



EMPLOYMENT TRIBUNALS

Claimant: Mr Patrick Billips

Respondent: London Ambulance Service

Heard at: London South Employment Tribunal **On:** 17 June 2019

Before: Employment Judge Martin

Representation:

Claimant: In person

Respondent: Mr Allen - Counsel

REASONS

1. Oral reasons were given in full at the conclusion of the hearing. The Claimant asked for written reasons by email dated 12 July 2019.
2. This is a hearing to determine whether the Claimant's claims were brought in time. The Claimant accepts his claim was presented out of time. The relevant dates are agreed as follows:
 - Notice of dismissal (12 weeks' notice). 2 March 2017
 - EDT 24 May 2017 (last date 23 August 17)
 - ACAS EC started 21/8/17
 - Certificate 21/9/17
 - Last date for ET1 21/10/17
 - ET1 19/11/17
3. The questions to be determined is whether it was reasonably practicable for the Claimant to have presented his claim in time. In my deliberations I have

focussed on the period from 2 March 2017 (notice of termination) to 21 October 2017 (last date to present the claim in time).

4. Throughout the relevant period, the Claimant was being advised by Mr Brand, an experienced TU representative who was a full-time union official and Branch Secretary. The Claimant submitted his application for ACAS early conciliation citing Mr Brand, as the contact. ACAS told the Claimant that all contact would be through Mr Brand. I have been taken to a log of the communications the ACAS had with Mr Brand.
5. For some reason (which we do not know) Mr Brand did not tell the Claimant that the ACAS certificate had been received on 21 September 2017, and that this meant that the time limit for him to submit his claim expired on 21 October. The Claimant only found this out in November, shortly before submitting his claim, when he asked what was happening with the ACAS process and Mr Brand forwarded him the certificate.
6. Mr Billips is a very thorough and meticulous person. He told me that in August 2017 he took screen shots from the ET website of the ET1 form so he could prepare himself for presenting his claim describing this as a “dry run”. He told me that he knew of the time limits from the research he undertook at this time.
7. In the period after he was told his employment was terminating (March 2017) to the date the primary time limit expired, the Claimant was engaged in correspondence with the Respondent about various matters including issues relating to his pay. I have been taken to various items of correspondence which show that he was able to participate in this communication with a high level of detail.
8. The Claimant has told me that the last two years of his employment were very difficult with various investigations and appeals going on and that he was frustrated and despairing about this which fed in to him not bringing claim in time.
9. The relevant statutory provisions are found in S111 Employment Rights Act:

Complaints to employment tribunal.

- (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—**
 - 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.**

10. Mr Allen who represents the Respondent provided the following case law which were all decided by appeal courts and are decisions that I must have regard to when coming to my decision.
11. The Case of **Dedman v British Building and Engineering Appliances Ltd [1974] ICR 5** decided that where a man goes to skilled advisors and they make a mistake (here the advisor is Mr Brand and the mistake is not notifying the Claimant of the Early Conciliation Certificate and consequent effect on time limits) then it was still practicable for him to have brought his claim in time. Dedman says that in these circumstances, the remedy is against that advisor. I have no information from Mr Brand about what happened so can only surmise that he forgot or was negligent in the way he dealt with the Claimant's case.
12. In Dedman it was held that in every case the Tribunal should enquire into the circumstances and ask themselves whether the man or his advisers were at fault in allowing the time limit to pass without presenting his claim, holding that if the person or his advisor was at fault in allowing the time limit to pass without presenting a claim he must take the consequences.
13. This case has been followed in numerous other cases including the cases using TU advisors which Mr Allen has referred to **Alliance & Leicester v Kidd UKEAT/0078/07/RN** and **Times Newspapers Ltd v O'Regan**.
14. I have applied my mind to the factors to take into account, including that my interpretation should take a liberal construction in favour of the employee. I have however found as a question of fact that the Claimant was able to bring his claim in time. He had the services of an experienced union representative; he had done a 'dry run' of the form; had acquainted himself with the time limits; he was engaging at a detailed level with the Respondent about various matters including his pay and he was communicating with his union representative. I accept that this would be a very difficult time as he had been employed by the Respondent for over 42 years, and what he described to me about the grievances, investigations appeals and so on, would inevitably have put him under stress with his employment then being terminated, which for anyone is a stressful time. Had this been a case of discrimination where the more liberal test of just and equitable extension of time would apply, I may well have come to a different decision.
15. However, in this case my finding is that the Claimant has shown by his correspondence which I was taken to have been able to engage with the Respondent, and his union representative. He was able to and had the foresight to do a 'dry run' of the application process and he had the benefit of an experienced advisor in Mr Brand.

16. Ultimately, I find that it was reasonably practicable for the Claimant to have brought his claim in time, the case law is clear. Where an advisor gives incorrect advice about time limits or there is some other failure as here, this binds the Claimant. In all the circumstances the Tribunal does not have jurisdiction to hear the Claimant's complaint on the basis that it was presented out of time and the Claimant's claim is therefore struck out.

Employment Judge Anne Martin

Date 12 August 2019