



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4103832/2020

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Held via Cloud Video Platform (CVP) on 4 December 2020

Employment Judge L Doherty

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Mr J Cairney

Claimant

Cathkin Clean Scotland Limited

Respondent

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgement of the Employment Tribunal is that it does not have jurisdiction to consider the claimant's claim of unfair dismissal.

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REASONS

1. The claimant presented a claim of unfair dismissal to the Employment Tribunal on 22 July 2020. The claimant was resisted. This was a preliminary issue to determine if the Tribunal's was able to consider the claim, on the basis that it was lodged out with the statutory time limit and is time-barred.
- 25 2. The hearing took place by way of CVP. The claimant appeared on his own behalf, and the respondents were represented by Mr Khandelwal, Director.
3. The claimant give evidence on his own behalf.

Findings in Fact

4. From the evidence and information before it the Tribunal made the following
30 findings in fact.
5. The claimant was employed by the respondents, his employment coming to an end on 9 January 2020.

6. Prior to this, the claimant had been involved in disciplinary proceedings. The claimant was unhappy about how he had been treated by the respondents, as a result of which he consulted with the CAB at some point in December 2019.
- 5 7. The claimant subsequently resigned from his employment on 9 January, and thereafter almost immediately contacted the CAB for advice in order to take matters further against his employer. The Claimant understood from his consultations with the CAB that there was a three month time limit within which he has to lodge a claim against his employers with the Employment
10 Tribunal.
8. It was suggested to the claimant by the CAB that he contact Strathclyde Law Clinic (the Clinic) for advice on pursuing an Employment Tribunal claim. The Clinic was very busy, and it was not possible for the claimant to get an appointment until sometime in February with an advisor. He was concerned
15 that this was running close to the time limit for lodging his claim.
9. The claimant was working, and could only attend evening drop-ins at the Clinic. On a couple of occasions, the claimant waited for a considerable period, but was sent away and was unable to see an adviser. Eventually, at some point towards the beginning or middle of February the claimant did see
20 an adviser at the Clinic. It was then his understanding that the three month time limit was a reset by contacting ACAS under the notification procedure.
10. The claimant contacted ACAS; the date of receipt of the EC notification on the ACAS certificate is 26 February 2020. The EC certificate was issued on 26 March 2020.
- 25 11. On 23 March 2020, the UK went into a national lockdown. The claimant worked throughout lockdown, but he understood from looking at news reports that the courts were closed. He saw reference the trials not be able to take place because the courts are closed. On the basis of this, and the national lockdown, the claimant assumed that the Employment Tribunals were closed
30 and therefore not able to deal with this claim. He did not take any steps to check if this was correct.

12. The claimant lodged his claim with the Employment Tribunal on 22 July 2020, as he thought that by then the country was starting to open up again. He then received an email from the Tribunal telling him the claim was out of time.

13. The Employment Tribunal remained open for the purposes of dealing with the administration of claims, including the acceptance of claims, and speaking to members of the public, throughout the lockdown period.

Submissions

14. The claimant asked the Tribunal to take into account the fact that the country was in lockdown, and he believed that the courts were closed. This was the reason why the claim was late, and he pointed to the fact that he would not otherwise have wasted so much time trying to get advice in the first place.

15. Mr Khandelwal suggested the claimant had not met the statutory test, but submitted this was a matter for the tribunal.

Consideration

16. Section 111 of the ERA provides:

(1) *A complaint may be presented to an employment tribunal against an employer by any person that he was unfairly dismissed by the employer.*

(2) *Subject to the following provisions of this section, an employment tribunal shall not consider a complaint under this section 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 the 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.*

17. The time limit for the presentation of a claim can also be extended by virtue of the provisions relating to the issue of the ACAS certificate. Where the time limit is due to expire during the period beginning with the day ACAS receives the request and one month after prospective claimant receives a certificate,
5 the time limit expires instead at the end of that period. This effectively gives the claimant one month from the date when he received the ACAS certificate to present his claim.
18. The three month time limit would have expired in this case on 8 April (three months after the date of termination of employment). The ACAS certificate
10 was received on 28 March, with the effect that time is extended to 28 April for lodging the claim.
19. The claim was not lodged until 22 July 2020, and is therefore late, even taking into account the extension afforded by the ACAS certificate.
20. The Tribunal therefore had firstly to consider whether it was reasonably
15 practicable for the claim to be lodged within the statutory limitation period.
21. The onus rests with the claimant to establish that it was not reasonably practicable for the claim to be lodged in time.
22. What is a reasonably practicable is a question of fact for the Tribunal. It has
20 been said that the relevant test is not simply a matter of looking at what was possible, but to ask whether, on the facts of the case as found, was it reasonable to expect that which was possible to have been done?
23. The claimant was aware of the time limit applicable to lodging an Employment
25 Tribunal claim. He had obtained advice about this, and he was in fact becoming concerned about the length of time it was taking to get an appointment with the Clinic as he was concerned about the approaching time limit.
24. The Tribunal had no difficulty in concluding that the reason why the claimant did not present his claim on time was, as he said, because he thought the courts were closed as a result of the lockdown due to the Covid pandemic,

and that he based this knowledge on what he saw on news reports about courts being closed, and trials not being conducted.

25. Beyond that the claimant made no enquiry as to whether the Employment Tribunal was open.

5 26. The Employment Tribunal remained open throughout the pandemic for the purpose of receiving claims and dealing with administrative matters, including speaking to members of the public. It was possible for the claimant to have made enquiry of the Employment Tribunal as to the position, but he did not do so. There was nothing beyond his belief that as a result of the national
10 lockdown, gleaned from general reports about the operation of the courts, and in particular trials, reported in the news upon which he concluded that the Employment Tribunal was unable to deal with this claim. While the Tribunal take into account that the claimant received the ACAS certificate very shortly after the national lockdown was announced, it was unreasonable for the
15 claimant to rely on general reports about the courts and the impact of lockdown on them without making any enquiry with the Employment Tribunal as to the position, at least prior to the end of April, when the time limit expired.

27. The claimant was aware of the importance of time limits, and of presenting his claim on time, and the Tribunal was satisfied that it was possible for the
20 claimant to have made enquiries with the Tribunal Service as to whether it could accept his claim, and it was reasonable to expect the claimant to have made such enquiry and to present this claim prior to 28 April 2020.

28. The Tribunal was not satisfied that it was not reasonably practicable for the claim not to be presented within the time limit, and the effect of that conclusion
25 is time should not be extended in the Section 111(2) of the ERA.

29. Accordingly, the Tribunal does not have jurisdiction to consider this claim.

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**L Doherty
Employment Judge**

**7 December 2020
Date of Judgment**

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Date sent to parties

23 January 2021

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