Case No. 1300866/2019

EMPLOYMENT TRIBUNALS

BETWEEN

Mrs A Toulouse	**AND**	**Sapphire Windscreens Limited**
Claimant		**Respondent**

BIRMINGHAM EMPLOYMENT TRIBUNAL

EMPLOYMENT JUDGE Self

Representation

For the Claimant: Written Submissions

For the Respondent: Written Submissions

JUDGMENT

Upon the Tribunal considering that it was reasonably practicable to have brought the Claim within the statutory time limit and further upon considering that even if it was not reasonably practicable the Claim was not brought within a reasonable time thereafter, all claims are dismissed because the Tribunal does not have jurisdiction to adjudicate on them.

REASONS

1. By a Claim Form lodged at the Employment Tribunal on 25 February 2019 the Claimant asserted that she had been unfairly and wrongfully dismissed, was owed holiday pay and sought compensation for not being provided any particulars of her employment.
2. At Section 8.2 of the Claim Form was the following:

   "The Applicant is seeking and extension of time to file the claim. The Applicant's original claim was submitted with the court within time following the completion of Early Conciliation however due to an error

on the first claim form the application was rejected. The claim was submitted on 11 February 2019 with the deadline for submission being 13 February 2019 and the Applicant's solicitors were notified of the error on 20th February 2019. It was not therefore reasonably practicable for the Applicant to submit her claim in time".

3. On that Claim Form the Claimant was shown as being represented by a firm of solicitors in Sutton Coldfield and the Particulars of Claim, which make no further reference to any time limit point, was signed off as being drafted by counsel and is dated on 8 February 2019.

4. A Response was lodged within the appropriate time and was accepted. At paragraph 1 of that document the Respondent asserts that the Employment Tribunal does not have jurisdiction to consider the claims because it is time barred. Dates are given that the Claimant was dismissed on 7 September 2018 and that Early Conciliation took place between 30 November 2018 and 13 January 2019. The consequence of all this was that the last day for submitting the claim would be 13 February 2019. I note that the parties are in agreement as to the last day that the claim could be submitted, and I respectfully agree with their calculation.

5. Both parties have requested that this matter be dealt with by the Tribunal without the need for a hearing and both parties have submitted written submissions in support of their respective positions. I have considered both documents and will summarise them here.

6. The Claimant accepts the timetable that is set out at paragraph 2 above and discloses that it was the Claimant's solicitors who issued the claim on the Claimant's behalf and that the reason for rejection of the Claim was an ***"incorrectly transposed"*** ACAS EC number. When the Claim was rejected the FAQ document that was meant to be attached to the letter of rejection was not attached and it was requested the following day. There is no evidence provided by the Claimant in support of any of these contentions. The Claimant relies wholly upon what is written in the Claim Form and the written submissions of counsel with no evidence submitted in support.

7. The Claimant cites s.111(2) of the Employment Rights Act 1996 ERA) which deals with the time limits for the unfair dismissal claims and the unlawful deduction of wages claims (holiday pay). There is no mention of the provision which would deal with the contractual claims that is found at Article 7 of the Employment Tribunal Extension of Jurisdiction (England and Wales) Order 1994 but the wording there is of the same effect. Hereafter when I refer to s.111(2) ERA I am using that as shorthand for the tests in both the ERA and the Extension Order.

8. The Claimant brings the attention of the Tribunal to the case of **Adams v British Telecommunications PLC (2017) ICR 382** and asserts that the facts therein are "very similar" to this matter and in particular took me to paragraph 14 of Simler J's judgment. The Tribunal is then referred to the cases of **Dedman (1974) 1 All ER 520** and **Walls Meat Co Limited v Khan (1978) IRLR 499.**

9. Applying the law to the facts of this case the Claimant's submission contend that ***"given Adams confirms that the focus is on the reasonable practicability of issuing the second claim and not the error made in issuing the first claim the Dedman principle does not apply in a case such as this".***

10. The submissions state that after they were aware of the error the Claimant's solicitors acted promptly and note that the 23 and 24 February was a weekend. The Claimant also states that following Adams the Tribunal should take no notice of the fact that the Claim was issued very close to the end of the limitation period. The Claimant also states that extending time would not offend against the overriding objective. The application for time to be extended which has been drafted concludes that this case ***"is on all fours with Adams and an extension of time is justified"***.

11. The Respondent sets out a timetable that appears to be agreed and sets out the legislation under the Employment Rights Act 1996 as set out by the Claimant above.

12. The Respondent reminds me that what is reasonably practicable is a matter of fact for the Tribunal and the burden of proof rests with the Claimant. The respondent cites **Marks and Spencer v Williams -Ryan (2005) EWCA Civ.**

13. The Respondent goes on to cite the **Dedman** principle which effectively states that where a skilled advisor is at fault for failing to submit a claim in time the Tribunal will usually consider that it would be reasonably practicable for the claim to have been presented in time. The Respondent goes on to cite the overriding objective to be relevant in applying the statutory test.

14. The Respondent reminds me that it is a two-stage test under section 111 and that the second part is whether or not the claim has been presented within such further period as the tribunal considers reasonable. The Respondent cites the Claim of **North East London NHS Foundation Trust v Zhou (2018) EAT 0066/2018**.

15. In concluding the submissions, the Respondent criticises the Claimant, or rather her solicitors, for the errors that were made and leaving matters so late in the limitation period. It is pointed out that no explanation had been given by the Claimant as to how the error arose or whose error it was. Having considered the Claimant's representations in the Claim Form and their submissions that observation by the Respondent is a correct one.

16. I have had the benefit of having the rejected file with me when I have considered this application. The Claimant has a copy of the original submission, but the Respondent will not have seen it. I considered whether or not there was any prejudice to the Respondent who would not have seen the information therein, especially in light of the paucity of information from the Respondent but have concluded that there is not.

17. The facts that I have been able to glean from the file are mostly agreed but for the purposes of clarity I set them out here: **

18. The Claimant cited **Adams v British Telecommunications PLC (2017) ICR 382** and is correct that the basic facts are similar in that the Claim Form was

rejected because of an error in the Early Conciliation Number on the Claim Form. The Claim Form was resubmitted, and the second claim was out of time by 2 days whereas the first Claim would have been in time by 2 days.

19. The learned Judge in Adams went through the applicable law between paragraphs 5 and 10 and I repeat that here so far as is relevant:

[5] There is no dispute as to the applicable law, which is set out by the Employment Judge at paras 10 to 12 of the Judgment with Reasons. The provisions governing time limits in unfair dismissal claims are set out at s 111 of the Employment Rights Act 1996 ("ERA") and those governing time limits… The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, Sch 1, provide at r 8 that a claim is started "by presenting a completed claim … using a prescribed form …". r 10 is headed "Rejection: form not used or failure to supply minimum information", and is a mandatory Rule that requires a Tribunal to reject a claim if, at (1)(c), "it does not contain all of the following information", namely, "(i) an early conciliation number". The result is that if the minimum information is not provided within the form, the Tribunal has no option but to reject the claim unless that omission is capable of being excused by considering some other Rule.

[6] Rule 12 deals with rejection for substantive defects and sets out at r 12(1) points that may lead a member of staff to refer a claim form to an Employment Judge if there are aspects of it that appear to be defective. Rule 12(2A) provides that the claim or part of it shall be rejected if the Judge considers that the claim or part of it is of a kind described in sub-para (e) or (f) of para (1) unless the Judge considers that the Claimant made a minor error in relation to a name or address and it would not be in the interests of justice to reject the claim. Rule 12(1)(e) provides that the claim is one that institutes relevant proceedings and the name of the Claimant on the claim form is not the same as the name of the prospective Claimant on the early conciliation certificate to which the early conciliation number relates, or (f) it is one that institutes relevant proceedings and the name of the Respondent on the claim form is not the same as the name of the prospective Respondent on the early conciliation certificate to which the early conciliation number relates.

[7] Rule 12(2A) thus provides an escape route for minor errors in relation to a name or address, both identified as the mandatory minimum information to be supplied under r 10, failing which a Tribunal will reject the claim. Contrariwise, a minor error in relation to the early conciliation certificate number itself, if the early conciliation number entered on the claim form is not the same as the early conciliation number on the certificate itself, is not capable of being corrected in the same way under r 12(2A). It is difficult to see any justification for this distinction. None was advanced by either counsel and I cannot identify any. Both are minor errors, but no escape route is provided for certificate number errors.

20.

[8] Rule 10(2) provides that the form shall be returned to the Claimant with a Notice of Rejection explaining why it has been rejected and that the Notice

should contain information about how to apply for a reconsideration of that rejection. Rule 13 deals with reconsideration and provides that a Claimant who has a claim that has been rejected under r 10 may apply for reconsideration on the basis that the decision to reject is wrong or that the notified defect can be rectified. Rule 13(4), however, provides that if the Judge decides that the original rejection was correct but that the defect has been rectified the claim shall be treated as presented on the date that the defect was rectified.

[9] Here, as is common ground, although the Claimant had correctly been through the ACAS procedures, the ET1 claim form originally submitted did not contain the complete ACAS early conciliation number as required. In Sterling Langstaff J held that the wording of r 10, which had not significantly been an issue for him, required an early conciliation number to be set out and that it was implicit that that number should be the accurate number. The same seems to me obviously true in this case, and Mr Sankey, who appeared on behalf of the Claimant, did not strongly contest that point. Accordingly, the first claim in this case was validly rejected by the Employment Tribunal as not containing the minimum information required.

[10] So far as reconsideration is concerned, again in Sterling at para 11 Langstaff J suggested that a Claimant in that situation might make an application for reconsideration of the rejection and that:
11. … It might be thought that in any case in which there had been a minor slip which was later corrected on resubmission of the same form, a reconsideration of the rejection might be applicable with the consequence that the claim would not be regarded as having been out of time. …"
The difficulty with that view, however, is presented by r 13(4), because if the original decision to reject is itself correct, the Rule affords no discretion as to how to treat the date of presentation of the claim. Rule 13(4) is expressed in mandatory terms and provides that it is not the date when the claim was originally presented but the later date when the defect is rectified.

[11] In those circumstances, and against that background, it seems to me that the Employment Judge was both entitled and correct to conclude: (i) that the first claim lodged on 16 February was incomplete and defective and was correctly rejected by the Employment Tribunal; (ii) that the defect was rectified on 19 February when the second claim was presented, fulfilling the minimum information requirements; and accordingly, (iii) whether or not the Tribunal had jurisdiction in respect of the Claimant's complaints would therefore depend on the question of reasonable practicability in relation to unfair dismissal and on whether an extension of time would be just and equitable so far as her unlawful race discrimination claims are concerned.

21. The Claimant has not sought to argue against the conclusions made by Simler J in respect of the way that the Rules, harsh as they may be, operate in relation to a claim which is submitted with an incorrect ACAS EC number. I conclude in the same way as in ADAMS that:

    a) The first claim was incomplete and defective and was rightly rejected by the Tribunal;

b) The defect was corrected when the second claim was presented on 25 February 2019;

c) The issue to be determined is whether the Tribunal had jurisdiction and that would depend upon the question of reasonable practicability in relation to unfair dismissal, wrongful dismissal and holiday pay claims and a consideration of whether it was then submitted within such further period as the Tribunal considers reasonable.

22. I have carefully considered the appeal in ADAMS and the error which was highlighted on appeal was that the Employment Tribunal Judge focussed on the submission of the first claim to the exclusion of the second claim and so the reasonable practicability decision could not stand and would be set aside. The learned Judge then went on to balance the facts of the ADAMS case rather than remit the matter back to the Employment Tribunal and in so doing exercised her discretion on the facts as they were presented to her. She concluded that she would exercise her broad discretion in concluding that it was not reasonably practicable to extend time on the facts as presented to her and the claim was permitted to proceed.

23. In my view the ratio of the case is that it is an error of law to simply focus upon the fact that the first claim was lodged in time when considering the issue of reasonable practicability in circumstances such as these but the focus should be on the second claim (para 21 Judgment) . I take on board that when considering the facts in this case. Reasonable practicability is determined upon the facts of any given situation and so I am certainly not bound to conclude that even though the facts are similar, and Simler J found in favour of the Claimant it would have been reasonably practicable in this case. As stated, it is the whole facts of the situation that are key, and I do not accept that I am bound in any way by Simler J's finding of facts in that case so as to inevitably find in favour of the Claimant.

24. At paragraph 21 Simler J indicated that the Employment Judge was entitled to take into account the fact that the Claim had only been lodged towards the very end of the limitation period because although a Claimant is entitled to use the whole of the period and there may be very good reasons for the timing of the application ***"leaving the claim to be lodged at the end of the period risks potentially serious consequences Those are the factors that a Tribunal is entitled to have regard to in determining the reasonable practicability in a given case".***

25. I next consider the later case of **North East London NHS Foundation Trust v Zhou (2018) EAT/0066/18** over which HHJ Eady presided. The facts again are similar but different to this case:

a) The Claimant had solicitors instructed but to save costs decided to do the formal parts of the ET herself.

b) The Claimant herself missed off the "/" and the last two digits of the EC number and her solicitors failed to spot the error before they submitted the claim on the last day of the relevant limitation period.

c) The Claim was rejected, and the solicitors resubmitted the claim with the correct EC number within a day of the rejection but that fell outside.

d) The Tribunal considered matters and applying Adams the Tribunal considered that both solicitors and the Claimant had a mistaken belief that a properly constituted claim had been submitted.

e) The Claimant's belief arose from confidence (albeit misplaced) in her solicitors and the solicitor's belief lay in the fact that they had failed to check the number and spot the error.

f) Taking these facts into account the Tribunal had little difficulty in concluding that it was not reasonably practicable as the case was akin to Adams and as the claim was resubmitted within a reasonable period and the claim was allowed to proceed.

26. It was held that the Claimant believed that she had lodged a properly constituted claim in time because she had confidence in her professional advisors. If those advisors had failed unreasonably to lodge a properly constituted the claim in time then the Dedman principle would apply and the Claimant would not simply be permitted to rely in her confidence as to what they had done, she would be bound by their unreasonable conduct. The question therefore in a circumstance such as Zhou was whether the Claimant's solicitors had acted reasonably. It was noted that the Dedman principle had not been raised in the Adams case. As the Tribunal had not engaged with whether the Claimant's solicitors had acted reasonably then the case was remitted to the same ET.

27. HHJ Eady makes the following comments in the Judgement from Para 37 onwards:

a) She comments that it is trite law that the question of what is or is not reasonably practicable is a question of fact for the Tribunal and she cited the **Walls Meat v Khan** authority mentioned earlier and the judgment of Brandon LJ:

28. ***"… The performance of an act, in this case the presentation of a complaint, is not reasonably practicable if there is some impediment which reasonably prevents, or interferes with, or inhibits, such performance. The impediment may be physical, for instance the illness of the complainant or a postal strike; or the impediment may be mental, namely, the state of mind of the complainant in the form of ignorance of, or mistaken belief with regard to, essential matters. Such states of mind can, however, only be regarded as impediments making it not reasonably practicable to present a complaint within the period of three months, if the ignorance on the one hand, or the mistaken belief on the other, is itself reasonable. Either state of mind will, further, not be reasonable if it arises from the fault of the complainant in not making such inquiries as he should reasonably in all the circumstance have made, or from the fault of his solicitors or other professional advisers in not giving him such information as they should reasonably in all the circumstances have given him." (Pages 60F-61A)***

b) Judge Eady goes on at paragraph 38:

29. The focus is accordingly on the Claimant's state of mind, viewed objectively. That said, where a Claimant has instructed professional advisers to act for her (as here), she will not be able to escape a finding that it was reasonably practicable to present the claim in time by virtue of the fact that the failure arises from an error made by her advisers, see Dedman v British Building and Engineering Appliances Ltd [1973] IRLR 379 CA ("the Dedman principle"). UKEAT/0066/18/LA. That rule might be mitigated in certain circumstances. For instance, the answer might not be the same if the adviser is working in a voluntary or lay capacity - see Marks & Spencer plc v Williams-Ryan [2005] IRLR 562 CA - or where it was reasonable for the advisers to have given the wrong advice in the particular circumstances of the case - see Northamptonshire County Council v Entwhistle [2010] IRLR 740. 39. When considering reasonable practicability for these purposes and the particular impediment to the in-time presentation of the claim, the reasonableness of the steps taken - not necessarily simply a question of fault - can be relevant. As Lady Wise observed in Baisley v South Lanarkshire Council [2017] ICR 365 EAT: "30. I have reached the view that the employment tribunal in this case did rely on what was regarded as fault on the part of the claimant's advisers as determinative of the issue. There are two main problems with such an approach. First, on the facts found, the only conceivable "fault" on the part of the advisers was that they did not take an active step to contact the tribunal to ensure that the facsimile transmission they had sent had actually been received. Standing that the problems they had encountered with their fax machine were not understood to include the non-receipt of faxes by the recipient, describing such an omission as "fault" seems to me to demand something approaching a perfectionist method of working. I do not consider that it can safely be concluded that any reasonable solicitor would have made such an inquiry. Secondly, and more importantly, even if on the facts found there was clear fault on the part of the claimant's advisers, there were other factors to be weighed in the balance before it could be proper to reach a conclusion whether discretion should be exercised in terms of rule 5. There is on the face of the judgment, no attempt to address the balance of prejudice. A failure to address the issue of balance of prejudice in such circumstances is in my view a clear error of law. I am fortified in that conclusion by the decision of the current President, Simler J, in Adams v British Telecommunications plc …" See also the approach adopted by Simler P at paragraphs 30 to 31 of Adams, when the EAT itself determined the question of reasonable practicability for the purpose of disposing of the appeal in that case.

c) HHJ Eady then went on to make her decision

30. As it is trite law that such cases are determined on their facts. I will now make the findings of fact that I can. I take into account all of the above matters when considering what should be done in this case. These facts are taken

from both Tribunal files which I have had before me and facts that the parties have agreed. Neither party has submitted any witness evidence in the form of a witness statement or documents. They could have done so had they wished and attached the same to their submissions but did not do so:

a) The Claimant was dismissed on 7 September 2018 and Early Conciliation took place between 30 November 2018 and 13 January 2019. An EC Form was sent to the parties numbered R349814/18/06 and the consequence of all this was that the last day for submitting the claim would be 13 February 2019.

b) A claim was lodged on 11 February 2019. It was numbered 1300510/19. I have no firm information as to who completed the Claim Form itself or the Particulars of Claim and I have no firm information as to who it was who physically presented the form. I have no information about whether or not the Claimant had any hand in the process at all. I have no knowledge as to how long the solicitors were instructed before submitting the claim, no knowledge of the normal checking processes which would be in place when submitting such forms. I know that the solicitors are named as representing the Claimant on the Claim Form and so I am prepared to infer from that and find on the balance of probabilities that it was the solicitors who completed the form and lodged it. I do not know the seniority of the person who lodged the form and I do not have any explanation as to how it is that the Claim Form was lodged with an incorrect number. I do not know whether the Claimant personally checked the Form before submission. In short, the Claimant has provided no explanation at all of the circumstances surrounding the issue of the Claim form at all and they would have all of that information at their disposal and have elected not to share the same.

c) On that Claim Form the EC number was R349814/18/04. Again, the Claimant has at no point explained what the error that they made was and this information comes from my consideration of the files. The error was in the last digit.

d) The Claim was vetted by Tribunal Staff on 18 February and the normal checks undertaken showed an issue with the EC number. A request was made by the Tribunal for a hard copy of the EC certificate on 20 February and this was provided by return by the Claimant's solicitors. From this I find that the solicitors had a physical copy of the ACAS EC Certificate and therefore the number when they presented the Claim and so were in a position to enter the correct number.

e) The matter was referred to an Employment Judge as per the Rules and the Employment Judge rejected the Claim and sent notice of that rejection on 20 February.

f) 20 February 2019 was a Wednesday. A further Claim 1300866/19 this Claim was lodged on 25 February 2019 – five days later. I have no information at all as to what went on during those 5 days and the process that was undertaken by the solicitors in order to remedy the problem. No explanation has been provided as to why it took 5 days to correct a single

digit on the ACAS number when it must have been known or should have been known that speed was of the essence.

g) From the Tribunal file I can see that EJ Lloyd wrote to the parties after a Response had been received on 13 June 2019 to ask if the parties were content for this issue to be dealt with on written submissions and both parties agreed and sent in their submissions by the end of June.

h) Unfortunately, it appears that the matter was then not immediately referred back to a Judge to deal with the application until 26 October 2019 which is where it was brought to my attention when undertaking duty work at the Tribunal. There was no opportunity to deal with it substantively that day and I asked the Tribunal to write to the parties to indicate that I was now dealing with the applications and would deal with it as soon as my various other commitments both sitting as a fee paid Judge and otherwise would allow.

31. I am satisfied that the Claimant correctly applied the Tribunal Rules when it rejected this case. A failure to provide the correct EC number has draconian and inevitable consequences which should be well known to all practitioners who practice in this area. I share the view of other Judges that the Rules appear to be arbitrarily punitive in this respect but am in no position to ameliorate the consequences of the Claimant's failure save for a consideration of the statutory test that would allow me to extend time in this case. I am quite clear that if, on the facts before me, I was considering an extension of time under the just and equitable test then I would have no hesitation when weighing up the prejudice to both parties, in particular, and the nature of the error. I am not however applying that test but am applying the more stringent reasonable practicability test

32. I take into account the dicta in Dedman and Marks and Spencer cited above that the legislation re time limits should be given a "liberal construction in favour of employees" but would point out that the case law that has developed since that time around 5 years ago and has been formed with that dicta in mind.

33. I take into account that what is reasonably practicable is a matter of fact for me to determine on the evidence that is presented to me. The parties have chosen not to present the case orally and have not submitted any evidence at all in support of their positions. I have what I have in terms of submission but bear in mind that this situation has arisen at the agreement of the parties. Indeed, the Claimant has chosen to offer me absolutely nothing by way of the circumstances of how the errors arose and it came to be that the Claim was lodged late.

34. I remind myself that the onus of demonstrating that it was not reasonably practicable to present the claim in time rests solely upon the Claimant. In **Porter v Bandridge (1978) ICR 943** it was said that this imposes a duty upon the Claimant to show precisely why it was that he did not present his complaint in time. In **Sterling v United Learning Trust (2015) EAT 0440/14** the perils of failing to put one's case effectively at first instance was noted as was the inevitable consequence of failing to discharge the test (para.23).

35. I do not accept the Claimant's main representation that seems to be summarised at paragraph 17 of the Claimant's skeleton to the effect that this case is on "all fours" with Adams and an extension of time is justified. It is a fact as accepted above that both cases involve an application for time to be extended under the reasonably practicable test because of a rejection by the Tribunal of an original claim lodged towards the end of a limitation period which could only then be rectified after the end of the period.

36. The reality is that the Claimant has provided me with absolutely no information as to why the original claim was rejected and what the factual circumstances were that made it come about. I am aware that I am required to look at the circumstances of why the second claim was not presented in time, but I cannot ignore the fact that a claim was originally lodged and rejected for reasons which have quite simply not been explained to me. there is also no information about the second claim and in particular why it took 5 days to lodge.

37. The burden lies upon the Claimant to show that it was not reasonably practicable as I set out in paragraph 31 above. I have considered the ET1 and the written submissions and the Claimant has spectacularly failed to provide me with any information that could go to that point. Taking into account the point raised in Zhou above I have to ask whether the Claimant's solicitors acted reasonably when lodging the Claim Form. It is a reasonable expectation that a solicitor of reasonable competence would know the importance of the ACAS EC number being correct and that knowledge would be particularly acute if a Claim is lodged at the end of the limitation period because there is every possibility of there being some delay before the rejection is given. It is a reasonable expectation that the Claim Form will be presented in a manner that will lead to it being accepted and the fact that it was not indicates that the solicitors have fallen below an acceptable standard of care and accordingly the start point must be that their behaviour has been unreasonable.

38. It is for the Claimant to provide information which would in some way ameliorate and provide an explanation for that conduct which show that the reasonably practicable test has been met. The Claimant's submissions fails to provide any explanation at all and whilst bearing in mind the effect upon the Claimant's case at the Tribunal of not permitting the Claimant is terminal and disastrous, the lack of any explanation or information leads me to conclude that they have failed to discharge the burden. I am unable to find anything that would lead me to believe that the solicitors have acted reasonably and the Dedman principle applies

39. I have considered the information I have and then have considered it against the dicta cited above in the Walls Meat case and all other cases. I conclude that the Claimant has not proven on the balance of probabilities that it would not have been reasonably practicable to lodge the claim and the claim must be dismissed.

40. I also do not consider that the Claimant has discharged the burden of proof and demonstrated that the second part of the test has been met. What time is deemed to be reasonable to lodge the claim if it was not reasonably

practicable is not fixed but must depend upon all the facts and the circumstances of the case.

41. I cannot see that I have any explanation before me as to why it is that it took the Claimant's solicitors 5 days to put another claim in especially when they must have known that the period out of time would continue until that was done. All that had to be done in actual fact was the changing of one digit. The explanation to be given as to what had happened would be short.

42. Surely as a lawyer few things can cause such a major sense of panic than realising that you have missed a time limit which may have draconian consequences. Even worse when the lawyer himself or herself is at fault. The correct response to the same is rectification and a minimisation of the damage at the earliest opportunity with an "all hands to the pump" mentality. The only explanation I have been offered for the delay is that 2 of the days were over a weekend. Claims can be lodged online any day and so I do not see that to be of assistance to the Claimant. If the point being made is that it would not be reasonable for the solicitor to work over a weekend to correct the error then it is not a strategy that I can possibly consider reasonable when trying to deal with a time limit issue where a client's claim may be at stake.

43. I have no explanation as to why it took until 25 February to reissue the claim and in the circumstances do not consider that the delay was reasonable in light of the mistake to be corrected in the absence of any other reasons being given.

44. It is very unfortunate for the Claimant that the claim will proceed no further but that is an issue she will need to take up with her solicitors. The Tribunal has no jurisdiction to hear these claims and they are dismissed.

Employment Judge Self

6 December 2019