



EMPLOYMENT TRIBUNALS

Claimant: Mr J Dando

Respondent: Department for Work and Pensions

Heard at: Cardiff **On:** 3 April 2020

Before: Employment Judge Moore

Representation

Claimant: Mr R Goodwin, Counsel

Respondent: Mr O James, Counsel

CORRECTED JUDGMENT

1. The claimant's claim of wrongful dismissal was presented out of time and it was reasonably practicable for it to have been presented in time. The claim is dismissed.

REASONS

Corrected reasons

This corrected Judgment removes the representatives email addresses that were inserted above. No other changes made.

Background and Introduction

1. The ET1 was posted to the Employment Tribunal address in Cardiff and was received on 20 December 2019. It was returned to the claimant's solicitors on 24 December 2019 as it had not been served within one of the prescribed methods of presenting an ET1. It was subsequently re-presented again by post but this time to the Employment Tribunals Central Office address in Leicester and was received on 3 January 2020.
2. The claimant brings claims of wrongful dismissal. The respondent resists the claim and asserted the claim had been brought out of time. The effective

date of termination was 6 August 2019 giving a primary limitation date of 5 November 2019. The date of receipt by ACAS of the early conciliation certificate was 28 October 2019 (“DAY A”) and the date of issue of the certificate (“DAY B”) was 28 November 2019. The time limit for filing the claim expired on 28 December 2019 as extended by the ACAS early conciliation period.

3. This preliminary hearing took place by telephone and was conducted in public. The parties dialled into a conference call and the hearing was broadcast on speakerphone in a hearing room open and available to be attended by any member of the public at the Cardiff Employment Tribunal. The hearing room was staffed by a clerk for the duration of the call available to provide such documents as would be required to be available for inspection by the public.
4. Neither party called witnesses. I heard oral submissions from both representatives and had before me written submissions.

The Law

5. A wrongful dismissal claim must be presented before the end of the period of three months beginning with the effective date of termination of the contract giving rise to the claim 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 three months. (Regulation 7 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994) (“the Regulations”).
 - a. I was referred to a number of authorities regarding the ‘reasonably practicable’ extension namely **Dedman v British Building & Engineering Appliances Ltd [1974] ICR 53 CA** and **Adams v British Telecommunications Plc [2017] ICR 382**.

Findings of fact

6. The limitation date (as extended by the early conciliation procedure) was 28 December 2019.
7. On 19 December 2019 the claimant’s solicitors sent a postal ET1 and accompanying documents to the Cardiff Employment Tribunal. It was date stamped received on 20 December 2019. It was returned under cover letter by Tribunal staff on 24 December 2019. The letter explained that the claim form was being returned as it had not been presented under one of the three prescribed methods of presenting an ET1 (Employment Tribunal (England and Wales) Presidential Practice Direction – Presentation of claims (“the Presidential Practice Direction”)).
8. The claimant’s solicitors’ offices were closed for Christmas and New Year. On 2 January 2020 the claimant’s solicitors received the Tribunal’s letter of 24 December 2019 and presented the same ET1 which was accepted on 3 January 2020. According to the Tribunal file this was received by the postal address for service in Leicester.

9. There was no challenge to the Tribunal's decision to return the initial ET1 and that it had not been correctly presented.
10. It was accepted that the initial claim was not presented correctly and in breach of the Presidential Practice Direction.
11. There was no evidence before me as to why the claim had not been presented in accordance with the Presidential Practice Direction.

Conclusions

12. I have carefully considered whether there were grounds to conclude that it had not been reasonably practicable to have presented the claim in time.
13. The claimant was represented by solicitors. I did not hear any evidence as to why the solicitors had not been able to comply with the practice direction. Counsel for the claimant acknowledged it was an error. Mr Goodwin submitted that the circumstances were analogous to those in **Adams v BT Plc**. In that case the claimant had presented a claim, in person which had a defective early conciliation number. It was correctly rejected and subsequently re-presented in a second claim which was out of time. The EAT allowed an appeal against the Tribunal's decision that it had been reasonably practicable to have presented the second claim in time.
14. With respect to Mr Goodwin in my judgment the facts of this case should be distinguished from the case of **Adams v BT Plc**.
15. The relevant question is whether the mistaken belief of the claimant and / or his solicitors that his claim had been presented in time was reasonable. This was referenced at paragraph 17 in Adams where Simler J cites the guidance of Brandon LJ in **Wall's Meat Co Ltd v Khan [1979] ICR 52**. Specifically where impediments such as mistaken belief only make it reasonably practicable not to have presented a claim in time if the ignorance or mistaken belief itself is reasonable.
16. In this case, the ignorance or mistaken belief was held by the claimant's solicitors. That leads me back to the Dedman principle that if the advisors were at fault then remedy is against the advisors.
17. I did not have any evidence as to why the claimant's solicitors had not complied with the Presidential Practice Direction on presenting the claim. I accept that it may have been a genuine error but this does not change the position in respect of practicability.
18. I therefore have concluded that it was reasonably practicable to have presented the claim in time and it was not done so. I therefore do not need to go on and address the second question namely was it then presented within further reasonable period. Nonetheless I record that this was sensibly conceded by Mr James in any event, if I was against him on the first question.
19. The claim is therefore dismissed.

Employment Judge Moore

Date 6 April 2020

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON

.....7 April 2020.....

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FOR EMPLOYMENT TRIBUNALS