



EMPLOYMENT TRIBUNALS

Claimant
Mr David Price

Respondent
North East Metro Operations Limited

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT NORTH SHIELDS
EMPLOYMENT JUDGE GARNON (SITTING ALONE)

ON 27 November 2019

Appearances

For Claimant: in person
For Respondent: Mr J Anderson of Counsel

JUDGMENT DISMISSING A CLAIM AT A PUBLIC PRELIMINARY HEARING

The claim was presented outside the time limit prescribed for doing so in circumstances where it was reasonably practicable for it to be presented within time. The Tribunal cannot consider the claim which is hereby dismissed.

REASONS

1. This is a claim of unfair dismissal. The issues to be decided at this hearing are
 - (a) whether the claim was presented before the end the relevant time limit?
 - (b) if not, was it reasonably practicable for it to have been?
 - (c) if not, was it presented within a reasonable time after?Rule 53 of the Employment Tribunal Rules of Procedure 2013 (the Rules) empowers me to issue a final judgment even at a preliminary hearing if the issue I decide is determinative of the whole case.
2. Section 111 of the Employment Rights Act 1996 (the Act) says the Tribunal **shall not consider** a complaint of unfair dismissal 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 it was not reasonably practicable for the complaint to be presented before the end of that period of three months.**
3. Section 207B provides for extension of time limits for Early Conciliation(EC), thus:
 - (2) *In this section—*
 - (a) *Day A is the day on which the complainant or applicant concerned complies with the requirement in subsection (1) of section 18A of the Employment Tribunals Act 1996*

(requirement to contact ACAS before instituting proceedings) in relation to the matter in respect of which the proceedings are brought, and

(b) Day B is the day on which the complainant or applicant concerned receives or, if earlier, is treated as receiving (by virtue of regulations made under subsection (11) of that section) the certificate issued under subsection (4) of that section.

(3) 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.

(4) 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.

(5) Where an employment tribunal has power under this Act to extend a time limit set by a relevant provision, the power is exercisable in relation to the time limit as extended by this section.”

4. The effective date of termination was 2 May 2019. The claimant needed to contact ACAS by 1 August. He did not until 21 August. ACAS sent the EC Certificate on 22 August. His claim was presented on that day. However, his contact with ACAS was out of time, and there is ample case law to the effect time limits are just that—limits. I cannot say 3 weeks is not long and waive the requirement. Also, I must follow relevant authorities of the Court of Appeal .

5. Reasonably practicable means reasonably “do-able”. The burden of proving it was not rests on the claimant. Palmer v Southend on Sea Borough Council 1984 ICR 372 listed a number of factors which may properly be argued including a claimant was **prevented** from presenting in time due to illness. That case also held I should look at the substantial cause of the failure to issue in time.

6. Dedman-v-British Building 1973 IRLR 379 , held that where either the claimant or his advisers were at fault in allowing the time limit to pass without presenting the complaint in time, it was reasonably practicable to present in time. The time-limit runs from the date of the dismissal not the rejection of any internal appeal. As with other mistaken beliefs of law if the claimant thinks the opposite, it will only render it not reasonably practicable for him to have presented in time if the mistaken belief is in itself reasonable Wall’s Meat-v- Khan 1978 IRLR 499. If the mistaken belief results from the fault of his advisers in not giving him all the information the claimant will not be able to rely upon it. Similar points were made in Riley -v-Tesco Stores1980 IRLR 103 .

7. Schultz-v-Esso Petroleum 1999 IRLR 488 held where ill-health is a factor I should concentrate on the closing rather than the early stage of the limitation period so if a disabling illness is relied the proper approach is to focus not on the early weeks but the far more critical ones leading up to the expiry of the limitation period.

8. The claimant gave evidence today. He was a member of the trade union ASLEF . A local representative was a friend of his Mr John Denby. He was given advance warning of the allegations against him and went to a disciplinary meeting on 2 May 2019 in front

of a train crew manager, accompanied by an HR advisor and minute taker. The claimant was represented by an ASLEF representative. The investigation officer gave evidence and it is clear from the minutes of the claimant conducted himself effectively during this hearing. The decision, announced to him on the day and confirmed by letter on 8 May, was that he was summarily dismissed for gross misconduct but could appeal within seven days, which he did. The grounds of appeal signed by him, compiled with the help of his trade union and his partner, are cogent and effective

9. An appeal hearing was held on 10 June when the claimant was represented by a full-time official of ASLEF. The result, confirmed by letter of 11 June, was to reject his appeal. Again he appears to have functioned well at that time. In the weeks which followed, he used the Internet to find out information but did not contact ACAS or any Citizens Advice Bureau. He knew of the time limit but was unsure whether it ran from the dismissal itself or rejection of the appeal.

10. In July, he went to his GP who has provided a letter saying he is "*currently struggling with depression*". He was in August prescribed Mirtazapine 15 mgs. Dr Stewart writes his low mood problems have been a recurrent issue over the last few years but been exacerbated by his dismissal. The claimant agrees saying he now has low self esteem and **motivation**. The letter says he is experiencing issues with memory and concentration in consequence of his depression and that may have contributed to his missing deadlines. I accept he has all the symptoms he describes. However, his union would know if his claim did stand a better than even chance of success and if it did, would not have let him run out of time. It is to me clear from his own evidence he was functioning adequately, albeit with great help from his partner, despite his depression. I cannot find the operative reason for him missing the time-limit was his ill-health. I have no pleasure in coming to this decision but I cannot find it was not reasonable practicable for this claim to have been presented in time. I have no further discretion to exercise. These complaints must be dismissed.

EMPLOYMENT JUDGE GARNON

JUDGMENT SIGNED BY EMPLOYMENT JUDGE ON 27 NOVEMBER 2019