EMPLOYMENT TRIBUNALS

Claimant: Mr A Laird

Respondent: Cementation Skanska Limited

Heard at: Leeds **On:** 20 May 2019

Before: Employment Judge Jones

REPRESENTATION:

Claimant: In person (supported by Ms J Ireeson)
Respondent: Mr R Taylor, Solicitor

JUDGMENT having been sent to the parties on 20 May 2019 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

1. Section 111 of the Employment Rights Act 1996 ("ERA") provides that a complaint may be presented to a Tribunal by a person that he was unfairly dismissed and that a Tribunal shall not consider a complaint under this subsection unless it is presented to the Tribunal before the end of the period of three months beginning with the effective date of termination or 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.

2. By section 111(2A) of the ERA the Tribunal must have regard to the extension of time provisions under section 207B of the ERA, that is for early conciliation purposes.

3. In this case the claimant was employed by the respondent from 2008 until 12 October 2018 when he was summarily dismissed. The claimant presented a complaint to the Tribunal of unfair dismissal on 28 March 2019.

4. The claimant entered a period of early conciliation on 2 January 2019 and an early conciliation certificate was issued on 16 February 2019. In this case I was to

determine as a preliminary issue whether the claim has been presented in time because if not I have no jurisdiction to consider that claim.

5. The parties agreed that the primary time limit had expired. That is because the period beginning with three months from the date of the termination of the employment would be 11 January 2019. The provisions of section 207B therefore have to be considered. Section 207B(3) provides that:

> "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."

6. The consequence of that is that six weeks and two days would be ignored between 2 January and 16 February, because, in effect, the time limit is taken to be frozen. That has the consequence that the time limit is extended by that frozen period from when it would otherwise have expired, namely 11 January. If section 207B(3) applied the time limit would have been extended to 25 February 2019.

7. There is, however, a further provision in Section 207B(iv) of the ERA:

> "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."

8. That will be one month from the date of the early conciliation certificate, which will be 16 March 2019. As this claim was presented on 28 March 2019 it follows that it is 12 days out of time.

9. Have I nevertheless jurisdiction to consider the claim under the other provisions of section 111? That is, was it not reasonably practicable for the claimant to have presented the claim in time and, if not, was it presented within a reasonable period thereafter? The Court of Appeal and Employment Appeal Tribunal have provided guidance in respect of such issues in a number of cases. "Reasonably practicable" must be given its natural meaning; it means "reasonably feasible"[1].

10. In this case the claimant gave an explanation as to why the claim form came to be submitted late. In a letter to the Tribunal of 13 May 2019 he explained that he had not heard about the outcome of his appeal against dismissal. There was some extensive delay in resolving that appeal. The claimant said that he was advised by ACAS and his trade union that resolution should be sought via the company's internal procedures before the Tribunal and he acted on that advice. He was told at the conclusion of the appeal on 22 January 2019, that further consultation would be required, but because he had still not heard anything by 11 March he made an attempt to issue the claim. Because of the complexity to a layman of the process he finally submitted it on 28 March 2019. He explained further in evidence those problems. He said that he was aware on 11 March that the time limit was 16 March because he had been told that by the conciliation officer at ACAS. He explained that his personal circumstances were such that he had difficulties compiling the form. He explained that there was a history of ill health whilst he was at work and he was off sick as a consequence of stress. He had feelings of despair. This had an impact

[1] Palmer and another v Southend-on-Sea Council [1984] ICR 372.

upon him which mean that everyday activities which are simple for many people were much more difficult for him to perform at that time, particularly when systems are unfamiliar and he struggles.

11. The claimant obtained alternative employment in November 2018 by which time he had ceased to receive sick notes in respect of stress and anxiety, but the claimant feels that he has continued to suffer such symptoms as I have described but at a lesser and lower level.

12. I have to consider, therefore, whether it was not reasonably practicable for the claimant to have presented his complaint within the period up until and including 16 March 2019. I have already referred to the case law which makes it clear I have to consider whether it was reasonably feasible to comply with the requirement.

13. I accept that the claimant was initially of the impression that the time limit would run from the expiration of the resolution of the internal procedures as a consequence of what he had been told, but I am satisfied that during the ACAS early conciliation process the claimant became aware that the time limit was 16 March 2019. I do not consider that his ignorance of the law about time limits operated after he became aware of that, which was within the time limit. His earlier misunderstanding about the law did not therefore mean it was not reasonably practicable for him to present the claim in time.

14. In respect of the difficulties the claimant had with the claim form, I accept it is not an easy system to negotiate, but I do not have any medical evidence to indicate there his condition would prevent him from being able to undertake the task on the computer or by submitting the claim by way of a paper form, but I do not reject the claimant's evidence that this would have been more challenging for him than others because of his history of ill health.

15. The claimant started the process on 11 March 2019, at a time he knew he had six days within which to complete the task. He was in employment at this time. Whilst I have sympathy for him and I recognise the online process is somewhat clunky and compilation of the claim form is not straightforward, it is a process which is manageable, or reasonably feasible, certainly within a space of six days, even having regard to the extra complexities to the claimant in the light of his health. I am not able to say that that it was not reasonably practicable for him to issue the claim in time. I must therefore dismiss this claim as it was presented out of time.

Employment Judge D N Jones

Date 19 June 2019

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