



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4102591/2019

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Held in Glasgow on 19 July 2019

Employment Judge I F Atack

10 **Mrs Helen Morton**

**Claimant
Represented by:
Mr D Wright -
Representative**

15 **Compass Group UK & Ireland Ltd**

**Respondent
Represented by:
Mr J Byrne -
HR Representative**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the employment tribunal is that under section 111 of the Employment Rights Act 1996 the Employment Tribunal does not have jurisdiction to hear the claimant's complaint of unfair dismissal which is dismissed.

REASONS

25 **Introduction**

1. This was a preliminary hearing to decide the preliminary issue of time bar. The claimant alleges that she was unfairly dismissed by the respondent. The respondent denies that the claimant was unfairly dismissed but raised as a preliminary issue a question of time bar.
- 30 2. No evidence was led before the Employment Tribunal but the claimant lodged 12 documents and the respondent a bundle of five, comprising 30 pages. Reference to the productions referred to by the parties will be by reference to their respective page numbers, preceded in the case of the claimant's

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documents, by the letter C and. in the case of respondent's documents, by the letter R.

3. The facts were not essentially in dispute and from the documents to which I was referred I made the following material findings in fact.

5 **Facts**

4. The claimant was dismissed on 14 September 2018.
5. She appealed against that decision. The appeal was refused by letter dated 12 November 2018, C1.
6. The claimant took advice from the Citizens Advice Bureau. She was advised she had to inform Acas before she could present a claim to the Employment Tribunal.
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7. She contacted Acas on 22 November 2018.
8. An Early Conciliation Certificate was issued by Acas showing the date of receipt by them of the Early Conciliation notification as 22 November 2018 and the date of issue by Acas of the Certificate as 22 December 2018, C3. The Early Conciliation certificate was sent by email to the claimant.
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9. The ET3 was presented on 12 February 2019. The claimant sent the form to the Employment Tribunal on 9 February but it was not treated as being presented until 12 February.
- 20 10. The claimant was unsure what to do regarding presenting her case due to the Christmas holiday period.
11. She visited the Citizens Advice Bureau on 18 January 2019 and was given an ET1 form to complete.
- 25 12. The claimant waited for her daughter to return home to help her deal with the form.

13. She completed the form and took it back to the Citizens Advice Bureau on 25 January 2019 for them to approve it. She was then advised that the Bureau could not become further involved in the case.

14. The ET1 form was sent to the employment tribunal on 9 February 2019. It was
5 accepted on 12 February 2019.

Submissions

Claimant

15. Mr. Wright for the claimant submitted that the claimant had not received proper advice from the Citizens Advice Bureau or from Acas. He submitted
10 that the claimant had not been given any advice about time limits. The claimant had not been sure how to fill in the ET1 form and was waiting for her daughter who was absent from home to return to help her with it.

16. He urged me to allow the claim to proceed.

Respondent

15 17. Mr. Byrne submitted that the claim was out of time and should have been submitted by 22 January 2019 at the latest. Even if it was accepted that the claim had been presented on 9 February it was still out of time.

18. It was his position that it had been reasonably practicable for the claimant to have submitted her claim in time and it was clear that she been in contact with
20 the Citizens Advice Bureau and it would be reasonable to assume that advice had been given to her relating to time limits. The claimant in any event should have queried with her advisor when the claim should have been submitted.

19. His submission was that it having been reasonably practicable for the claimant to have been submitted the claim in time the Tribunal did not have jurisdiction
25 to hear it.

Decision

20. The issues for the Employment Tribunal to decide in this case were: had the claim been presented in time, or if not, had it been presented within such

further period as the Tribunal considered reasonable in a case where it was satisfied that it had not been reasonably practicable for the claim to be presented in time.

21. In terms of section 111(2) of the **Employment Rights Act 1996** a complaint
5 must be presented before the end of the period of three months beginning with the effective date of termination 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.

10 22. By virtue of section 18 A of the **Employment Tribunals Act 1996** a person intending to bring a claim must contact Acas before instituting Employment Tribunal proceedings. The procedure involves the following stages:-

- the potential claimant informs Acas that he or she intends to bring a claim
- 15 • if the claimant agrees to early conciliation, Acas instructs a conciliation officer
- the Acas conciliation officer has one month to attempt to resolve the dispute between the parties, which may be extended by a further two weeks
- 20 • if settlement is not reached, or if either party decides at any point not to continue to participate in conciliation, the Acas conciliation officer issues the claimant with an EC certificate
- the prospective claimant may then bring a claim

23. Section 18A (8) provides as follows:

25 *“A person who is subject to the requirement in subsection (1) may not present an application to institute relevant proceedings without a certificate under subsection (4)”.*

24. **The Employment Tribunals (Early Conciliation: Exemptions and Rules of Procedure) Regulations 2014** set out what a prospective claimant must do to satisfy the requirement for early conciliation. It provides at regulation 2 (2) that an early conciliation form presented to Acas must contain the prospective claimant's name and address and the prospective respondent's name and address. The form may be submitted either using an online form from the Acas website or sent by post to the Acas address set out in the early conciliation form.

25. Regulation 9 provides as follows:

“9.

(1) Where Acas issues an early conciliation certificate, it must send a copy to the prospective claimant and, if Acas has had contact with the prospective respondent during the period of early conciliation, to the prospective respondent.

(2) If the prospective claimant or prospective respondent has provided an email address to Acas, Acas must send the early conciliation certificate by email and in any other case must send the early conciliation certificate by post.

(3) An early conciliation certificate will be deemed received –

(a) if sent by email, on the date it is sent; or

(b) if sent by post, on the day on which it would be delivered in the ordinary course of the post”

26. Section 207B of the Employment Rights Act 1996 provides as follows:

“207B Extension of time limits to facilitate conciliation before institution of proceedings

(1) This section applies where this Act provides for it to apply for the purposes of the provision of this Act (a “relevant provision”).

But it does not apply to a dispute that is (or so much of a dispute as is) a relevant dispute for the purposes of section 207A.

(2) in this section –

5 (a) Day A is the day on which the complainant or applicant concerned complies with the requirement in subsection (1) of section 18 A 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

10 (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.

15 (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.

20 (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.

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

25 27. In this case the claimant was dismissed on 14 September 2018. Although she appealed that decision the fact of the matter is that was the effective date of termination of her employment and the time limit for presenting a claim to the Employment Tribunal begins to run from that date.

28. She was required to comply with the early conciliation provisions and did so by contacting Acas on 22 November 2018. The Early Conciliation Certificate

was issued on 22 December 2018. Day A accordingly was 23 November 2018 and Day B the 22 December when the EC certificate was sent by email to the claimant.

29. In terms of the Early Conciliation Scheme the Acas conciliation officer has one month to attempt to resolve the dispute between the parties, which may be extended, if the parties agree, up to two weeks but if agreement is not reached, or if either party decides at any point not continue to participate in conciliation, the Acas conciliation officer will issue the claimant with an Early Conciliation certificate. The claimant is then entitled to bring her claim to the employment tribunal.
30. When determining whether a time limit has been complied with, the period beginning with the day after the early conciliation request is received by Acas up to and including the day when the early conciliation it is received or deemed to have been received by the claimant is not counted. What this means is that the clock will stop when Acas receives the request and start to run again the day after to the perspective claimant receives the certificate.
31. The claimant in this case was sent the certificate by Acas on 22 December 2018 but did not present her claim to the employment tribunal until 12 February 2019. On the face of it the claim has been presented out of time. It should have been presented by 22 January 2019.
32. The next question to consider is: was presentation in time not reasonably practicable.
33. This is a question of fact and the onus is on the claimant. The concept of what is reasonably practicable is broadly similar to reasonably feasible, being somewhere between “reasonable” and “reasonably physically capable of being done” – *Palmer v Southend on Sea Borough Council* 1984 ICR 372.
34. The claimant had contacted the Citizens Advice Bureau on numerous occasions but yet submitted that she was not aware of the requirement to present the claim to the Employment Tribunal within a prescribed time from the date of her dismissal. Mr. Byrne suggested it was reasonable to assume

that the advisor the claimant had seen had the means to advise her of the relevant time limits for presenting her claim. He also submitted that even if she was not given that advice it was for the claimant to inquire as to when the claim should have been submitted.

5 35. It was not suggested to me that the claimant had been prevented in any way from presenting her claim before she did. It was Mr. Wright's position that the claimant did not deal with the matter over the Christmas and New Year's holiday period and was waiting for her daughter to to return to help her complete the form. That could only have been after the 18 January 2019 when
10 she was given the form by the Citizens Advice Bureau but does not explain why the form was not presented until 12 February.

36. The claim should have been presented by 22 January 2019. The normal date for lodging the ET1 would have been 13 December but because the early conciliation notification was submitted on 22 November 2018, the clock in
15 effect stopped so far as the presenting of the claim was concerned. It started again on 22 December when the Early Conciliation certificate was issued. The claim should have been presented by 22 January 2019.

37. The onus is upon the claimant to show why it was not reasonably practicable to present the claim in time and in my judgment she has failed to discharge
20 that onus. There was no indication that the claimant was physically unable to deal with the claim and there was ample evidence that she had been able to contact the Citizens Advice Bureau on numerous occasions.

38. I was satisfied that the claim should have been presented by 22 January 2019 and it was not in fact presented until 12 February 2019. Even if the claimant
25 been presented on the 9 February 2019 it was still out of time. I was satisfied that it had been feasible for the claimant to have presented her claim before either the 9 or 12 February and nothing physically prevented her from so doing. In my opinion it had been reasonably practicable for the claimant to have presented her claim in time.

30 39. Having concluded that it had been reasonably practicable to present the claim within the prescribed time limit there is no need to consider whether the claim

was presented within such further time as the Employment tribunal might consider reasonable. However, no satisfactory explanation was given as to why the claim was not presented after the claimant had seen the Citizens Advice Bureau on 25 January but had waited until 9 February before sending it to the Employment Tribunal. In the circumstances it could not be held that the claim had been presented in a reasonable time after 22 January.

40. I concluded that the Employment Tribunal does not have jurisdiction to hear her claim which is dismissed.

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| 10 | Employment Judge: | I F Atack |
| | Date of Judgement: | 29 July 2019 |
| | Entered in Register, | |
| | Copied to Parties: | 31 July 2019 |

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