



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms N Hanson

**Respondent:** Porthaven Care Home No 2 Ltd

**Heard at:** Croydon by Cloud Video Platform  
**On:** 25 August 2020

**Before:** Employment Judge Nash (sitting alone)

## Representation

**Claimant:** In person  
**Respondent:** Mr R Watson, consultant

**JUDGMENT** having been sent to the parties on 8 September 2020 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

## REASONS

1. The claimant's employment was terminated on 10.10.19. Following a period of ACAS early conciliation from 23.2.20 to 5.3.20, the claimant presented her claim to the tribunal on 8.3.20. The tribunal sent the parties a notice of a full merits hearing, and standard directions on 11.3.20. The response was received in time on 8.4.20.
2. The tribunal heard from the claimant on her own behalf. The respondent led no oral evidence.

### Preliminary Issues

3. The case was listed for a full merits hearing. At the beginning of the hearing, the respondent applied to postpone the hearing on the basis that the claimant had failed, without excuse, to comply with the orders of 11.3.20 including providing disclosure and a witness statement. This was despite it having reminded her to comply on 15.7.20. In the alternative, the respondent applied for the tribunal to convert the hearing into a case management hearing.

4. Upon discussing with the parties as to how to proceed, the tribunal ascertained that there was a potential issue as to its jurisdiction because all of the claim may have been presented out of time.
5. The tribunal considered the state of proceedings. It applied the over-riding objective. The tribunal took into account its duty to avoid delay and to proceed in a manner proportionate to the issues in dispute. It determined that the most proportionate approach was to determine the time point before deciding how to proceed. The tribunal had sight of the relevant documents, being communications post-termination between the parties. The claimant was present and able to give oral evidence on the point, although no witness statement had been prepared.

### The Claims

6. The claimant brought claims for:-
  - a. breach of contract,
  - b. s13 Employment Rights Act for unauthorized deduction from wages;
  - c. Working Time Regulations for unpaid holiday pay.

### The Issues

7. The issues for the hearing were whether any or all of the claimant's claims were brought within the requisite limitation periods in the relevant legislation. Statute provides the same test for all three claims:-
  - a. Was it reasonably practicable to present the claims in time
  - b. and if not were they presented in such further time as the tribunal considers reasonable?

### The Facts

8. The respondent runs care homes. It employs about 1100 staff. The claimant started work on 18.2.18 as a Home Trainer.
9. The effective date of termination was 10.10.19. Some of the claims related to payments made post-termination and the date of these payments was subject to some dispute. The claimant contended that this payment was 690 pounds short. The respondent contended that it had paid the claimant all the money owed to her in the final payment on 14.11.19.
10. The latest date, according to the parties, on which the relevant payments were made was 14.11.19. As this was the date that most favourable to the claimant's case as to time, and this was the date on which the respondent relied, the tribunal proceeded on the basis that the relevant post-termination payments were made on 14.11.19. Accordingly, the claimant, in order to comply with the statutory time limits should have contacted ACAS no later than 13.2.20; she had contacted ACAS on 23.2.20.

11. ACAS early conciliation closed on 5.3.20 and the claim was presented on 8.3.20.
12. The claimant's explanation as to why she did not comply with the statutory time limit was that she did not know of the time limit. She firstly tried to resolve matters with her employer before going to law. She had raised her concerns about the final payment and the respondent told her that it was "looking into" it, including on 16.1.20. She gave the respondent a few more weeks as she wanted to avoid legal proceedings.
13. She had telephoned the respondent again on 22 February but to no avail.
14. The tribunal had sight of a number of emails between the claimant and respondent which corroborated this account. The tribunal accepted the claimant's account of her telephoning the respondent to seek to resolve matters as it was plausible and consistent with the approach shown in the emails. Further, this account was not challenged by the respondent.
15. It was only upon contacting ACAS the next day 23 February that she discovered that there was a time limit. Had she known of the time limit, she would have contacted ACAS earlier and complied.
16. The claimant also said that she was a single parent with money worries. She was tired from the new job she had started after the end of her employment with the respondent. She was concentrating her focus and attention on her new job in order to ensure that she was kept on.

#### The Applicable Law

17. The statutory time limit for s13 Employment Rights Act is as follows:-

- (1)A worker may present a complaint to an employment tribunal—
  - (a)that his employer has made a deduction from his wages in contravention of section 13 ...
- (2)Subject to subsection (4), an employment tribunal shall not consider a complaint under this section unless it is presented before the end of the period of three months beginning with—
  - (a)in the case of a complaint relating to a deduction by the employer, the date of payment of the wages from which the deduction was made, ...
- (4)Where the employment tribunal is satisfied that it was not reasonably practicable for a complaint under this section to be presented before the end of the relevant period of three months, the tribunal may consider the complaint if it is presented within such further period as the tribunal considers reasonable.

18. The same time limit and discretion as to extending time applies to breach of contract claims and under the Working Time Regulations at Regulation 30.
19. These time limits have been made more complex by the operation of the ACAS Early Conciliation procedure. However, in this case, the procedures have not complicated the situation unduly. In effect, the claimant needed to have  
  
taken the first step in any tribunal application, contacting ACAS to start early conciliation, within three months less one day of the date when time started to run.

#### Applying the Law to the Facts

20. The claim was presented after the expiry of the statutory time limits, taking into account the operation of the ACAS Early Conciliation procedure.
21. The tribunal firstly considered if it was reasonably practicable to present the claim in time.
22. According to the Court of Appeal in *Dedman v British Building and Engineering Appliances Ltd 1974 ICR 53, CA* the statutory tests as to time limits should be given a 'liberal construction in favour of the employee'. Further, according to the Court of Appeal in *Porter v Bandridge Ltd 1978 ICR 943, CA* the burden of proof is on the claimant. 'That imposes a duty upon him to show precisely why it was that he did not present his complaint'.
23. The case law tells us that the meaning of "reasonably practicable" is what is "reasonably feasible".
24. The tribunal considered the claimant's case that she was ignorant of the time limit. She did not contend that she was ignorant of the Tribunal or of her right to complain to the tribunal. In both *Dedman* and *Porter* the Court of Appeal determined that if a claimant seeks to rely on ignorance of the law when arguing that it was not reasonably practicable to present a claim in time, then the tribunal must determine whether that ignorance is reasonable. It is not enough for a claimant to show that they were genuinely ignorant of the law.
25. With specific regard to time limits, the tribunal applied the case of *Trevelyan's (Birmingham) Ltd v Norton 1991 ICR 488, EAT*, to the effect that when a claimant knows of their right to complain of (in that case, unfair dismissal), they are under an obligation to seek information and advice about how to enforce that right.
26. The tribunal took the context of the claimant's position into account. There was no suggestion of anything which might have prevented or rendered it unduly difficult for the claimant to inform herself about time limits. The claimant did not contend that she was unable to use the internet or take advantage of modern means of communication and the very considerable amount of material available in the public domain as to tribunal procedures and time limits. Indeed, the fact that she contacted

ACAS was evidence of her ability to inform herself about tribunals and their procedures.

27. The tribunal considered whether the claimant's ignorance of time limits would be reasonable. There was no suggestion or evidence that the claimant had been misled or deceived. Further, there was no evidence or suggestion that the claimant had been mis-informed by an authoritative source as to either the

existence or details of the time limit. When the claimant did seek information, from ACAS, she was correctly informed of the time limit.

28. The tribunal, further, could not find any reason in the claimant's individual circumstances to render any ignorance of time limits reasonable. She was a single parent understandably committed to holding down new employment. However, on her own case, she did hold down this job successfully and was able to correspond and communicate with her former employer prior to the expiry of the time limit, both in writing and by telephone.

29. The tribunal noted that the claimant made what appeared to be genuine attempts to resolve the dispute between her and her former employer in the three months following receipt of the final payment. However, the Court of Appeal in *Palmer and anor v Southend on Sea 1984 ICR 372* confirmed that, even when an employee is going through a formal internal appeal process this is not – on its own – enough to render it not reasonably practicable to comply with the time limit. On the facts in this case, there was not even an employer's process, the employee was simply trying to resolve the matter informally.

30. Few tribunals would criticize an employee who firstly tries to resolve an employment dispute internally and without going immediately to the law. However, to extend time, a tribunal must be satisfied that a claimant's ignorance of the time limit was reasonable in the particular circumstances of the case. The claimant has, for the reasons, set out in this judgment, failed to establish this.

31. Accordingly, it was reasonably practicable for the three claims to have been presented in time and the tribunal does not have the jurisdiction to consider any of the claimant's claims.

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Employment Judge Nash  
Date 29 November 2020

