EMPLOYMENT TRIBUNALS

Claimant: **Mr S Littlemore**

Respondent: **Steadfast Security Solutions Limited**

Heard at: **Manorview, Newcastle-upon-Tyne** **On:** **3 September 2019**

Before: **Employment Judge A.M.S.Green**

Representation
Claimant: Mr F Ferguson – Sunderland Welfare Rights
Respondent: Mr H Menon - Counsel

JUDGMENT

The Tribunal does not have jurisdiction to hear the claimant's claim for unfair dismissal.

REASONS

1. This public preliminary hearing relates to one of five different claimants who have several overlapping and separate claims relating to their employment with the respondent.

2. The claimant was employed by the respondent as a security officer at Sunderland Football Club, at the Stadium of Light. He claimed that the respondent lost its contract to provide security guards at the Stadium of Light with effect from 7 December 2017 because the contract was re-tendered and awarded to another service provider called Alpha. Although this may have amounted to a service provision change under TUPE that issue did not form the subject matter of this public preliminary hearing. A separate pubic preliminary hearing has been listed before me on 4 September 2019 to address that issue involving this claimant and other claimants. The claimant has claimed unfair dismissal and notice pay. The claimant has applied to join Alpha as a second respondent in these proceedings. There is no issue between the parties that the claimant filed his ET1 outside the three month time limit and that the Tribunal does not have jurisdiction to hear his claim unless he can rely on the

"escape"provisions set out in Employment Rights Act 1996, section 111(2)(a) & (b) ("ERA").

3. At a private preliminary hearing on 12 June 2019, employment judge Arullendran identified the following issues that should be determined by this Tribunal:

   a. Were any or all of the claimant's complaints presented with the time limits set out in section 111(2)(a) and (b) ERA?

   b. Should Alpha be joined as a party in the claim brought by Mr Long?

   It was agreed with the representatives that the question of joinder only required to be determined if I found that the claimant had successfully established that the Tribunal has jurisdiction to hear his unfair dismissal claim.

4. The parties filed and served a joint evidence bundle. Mr Ferguson tendered additional documentation which I admitted into evidence at the hearing. The claimant and Mr Hubord of the respondent adopted their witness statements and gave oral evidence. The representatives made closing submissions.

5. The claimant must establish that the Tribunal has jurisdiction on a balance of probabilities.

6. In reaching my decision, I have carefully considered the oral and documentary evidence, my record of proceedings and the closing submissions. The fact that I have not referred to every document in the evidence bundles should not be taken to mean that I have not considered it.

7. Having considered the evidence,I make the following findings of fact:

   a. Mr Ferguson is not legally qualified. He provides his services through Sunderland City Council free of charge. Demand for his services is high and he has limited resources at his disposal.

   b. It is common ground that the claimant's ET1 should have been filed on 27 April 2019 allowing for the period of Early Conciliation with ACAS.

   c. Mr Ferguson claimed to have sent the ET1 to the Tribunal administration in Leicester on 18 April 2019.

   d. Mr Ferguson made an electronic diary entry in his work diary to check on 23 April 2019 that the ET1 had been received. He did not keep a back up paper diary as his employers did not allow this because of GDPR data security concerns.The entire IT system at Sunderland City Council was shut down because of a fault for 23 April and most of 24 April 2019. He admits that he overlooked the required action until 7 May 2019 when he rang the Tribunal office in North Shields. They were unable to trace the claim.

e. Mr Ferguson posted the ET1 by first class post on 9 May 2019. This was received and date stamped by the Tribunal on 14 May 2019.

f. Mr Ferguson takes full responsibility for the the delay in filing the ET1 and accepts that the claimant is not at fault.

8. ERA section 111(2) ERA provides:

   (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.

9. I remind myself that in **Palmer and anor v Southend-on-Sea Borough Council 1984 ICR 372 CA** the Court of Appeal concluded that "reasonably practical" does not mean reasonable, which would be too favourable to employees, and does nor mean physically possible, which would be too favourable to employers, but means something like reasonably feasible. In other words, on the facts of the case, was it reasonable to expect that which was possible to have been done?

10. In this case, Mr Ferguson, a professional advisor has taken responsibility for the delay in filing the ET1. He does not argue that he was ignorant of the time limits. He knew when the ET1 had to be filed. He relies upon a general IT failure at his work for the delay. I do not think that is acceptable as he could and should have kept a paper back up diary to deal with such an eventuality as an IT failure. However, regardless of that, the IT failure was quite short lived because it came to an end sometime on 24 April 2019 leaving Mr Ferguson with another 3 days before the time limit for filing the ET1 was triggered. That did not happen. He forgot to check with the Tribunal until 7 May 2019. He admits that this was an oversight. He suggests that he is overworked and under resourced.

11. Mr Ferguson is not a solicitor. He is, however, a professional advisor. In **Ashcroft v Haberdashers' Aske's Boys School 2008 ICR 613, EAT** the EAT held that the negligence or delay by an advisor in presenting a tribunal claim is to be ascribed to the claimant applies to employment law consultants even though they are not qualified solicitors. Burton J accepted that the principal established in **Dedman v British Building and Engineering Appliances Ltd 1974 ICR 53, CA** that an advisor's negligence or delay in presenting a claim is ascribed to the claimant applies equally where the advisor is not a solicitor.

12. I find that it would have been reasonably practical for Mr Ferguson to have presented the ET1 in time. For example, he could have done so electronically freeing himself from the vagaries of the post. Alternatively, he

could have followed up with the Tribunal between 24 and 27 April 2019 after the IT system was back up and running. He did not do that because he forgot to or "overlooked" it, to use his word. He is responsible for the delay and he cannot blame the IT system at his workplace. He is a professional advisor and his failure and delay in presenting the claim is ascribed to the claimant. It follows that the Tribunal does not have jurisdiction to hear the claimant's claim for unfair dismissal.

13. As agreed with the parties, as I have found that the Tribunal does not have jurisdiction to hear the unfair dismissal claim, I am not required to determine whether Alpha should be joined as a second respondent.

Employment Judge A.M.S.Green

Date 3 September 2019