



**EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 4100566/2020**

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**Held in Glasgow on 14 September 2020**

**Employment Judge L Doherty**

10 **Ms S McAvoy**

**Claimant  
In Person**

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**Blue Triangle Housing Association**

**Respondent  
Represented by:  
Mr Caldow -  
Solicitor**

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**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The judgement of the Employment Tribunal is that the claim was presented out with the statutory time limit in the Section 111 of the Employment Rights Act 1996 and the Tribunal does not have jurisdiction to consider the claim.

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**REASONS**

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1. The claimant presented a claim of unfair dismissal to the Employment Tribunal on 29 January 2020. There is an issue of the time bar, the claim being lodged out with the statutory three months' time limit. This Preliminary Hearing (PH) was fixed to consider whether the time limit should be extended in order to allow the Tribunal jurisdiction to deal with the claim.
2. The PH took place by way of videoconference. The claimant appeared on her own behalf, and the respondent was represented by Mr Caldow, solicitor.
3. The parties produce a joint bundle of documents, and the claimant give evidence on her own behalf.

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**Findings in fact**

4. The claimant, whose date of birth is the 24/07/1967, was employed by the respondents as a Support Worker from 2014 until her dismissal in September 2019. The claimant's employment was terminated on 21 or 22 September 2019.
5. The claimant was certified as unfit for work by her GP due to work-related stress from around 9 July 2019. The claimant remained unfit for work due to stress and anxiety throughout the disciplinary process which took place in September/October 2019. The claimant initially visited her GP approximately once every two weeks. By January 2020, she was visiting her GP around once a month. The claimant continues to experience stress, depression and anxiety. The claimant also experiences problems as a result of a throat condition.
6. The claimant found the experience of being accused of misconduct, being called to a disciplinary procedure, and being dismissed, very stressful.
7. After the termination of employment, the claimant also experienced stress because of the loss of her job, and the financial implications of this. The claimant is a single parent.
8. The claimant was invited to attend a disciplinary hearing on 17 September 2019 as a result of a complaint by a service user. The respondents decided to dismiss the claimant, and wrote to her confirming that in a letter dated 20 September. In that letter the claimant was advised that she had the right to appeal against the decision to dismiss.
9. The claimant lodged a written appeal on 22 September. An appeal hearing took place on 14 October, which the claimant attended. The appeal was unsuccessful, and the respondent wrote to the claimant confirming their decision on 27 September 2020.
10. The claimant had the assistance of a Trade Union representative from Unison in the conduct of her disciplinary and appeals procedures. She obtained advice from her Trade Union representative about the disciplinary and appeal

procedure, and about how she could pursue an unfair dismissal claim against the respondents after her dismissal.

11. The claimant wished to make an unfair dismissal claim against her employers was advised by her Trade Union representative to contact ACAS.

5 12. The claimant contacted ACAS on 24 October 2019. She received the ACAS Certificate on 24 November 2019. Part of the ACAS certificate states:

*“Please keep this Certificate are securely as you will need to quote the reference number (exactly as it appears above) in any Employment Tribunal application concerning this matter.”*

10 13. The claimant looked online at the ACAS Guidance on presenting an Employment Tribunal claim. She was vaguely aware that there was a three-month time limit for the presentation of such a claim.

14. The claimant contacted ACAS around 24 or 25 November. She had a conversation she had with the ACAS Officer, by the name of Ismail at that time. Due to an error on her part she formed the impression that ACAS would take matters further for her. She formed this impression because the ACAS Officer referred to ‘we will do this’ or ‘we will do that’, in the course of the conversation she had with him.

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15. The claimant was aware from speaking to the ACAS officer in November that her claim had to be lodged by 20 January.

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16. The claimant did not hear anything by 20 January, and she contacted ACAS around that time. At that stage she was told by the ACAS officer with whom she spoke that the claim should have been presented by her to the Employment Tribunal.

25 17. The claimant presented her claim to the Employment Tribunal on 29 January 2020.

18. After her employment with the respondents came to an end the claimant looked for other employment. She was recommended by a friend for a job in a Call Centre, and she undertook a telephone interview for this post. Further

to this interview she was successful in gaining an offer of employment. The claimant's employment commenced in the Call Centre on around 18 November. The claimant only worked in the Call Centre for a matter of days. She did not enjoy the job and found it difficult to settle into after her long experience of working in the Care Sector.

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19. The claimant continued to look for employment, and was successful in getting another job, which commenced in February 2020.

### Note on Evidence

20. There were no significant issues of credibility in relation to the claimant's evidence, and the Tribunal did not form the impression that the claimant in any way such to deliberately mislead the Tribunal.

21. There was however one issue of disputed fact upon which the Tribunal considered it relevant to make a determination. That was whether the claimant formed the Impression that ACAS would pursue her claim for her as a result of her own error. It was put to the claimant in cross examination that it was simply her mistake which caused her misunderstanding that ACAS were going to pursue her claim for her. The claimant responded that she was under the impression ACAS would do it, and it was a miscommunication. She said she formed the impression because the ACAS officer said in the course of the conversation that she had with them that 'we' would do this or that.

22. The claimant was candid in accepting that she had not been specifically told by ACAS that they would lodge the claim on her behalf, rather putting it down to a 'miscommunication'. The claimant did not give specifics of what the ACAS officer said 'we' would do which caused her to form the impression which she did. The claimant accepted she was told by ACAS in November that her claim had to 'be in' by 20 November. Taking these factors into account the Tribunal was satisfied on balance that it was an error on the claimant's part which led her to conclude following her conversation with the ACAS officer that ACAS were going to pursue the matter with the Employment Tribunal for her.

**Cases before the Tribunal**

23. Mr Caldow produced the following list of cases.

- *Porter v Bandridge Ltd 1978 IRLR 2712*
- *Wall's Meat Co Ltd v Khan 1978 IRLR 499 16*
- 5 • *Dedman v British Building and Engineering Appliances Ltd 1974 1 All ER 520*
- *Asda Stores Ltd v Kauser 2007 WL 2944848 37*
- *Governing Body of Sheredes School v Davies 2016 WL 04721353.*
- *DHL Supply Chain v Fazackerly 2018 WL 02045086*
- 10 • *Dentressangle Logistics Ltd v Hutton 2013 WL 5905564*
- *Cullinane v Balfour Beatty Engineering Services Ltd 2011 WL 1151660*
- *Golub v University of Sussex 1981 WL 695717*

**Submissions***Claimant's submissions*

- 15 24. The claimant submitted that she was experiencing worry, stress and depression, and was not thinking properly as a result of the accusations made against her, and her dismissal, and this accounted for the claim being lodged late. She submitted that as soon as she contacted ACAS in the middle of January 2020 and realised what had gone wrong, she submitted a claim. The
- 20 The claimant pointed to the fact that this claim was lodged on 29 January, and was therefore only eight or nine days late; she understood that the 20 January was the last date for submission of the claim.
25. The claimant also submitted that she had a good support network which had allowed her to carry on during these times.

*Respondents Submissions*

26. Mr Caldwell for the respondent's reminded the Tribunal that the burden of proof rests with the claimant to establish that it was not reasonably practicable for the claim to be presented in time (the case of *Porter* above). He referred particularly to paragraph 6 of that case, where the court said it was a duty on the claimant to show precisely why the claim was not presented in time.
27. Mr Caldwell submitted that the claimant has not done so.
28. Mr Caldwell referred to the cases of *Walls Meat* and *Dedman*, (above), and reminded the Tribunal that ignorance of the time limit is not a reasonable excuse for late presentation of the claim, if that ignorance itself is not reasonable.
29. Mr Caldwell also referred to the case of *Asda Stores* (above), and the judgement of Lady Smith, at paragraphs 17 and 42. This case, Mr Caldwell submitted, outlined that there needs to be more than a conclusion that the claimant was stressed in order for the Tribunal to properly exercise its discretion to extend time.
30. Mr Caldwell submitted that the claimant had not produced medical evidence in support of her position. While he accepted that this was not fatal to the Tribunal's conclusion to the effect that the claimant was suffering from stress, he submitted that it was a factor which the Tribunal should take into account. Furthermore, it was relevant in this case that the claimant had been able to take part in the disciplinary process contact, ACAS, and look for other work.
31. Mr Caldwell submitted that it could not be concluded that the claimant had been misguided or given misinformation by ACAS. The claimant had given insufficient detail about what ACAS is said to allow the Tribunal to conclude that she had been mis-advised.
32. Mr Caldwell submitted that this case could be distinguished from the DHL case (above) as it could not be concluded that specific advice was given to the claimant.

**Consideration**

33. Section 111 of the ERA provides:

5 “(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 provisions of this section, an employment tribunal shall not consider a complaint under this section unless it is presented to the tribunal –*

10 (a) *before the end of the period of three months beginning with the effective date of termination, or*

(b) *within such a 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.”*

15 34. Section 207B of the ERA and Section 18A of the Employment Tribunal’s Act 1996 have the effect of extending the relevant time limit to take account of the period of time during which the ACAS Early Conciliation will take place.

20 35. There was an issue as the date of dismissal by a factor of one day in this case, the claimant stating that her ET1 that she was dismissed on 22 September, and the respondent stating it was 21 September. Mr Caldow accepted at the start of the PH that nothing material turned on this. The Tribunal has therefore taken the date of dismissal as 22 September.

25 36. The date of presentation of the ACAS Certificate was 24 October, and the date of issue of the certificate was 24 November. The time limit for the presentation of the claim under Section 111 is therefore extended to 20 January. The claim was presented in 29 January, and is therefore presented late.

37. The Tribunal has to adopt a two-stage approach to that question of whether to extent time to consider the claim.

38. The first is to consider whether it was not reasonably practicable for the claimant to be lodged within the statutory time limit. If the Tribunal is satisfied that it was not reasonably practicable for claimed to be lodged on time, it then has to go on to address whether the claim was lodged within a reasonable period thereafter.
39. What is reasonably practicable as a question of fact for the Tribunal. The burden of proof rests with the claimant to show that it not reasonably practicable for the claim to be presented in time. 'Reasonably practicable' has been held to mean something like 'reasonably feasible'. Lady Smith, in the *Asda Stores* case, referred to by Mr Caldow, explained the test as follows:
- 'the relevant test is not simply a matter of looking at what was possible but to ask whether, on the facts of the case is found, it was reasonable to expect that which was possible to have been done.'*
40. The Tribunal accepted in this case that the claimant had been certified as unfit for work on account of work stress and depression and had been unfit for work from 10 July. It accepted that she been certified as unfit for work because of stress throughout the disciplinary procedure. It also accepted that the loss of the claimant's job occasioned her stress and worry, including financial worry.
41. The Tribunal however was unable to conclude that the impact of the claimant's stress and depression was such that it interfered with her ability to engage in the disciplinary process with her employers at the disciplinary and appeals stage, and thereafter to pursue matters further with ACAS.
42. Furthermore, the claimant was able to engage with the search for new employment, and successfully undertook a telephone interview obtaining employment in November 2019. The reason the claimant did not remain long in that employment was she did not enjoy it after her lengthy experience of working in the Care Sector. The claimant was able to engage further looking for work after she left that job, obtaining a job in February 2020.
43. The claimant's engagement with the disciplinary process, the pursuit of a claim by contacting ACAS, and her and her engagement with looking for



alternative employment and taking up such employment, are all indicators that the claimant's mental state was not such that it rendered it not reasonable practicable for her to have lodged a claim within the statutory time limit. The fact that the claimant was able to engage with these matters supported the conclusion that she was also able to engage with the pursuit of a claim of unfair dismissal before the Employment Tribunal. The Tribunal is further supported in this conclusion in that the claimant candidly accepted that she had obtained advice from her Trade Union representative about the pursuit of a claim, and that she had looked at advice and guidance online from ACAS about pursuing a claim and had contacted ACAS.

44. The claimant accepted that she was aware of the time limits for presentation of a claim to the Employment Tribunal, albeit she said that she was vaguely aware of them. She accepted that when she contacted ACAS in November, she was told that her claim 'had to be in' by 20 January. The Tribunal was therefore unable to conclude that the claimant was unaware time limit for presenting a claim, or that it was reasonable for her to be so unaware.

45. The Tribunal then considered the claimant's position that she was under the impression that ACAS was going to pursue the claim on her behalf. The claimant said that she formed this impression because the ACAS officer said; 'we will do this' or 'we will do that'. The claimant did not give any specifics of what exactly the ACAS officer said 'we' would do which gave rise to that impression on her part. The Tribunal could not conclude, and indeed it was not suggested by the claimant, that the ACAS officer advised her that ACAS would pursue a claim on her behalf. In the circumstances the Tribunal did not conclude that the claimant had been misadvised. Rather as indicated above under the *Findings in Fight*, the Tribunal was satisfied that the claimant's impression that ACAS would pursue matters on her behalf was formed due to a mistake or error on her part.

46. The Tribunal considered whether the fact that the claimant had as a result of her own mistake formed the impression that ACAS would pursue matters on her behalf, with a sufficient basis for it to conclude that it was not reasonably practicable for the claim to be presented in time.

47. In considering this question the Tribunal considered the facts it had found. These, in short, were that while the claimant was suffering from stress and depression, but that she was able to engage in the process of presenting a claim to the employment Tribunal. The claimant had the benefit of Trade Union representation the course of her disciplinary and appeals process, and obtained advice from her Trade Union representative about lodging an unfair dismissal claim with the Employment Tribunal. The claimant was aware of the fact that there were time limits for the presentation of that claim, and by November 2019 was aware of the time limit which applied to her claim. As a result of a mistake on her part the claimant formed the impression from a conversation with an ACAS officer that ACAS would pursue matters on her behalf. The claimant was not told by the ACAS officer that ACAS would do so.
48. The Tribunal then considered whether on those facts it was reasonable to expect that which was possible, to have been done. The Tribunal concluded that it was possible for the claim to be presented in time and taking into account the facts which it had found, it was reasonable to expect that to have been done.
49. Having reached this conclusion, the Tribunal does not have to go on to consider the second limb of the test in Section 111 (2) of the ERA.
50. The effect of the Tribunal's conclusion that the claimant has not demonstrated that it was not reasonably practicable for the claim to be lodged on time, is that the Tribunal does not have jurisdiction to consider this claim.

51. These proceedings are now at an end.

5 Employment Judge: L Doherty  
Date of Judgment: 16 September 2020  
Entered in register: 18 September 2020  
and copied to parties