



## EMPLOYMENT TRIBUNALS (SCOTLAND)

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**Case No: 4104212/20**

**Held in Edinburgh on 5 February 2021**

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**Employment Judge A Jones**

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**Ms N Unthank**

**Claimant  
Represented by:  
Mr D Patterson**

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**Scottish Borders Council**

**Respondent  
Represented by:  
Mr I Davidson, solicitor**

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### **JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

It was reasonably practicable for the claimant to have lodged her claim within the statutory time limit. The Tribunal therefore has no jurisdiction to consider the claim.

#### **Introduction**

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1. This was a preliminary hearing on the question of time bar. The claimant had lodged a claim of unfair dismissal and accepted that this claim had been lodged more than three months after the date of her dismissal. The claimant was represented by her friend and the respondent was represented by Mr Davidson solicitor.

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2. The claimant did not elect to give evidence and Mr Patterson indicated that he would make submissions on her behalf. Mr Davidson had already

provided the claimant and the Tribunal with skeleton submissions and the authorities referred to therein.

### **Findings in fact**

- 5 3. There was no dispute on the facts of the matter. The Tribunal therefore found the following facts to have been established:

The claimant was dismissed on 6 March 2020. The claimant was represented at that time by her trade union.

The claimant contacted ACAS on 28 July 2020.

- 10 An Early Conciliation Certificate was issued on 31 July 2020.

The claimant lodge an ET1 on 5<sup>th</sup> August 2020

### **Submissions**

- 15 4. Mr Patterson, in making submissions on behalf of the claimant followed the format of the skeleton argument of Mr Davidson. The reasons advanced on behalf of the claimant can be summarised as follows:

- The claimant was not aware of the time limit for lodging a claim of unfair dismissal until shortly before she contacted ACAS on 28 July.
- 20 • The claimant's appeal against her dismissal had been unreasonably delayed by the respondent and she had not been advised by the respondent of the relevant time limit for lodging a claim
- 25 • The claimant's trade union representative had not given her any advice about relevant time limits and had not alerted her to the requirement to lodge a claim within three months of her dismissal.

The respondent highlighted that while each case turns on its own facts, there are several principles drawn from previous authorities, in particular;

- 5 • An unawareness of the right to make a claim, or the time limit for exercising them is not of itself an d excuse, unless it appears that the person could not reasonably be expected to be aware of them (**Wall's Meat Co. Ltd, v Khan** 1979 ICR 52)
- 10 • In assessing whether or not the lack of awareness was reasonable, account must be taken of any enquiries the person should have made (**Lowri Beck Services Ltd, Brophy** 2019 EWCA Civ 2490), and
- 15 • If a person retains the services of a skilled advisor, any unreasonable ignorance or mistake on the part of the advisor is attributed to the person (**Dedman v British Building and Engineering Appliances Ltd** 1974 WLR 171)
- 20 • Applying these principles, the respondent submitted that it was not reasonable of the claimant to believe that she should wait until the outcome of her appeal before lodging a claim and that any failure on the part of her trade union to provide her with appropriate advice is a failure assumed by the claimant

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### **Relevant law**

5. Section 101 (1) of the Employment Rights Act 1996 gives employees the right to pursue a claim of unfair dismissal in the Employment Tribunal. Subsection  
30 (2) reads:

“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 –

- 5 (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 that it was not reasonable practical for the complaint to be presented before the end of that period of three months.”

10 The respondent made reference to a number of the leading cases in this area. However, as was also highlighted the test of reasonable practicability if one of fact and not of law (**Palmer and Saunders v Southend-on-sea Borough Council** [1984] IRLR 119).

## 15 **Discussion and decision**

6. The Tribunal considered the relevant facts in this case. It accepted that the claimant was ignorant of the relevant time limit. However mere ignorance is not sufficient in order to meet the test of reasonable practicability. As the respondent highlighted, the question is whether that ignorance was

20 reasonable or not.

7. The Tribunal concluded that the ignorance was not reasonable. In the first instance, the Tribunal noted that the claimant did not take any steps to clarify what time limit might apply until almost five months after she had been dismissed. While the Tribunal appreciated that the respondents had delayed

25 in making arrangements for an appeal hearing against the claimant's dismissal, it would have been reasonable for the claimant to have sought advice on the matter whether from her trade union, the Citizens' Advice Bureau or indeed asked the question of the respondent itself. The claimant is a 51 year old woman who worked as a social care worker for the respondent

30 for 28 years. There was no information before the Tribunal to suggest that she was not capable of understanding time limits or the requirement to lodge a claim. It is noted from a letter sent by the claimant of 21 April 2020 to the

respondent in relation to her outstanding appeal, that she stated 'I would like to know at what stage this situation is as I will need to plan what is next in the process'.

- 5 8. Moreover, the claimant had been advised by a trade union throughout the process leading up to and including her dismissal. The Tribunal did not hear evidence from the claimant so is unaware of what discussions the claimant may have had with her trade union representative regarding what steps may be appropriate for the claimant to have taken once she was dismissed. If the trade union had given her inaccurate or misleading advice, then that is of no assistance to her in the matter before the Tribunal. That is a matter between 10 her and the trade union. Equally however, it would have been reasonable of the claimant to make enquiries of the trade union in relation to time limits or steps which were required to be taken by the claimant to protect her position.
- 15 9. In all of these circumstances, the Tribunal concluded that it was reasonably practicable for the claimant to have lodged her claim within the statutory period. Therefore, the Tribunal does not have jurisdiction to consider her claim of unfair dismissal.

20 Employment Judge: Amanda Jones  
Date of Judgment: 09 February 2021  
Entered in register: 17 February 2021  
and copied to parties