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**EMPLOYMENT TRIBUNALS (SCOTLAND)**

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**Case Number: :4122164/2018**

**Held in Glasgow on 15 February 2019**

**Employment Judge: Iain Atack**

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**Mr J Cowden**

**Claimant  
In Person**

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**South Lanarkshire Council**

**Respondent  
Represented by:-  
Mr S O'Neill –  
Solicitor**

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**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

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The Judgment of the Employment Tribunal is that under section 111 of the Employments Rights Act 1996 the Tribunal does not have jurisdiction to hear the claimant's claim of unfair dismissal which is dismissed.

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**REASONS**

**Introduction**

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

1. In this case the claimant alleges that he was unfairly dismissed by the respondent. The respondent denies that the claimant was unfairly dismissed but raised, as a preliminary issue the question of timebar. This hearing was a Preliminary Hearing to determine the issue of timebar.
  
- 5 2. In his ET1 the claimant had alleged that his employment terminated on 17 July 2018 whereas the respondent in their ET3 alleged the employment terminated on 11 July. The claimant was asked by an Employment Judge on 7 December 2018 to confirm if he agreed with the respondent's date and given until 21 December 2018 to respond. The claimant did not respond and was  
10 reminded on 7 January 2019 that he had failed to reply to the request which had been sent to him . There was no response to that reminding letter and the claimant was then warned that his case might be struck out on the basis of it not being actively pursued under the terms of Rule 37 (1)(d) of the first  
15 schedule of the Employment Tribunals(Constitution and Rules of Procedure) Regulations 2013. He was informed that if nothing had been heard from him by 30 January 2019 an Employment Judge would consider striking out the claim. No response was received from the claimant within that time limit and an Employment Judge directed the matter proceed to a Preliminary Hearing.
  
3. At the hearing the respondent produced a bundle extending to 17 pages.  
20 Reference to the documents in that bundle will be made by reference to the page.
  
4. The claimant gave evidence on his own behalf. The respondent led no evidence, relying simply upon the productions and their submissions.

**Facts**

- 25 5. From the evidence led and the documents to which I was referred I made the following material findings in fact.
  
6. The claimant was employed by the respondent as a refuse collector. His employment was terminated on 11 June 2018 following a disciplinary hearing on 27 June, page 17. The claimant appealed against his dismissal. The  
30 appeal was fixed for 25 October 18, page 1.

7. Throughout the whole of the disciplinary proceedings the claimant was represented by his trade union, GMB. He was represented at the appeal by Mr Martin Doran, a full-time official of the GMB union.
8. The claimant contacted ACAS in terms of section 18A of the Employment Tribunals Act 1996 on 29 October 2018. The ACAS certificate was issued on 30 October 2018.
9. The claimant presented his ET1 on 30 October 2018.
10. There had been nothing to physically prevent the claimant from presenting the claim earlier than he did.
11. The claimant carried out no investigations of his own with regard to time limits until after his appeal had been heard.

### **Submissions**

#### **Claimant Submissions**

12. Mr Cowden did not make any submission as such, relying on the evidence he had given. To summarise his position: he had said he did not know anything about time limits and was not informed of them by his union representatives. It was only after the appeal hearing that Mr Doran had told him that his claim was time-barred. Mr Cowden alleged that the union officials who were representing him up until the appeal were all employed by the council; his suggestion being that that might explain the lack of information given to him. It was only after the appeal had been dismissed that he contacted ACAS. He had done that after contacting the union helpline where again he was told that his case was time-barred.
13. It was also Mr Cowden's position that the respondent had deliberately set the date of the appeal to take place on a date after the three-month period for presenting a claim would have expired.

#### **Respondent's Submissions**

14. Mr O'Neill for the respondent submitted that the claim was out of time in terms of section 111 (2)(a) of the Employment Rights Act 1996.

15. There was no evidence to say that it had not been physically feasible for the claimant to present it within the time limit.
16. The fact that the claimant may not have known of the time limits was irrelevant to the question of whether it was practicable for him to present the claim in time.
17. The fact that the claimant awaited the outcome of a domestic appeal before presenting his claim was not relevant and did not make it not reasonably practicable to present the claim in time.
18. The claimant had been represented throughout the disciplinary process by several trade union representatives and it was difficult to believe that he had not been advised by those officials of his rights to present a claim to the Employment Tribunal and of the time limits for doing so. The failure to present the claim lay squarely with the claimant and it had been reasonably practicable for him to have presented the claim in time. There were no facts or circumstances presented in evidence which showed that the claimant was prevented from presenting his claim in time. Advice was available to him through his union and in any event he could have contacted ACAS much sooner than he did.
19. Mr O'Neill referred the following cases
- *Porter v Bandridge Ltd* 1978 ICR 943
  - *Palmer v Southend-on-Sea Borough Council* 1984 ICR 372
  - *Dedman v British Building and Engineering Appliances Ltd.* 1974 ICR 53

**Decision**

25 **Relevant Law**

20. In terms of section 111 (2)(a) of the Employment Rights Act 1996 a complaint must be presented to the Employment Tribunal before the end of the period of 3 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 3 months.

**Issues**

5 21. The issues to be considered by the Tribunal were

(1) Was the claimant's complaint presented before the end of the period of 3 months beginning the effective date of termination?

(2) If not so, was presentation in time not reasonably practicable?

10 (3) If so, was the complaint presented within such further time as the Tribunal considers reasonable?

22. These issues will be considered in turn.

23. *Was the claimant's claim presented before the end of the period of 3 months beginning with the effective date of termination?*

15 24. The effective date of termination of the claimant's contract of employment was 11 July 2018. To comply with section 111 (2)(a) of the 1996 Act the unfair dismissal complaint required to be presented by not later than 10 October 2018. The complaint was presented on 30 October 2018. Accordingly, on the face of it the complaint is out of time.

25. *Was presentation in time not reasonably practicable?*

20 26. This is a question of fact and the onus is on the claimant. The concept of what is reasonably practicable is broadly similar to reasonably feasible, being somewhere between "reasonable" and "reasonably physically capable of being done" – *Palmer v Southend-on-Sea Borough Council* (above)

25 27. In the present case the claimant was represented throughout the entirety of the disciplinary proceedings by union representatives. He was represented in preparation for the appeal and at the appeal by Mr Martin Doran, a full-time official of GMB. It was the claimant's position that he had not been told

anything about time limits by any of his union representatives and suggested that the reason for that lack of information was that the union representatives, with the exception of Mr Doran, were employed by the respondent. It was his position that the only time there was mention of a time-limit was after the appeal when Mr Doran told him the claim was time-barred.

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28. Without further detailed evidence I found it difficult to accept that union representatives would fail to advise the claimant upon such a basic point as his right to present a claim to the Employment Tribunal. If they did not advise him that that is a matter he may wish to pursue with them but it is not a matter for the respondent.

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29. The case of *Dedman v British Building and Engineering Appliances Ltd* (above) which was affirmed in the case of *Marks and Spencer plc v Williams-Ryan* 2005 ICR 1293, is authority for the proposition that where the employee has retained a solicitor to act for him or her and fails to meet the time limits because of the solicitor's negligence, the solicitor's fault will defeat any attempt to argue that it was not reasonably practicable to make a timely complaint to the Tribunal.

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30. Although solicitors were not instructed in this case, trade union representatives also count as "advisers" in this context and if they are helping a claimant with his or her case they are generally expected to know the relevant time limits and to appreciate the necessity of presenting claims in time.

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31. The claimant considered that the respondent had deliberately set the date for the hearing of the appeal after the date when any time limit would expire for presenting the claim to the employment tribunal. The fact of the matter is that the existence of a contractual appeal procedure does not affect the effective date of termination and the time for presenting the claim runs from that date.

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32. In the case of *Bodha v Hampshire Health Authority* 1982 ICR 200 it was held that the existence of an impending internal appeal was not in itself sufficient

to justify a finding that it was not reasonably practicable to present a complaint to a Tribunal within the time-limit.

5 33. The claimant was perfectly able to contact ACAS following the appeal having carried out an Internet search regarding his employment rights. He could have done that previously as there was nothing physically to prevent him from doing so.

10 34. If the claimant was indeed ignorant of his rights, then the question arises as to whether that ignorance was reasonable. I considered that the claimant should have taken steps to ascertain what his rights were and he was fully able to have done so.

35. In my judgement it was reasonably practicable for the claim to have been presented within the time limit contained in section 111 (2)(a) of the 1996 Act.

15 36. Having concluded that it was reasonably practicable to present the claim within that prescribed time-limit there is no need to consider whether the claim was presented within such further time-limit as the Tribunal might consider reasonable.

37. The claimant's case is accordingly dismissed

20 **Employment Judge**

**Iain Atack**

**Date of Judgment**

**25 February 2019**

25 **Entered in register  
and copied to parties**

**26 February 2019**

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