal with my claim on my behalf. I gave them my authorisation and I was waiting for the Tribunal to contact me, but I know that the solicitors did not make any claim on my behalf. Therefore I would like to ask the judge to look into my case as the delay is caused by the solicitor’s negligence.”**

**D** 16. The complaint form to the Ombudsman shows in addition that the Claimant went to Merseyside Employment Law in June and subsequently was assured that everything was all right and that his case was going through. On the evidence before the EJ, the Claimant knew that he had a claim. He went to appropriate experts including solicitors within time. He authorised solicitors to pursue his claim.

**E** 17. On the evidence before the EJ, Claimant therefore knew that he had a claim. He gave authorisation for the claim to be pursued on his behalf within time. He had a solicitor to act for **F** him. It appears that it was, therefore, their fault that the claim was not put in time.

**G** 18. The determination of the liability of the solicitor was not a matter to be decided by the EJ. However, the EJ had to make a determination on the evidence which the Claimant produced to him whether it was reasonably practicable for the Claimant to lodge his claim in time. On that material, in my judgement, the observation and conclusion reached by the EJ in paragraph 32 of the Judgment is unchallengeable.

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**A** 19. As has been observed by counsel for the Respondent, the situation falls plainly within the scope of the determinations of the Court of Appeal starting with **Dedman** that where a Claimant knows that he has a claim and puts his case in the hands of specialist advisers and it is due to their  
**B** fault that a claim is not presented in time, it was reasonably practicable for the Claimant to present his claim in time. The classic statement of this proposition is to be found in **Marks & Spencer v Williams-Ryan** at paragraph 31 at which the Court of Appeal observed in the Judgment of Lord Phillips:

**C** “What proposition of law is established by these authorities? The passage I quoted from Lord Denning's judgment in *Dedman* was part of the ratio. There the employee had retained a solicitor to act for him and failed to meet the time limit because of the solicitor's negligence. In such circumstances it is clear that the adviser's fault will defeat any attempt to argue that it was not reasonably practicable to make a timely complaint to an employment tribunal.”

**D** 20. In my judgement, the observation of the EJ towards the end of paragraph 32 of his Judgment does not affect the conclusion and the correctness of the conclusion reached by the him; that it was reasonably practicable for the Claimant to present his claim in time. The finding  
**E** of fact which preceded the passage relied upon on behalf of the Claimant makes it clear that the EJ found as a fact that the Claimant relied upon Merseyside Employment Law to pursue his claim.

**F** 21. The two sentences on which reliance is placed for the Claimant is an observation based not on a finding of fact because the finding of fact was contrary effect. The observation was that if the Claimant had not relied on the advice of Merseyside Employment Law the EJ considered he could have taken other steps which would have resulted in him presenting his claim on time.  
**G** It is plain that the basis of the decision taken by the EJ was not that observation, but on the finding of fact made by the EJ that the Claimant relied on Merseyside Employment Law to present his claim.

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**A** 22. Mr Kamara has said everything that could be said on behalf of the Claimant and has done so with great courtesy. One cannot help but feel sympathy for the Claimant. He did everything he could to have his claim presented in time.

**B** 23. The conclusion of the EJ that it was reasonably practicable to present the claim in time and that, therefore, the Claimant cannot benefit from the relaxation of the escape clause for unfair dismissal, results from the statutory provision relating to time limits in unfair dismissal claims  
**C** and Court of Appeal authority. That a different outcome can lead to the extension of time in discrimination claims results from the different statutory provisions which apply to such claims namely; whether it is just and equitable to extend time.

**D** 24. That difference is shown by the difference in the result in the Claimant's claims for race discrimination arising from the same event, namely dismissal on 12 May 2017, relied upon for  
**E** the unfair dismissal claim and the same date of presentation of the ET1, 23 March 2018. That difference results from the difference in statutory provision that there can be a just and equitable extension for discrimination claims but not for unfair dismissal claims. Accordingly, this appeal is dismissed despite the sterling efforts of counsel for the Claimant.

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