EMPLOYMENT TRIBUNALS

Claimant: Wouhaid Nasser
Respondent: Brompton Bicycle Ltd

Heard at: Watford (hybrid hearing) **On:** 6 April 2021, & 3 June 2021 in Chambers

Before: Employment Judge Shastri-Hurst

Representation
Claimant: In person
Respondent: Mr G Dando (solicitor)

JUDGMENT

1. The Claimant's claim is dismissed as the Employment Tribunal does not have jurisdiction to consider his claim, due to it being out of time.

REASONS

Introduction

1. By claim form of 29 October 2019, the Claimant brings a claim of unfair dismissal pursuant to s98 of the Employment Rights Act 1996 ("ERA"). The Respondent defends the claim on the basis that the reason for dismissal was a fair one, namely conduct, and that the dismissal was fair in all the circumstances.

2. The Claimant was employed by the Respondent from 1 April 2011 to 26 February 2019. During the course of his employment, on 31 July 2018, there was an incident at work that led to the Claimant being suspended on 1 August 2018, and subjected to a disciplinary process.

3. The Claimant was informed of the decision to dismiss him on 22 January 2019, with that dismissal taking effect on 26 February 2019 – p78-81. The Claimant appealed this decision. The appeal was dealt with and the dismissal upheld. The Claimant was informed of this decision by letter of 11 February 2019 – p88.

4. From 1 August 2018 to 25 February 2019, the Claimant was on sick leave, signed off due to stress at work – pp31-37.

5. The Claimant underwent the ACAS early conciliation process between 14 March 2019 ("Day A") and 9 April 2019 ("Day B") – p2. The Claimant did not present a claim at or around that time. He in fact contacted ACAS again on 10 October 2019, at which point a second ACAS certificate was generated, correcting a spelling mistake in the Claimant's name – p3.

6. The Claimant then presented his claim, 19 days later, on 29 October 2019 – p4.

Hearing 6 April 2021

7. The matter was set down for an open preliminary hearing before me on 6 April 2021 in order to consider the following issues:

    7.1. To determine whether it was reasonably practicable for the Claimant to present his claim for unfair dismissal within the primary time period specified in s111 ERA;

    7.2. If not, to determine whether the Claimant presented his claim within a reasonable further period;

    7.3. To determine whether any of the Claimant's claims should be struck out as having no reasonable prospect of success (under rule 37 of the Employment Tribunal Rules of Procedure 2013 ("the Rules")); or

    7.4. To decide whether a deposit order should be made on the grounds that the Claimant's claims stand little reasonable prospects of success (under r39 of the Rules).

8. At the hearing on 6 April, the Claimant represented himself, although he has had assistance from Kamberley Solicitors. We were greatly assisted by Mr Bamatraf, an interpreter in the Arabic language with Algerian dialect, who was present in order to translate for the Claimant. The Respondent was represented by Mr Dando. I also was provided with a bundle of 88 pages, as well as an addition pdf document of 9 pages regarding correspondence between the Claimant and ACAS ("the ACAS pdf"). Within the bundle, I had two witness statements from the Claimant; one regarding time limit issues, the other regarding the alleged facts surrounding the (now withdrawn) discrimination claim.

9. Unfortunately, we ran out of time to deal with submissions and judgment on 6 April 2021. We did manage to conclude the Claimant's evidence. I therefore ordered parties to provide written submissions sequentially, with the Respondent providing their submissions first, followed by the Claimant. Given the Claimant's language barrier, I checked that he was satisfied that he (with the assistance of his solicitors) would be able to comply with an order for written submissions (as opposed to listing the matter for a part-heard hearing): he was content that he would be able to do so within the time frame permitted.

10. I now also therefore have the benefit of both parties' submissions, for which I am most grateful.

11. A full history of the 6 April 2021 hearing is set out in the Record of Preliminary Hearing following that hearing; I do not propose to repeat it here. This Judgment should be read in conjunction with that Record.

Primary time limit

12. Under s111 of the ERA, a claim for unfair dismissal under s98 ERA must be presented before the end of three months, beginning with the effective date of termination. The primary time limit in this case would therefore be 25 May 2019. It is however then necessary to extend that time limit under the ACAS early conciliation provisions at s207B ERA, which provides:

> "(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.
> (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."

13. The period at s111(3) ERA is 26 days. This therefore is added on to the primary time limit of 25 May 2019, to give a revised time limit of 20 June 2019.

14. Turning to s111(4) ERA, the period set out therein would end on 9 May 2019. Therefore, the revised time limit of 20 June 2019 does not fall within the s111(4) period.

15. Having applied the ACAS early conciliation extension provisions, the primary time limit for the Claimant's claim to be presented was 20 June 2019. Given that his claim was not presented until 29 October 2019, his claim stands as being 4 months out of time.

ISSUES

16. The hearing on 6 April 2021 was listed to deal with the four preliminary issues as set out above, and repeated here for completeness:

    16.1. To determine whether it was reasonably practicable for the Claimant to present his claim for unfair dismissal within the primary time period specified in s111 ERA;

    16.2. If not, to determine whether the Claimant presented his claim within a reasonable further period;

    16.3. To determine whether any of the Claimant's claims should be struck out as having no reasonable prospect of success (under rule 37 of the Employment Tribunal Rules of Procedure 2013 ("the Rules")); or

    16.4. To decide whether a deposit order should be made on the grounds that the Claimant's claims stand little reasonable prospects of success (under r39 of the Rules).

LEGAL FRAMEWORK

Extension of time

17. S111 ERA makes provision for an extension of time for unfair dismissal cases when the primary time limit is missed, as follows:

> "(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 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."

18. This legislation therefore provides for a two stage test for tribunals:

    18.1. Firstly, the tribunal must be satisfied that it was not reasonably practicable for the Claimant to have presented his claim on or before 20 June 2019; and

    18.2. Secondly, if it was not reasonably practicable, the tribunal must be satisfied that the period from 20 June to 29 October 2019 was a reasonable further period to enter his claim.

19. The burden of proof regarding both limbs of this test falls to the Claimant.

Reasonably practicable

20. The first question must be why the primary time limit of 20 June 2019 was missed. Then I must ask whether, notwithstanding those reasons, was the timely presentation of the claim still reasonably practicable.

21. The meaning of "reasonably practicable" has been held to mean "*reasonably feasible*"**–** Palmer & Saunders v Southend-on-Sea Borough Council [1984] 1 All ER 945. What is "*reasonably feasible*" has been held to sit somewhere between the two extremes of what is reasonable, and what is physically possible.

Ignorance/misunderstanding

22. Where the reason for missing the primary time limit is said to be ignorance or mistake, the question remains whether, in all the circumstances, it was reasonably practicable for a litigant to have presented the claim in time.

23. The Court of Appeal has stated, in a case of mistake, that the term "*reasonably practicable*" should be given liberal meaning so as to favour a claimant – Lowri Beck Services Ltd v Brophy (12 December 2019, unreported). One factor of relevance to ignorance/mistake cases will be whether a claimant has instructed a professional adviser. Where a litigant has no professional advice, they need only show that their ignorance or mistake was reasonable. As per Lord Denning in Wall's Meat Co Ltd v Khan [1979] ICR 52:

> "It is simply to ask this question: had the man just cause or excuse for not presenting his complaint within the prescribed time? Ignorance of his rights – or ignorance of the time limit – is not just cause or excuse unless it appears that he or his advisers could not reasonably be expected to have been aware of them. If he or his advisers could reasonably have been so expected, it was his or their fault, and he must take the consequences."

24. The question becomes whether the mistake or ignorance is itself reasonable. Brandon LJ in Khan held:

> "The performance of an act, in this case the presentation of a complaint, is not reasonably practicable if there is some impediment which reasonably prevents, or interferes with, or inhibits, such performance. The impediment may be physical, for instance the illness of the complainant or a postal strike; or the impediment may be mental, namely, the state of mind of the complainant in the form of ignorance of, or mistaken belief with regard to, essential matters. Such states of mind can, however, only be regarded as impediments making it not reasonably practicable to present a complaint within the period of three months, if the ignorance on the one hand, or the mistaken belief on the other, is itself reasonable. Either state of mind will, further, not be reasonable if it arises from the fault of the complainant in not making such inquiries as he should reasonably in all the circumstances have made …"

Illness

25. In order to be able to extend time as a result of a litigant's poor health, it is necessary for a tribunal to make findings as to the nature of any illness and the extent to which it affected a litigant's ability to commence litigation. It also requires findings on the effect of the illness throughout the full three month primary limitation period.

26. The tribunal, in questioning what was reasonably practicable, should look carefully at any change in the Claimant's circumstances (including fluctuating health issues) throughout the full duration of the primary limitation period, as well as taking into account at what stage of that primary period the changes occurred – Schultz v Esso Petroleum Ltd [1999] IRLR 488.

Reasonable time period

27. What is considered reasonable depends on the circumstances at the time. It is not just a question of the time period that has passed since the expiry of the limitation period. For example, as the Claimant points out in his submissions, a delay of almost five months has been found to be reasonable – Locke v Tabfine Ltd t/a Hands Music Centre UKEAT/0517/10. Having said that, the tribunal does not have unfettered discretion to permit claims to continue, regardless of the length of delay – Westward Circuits Ltd v Read [1973] ICR 301. The length of delay is one factor to be considered, but not to the exclusion of all other relevant factors in any given case – Marley (UK) Ltd v Anderson [1994] IRLR 152.

28. A claimant must present his claim as soon as possible once the impediment stopping him having presented the claim in the initial three month period is removed.

29. It is necessary to consider the relevant circumstances throughout the period of delay and, at each point, what knowledge the Claimant had, and what knowledge he should have had if he had acted reasonably in all the circumstances – Northumberland County Council v Thompson UKEAT/209/07.

Strike out

30. The Respondent applies to strike out the Claimant's claims under r37(1)(a) of Sch 1 of the Rules, which provides as follows:

> "At any stage of the proceedings, either on its own initiative or on the application of a party, a tribunal may strike out all or part of a claim on any of the following grounds:
>
> (a) That it is scandalous or vexatious or has no reasonable prospect of success; ..."

31. Generally, this power to strike out should only be used in rare circumstances – Tayside Public Transport Co Ltd (t/a Travel Dundee) v Reilly [2012] IRLR 755. It is understood that, as a general rule of thumb, claims should not be struck out where there is a dispute of facts that go to the core of the claim – Ezsias v North Glamorgan NHS Trust [2007] IRLR 603.

32. I am also assisted by the case of Balls v Downham Market High School and College [2011] IRLR 217, in which Lady Smith held:

> "When strike out is sought or contemplated on the ground that the claim has no reasonable prospects of success, the structure of the exercise that the tribunal has to carry out is the same; the tribunal must first consider whether, on a careful consideration of all the available material, it can properly conclude that the claim has *no* reasonable prospects of success. I stress the word "no" because it shows that the test is not whether the claimant's claim is likely to fail nor is it a matter of asking whether it is possible that his claim will fail. Nor is it a test which can be satisfied by considering what is put forward by the respondent either in the ET3 or in submissions and deciding whether their written or oral assertions regarding disputed matters are likely to be established as facts. It is, in short, a high test. There must be *no* reasonable prospects."

33. Only in exceptional circumstances will a claim with contested facts be struck out – Ezsias. However, there are some caveats to the general approach of caution towards strike out applications. For example, when:

    33.1. "*It is instantly demonstrable that the central facts in the claim are untrue*" – Tayside;

    33.2. There is no real substance to the factual assertions a claimant makes, particularly in light of contradictory contemporaneous documentary evidence – ED & F Man Liquid Products v Patel [2003] EWCA Civ 472;

    33.3. There are no reasonable prospects of the facts needed to find liability being established. This is caveated by the need to be aware of the danger of reaching that conclusion without having heard all the evidence – Ahir v British Airways plc [2017] EWCA Civ 1392 CA.

34. When considering an application to strike out, a claimant's claim must be taken at its highest, as it is set out in the ET1, "*unless contradicted by plainly inconsistent documents*" – Ukegheson v London Borough of Haringey [2015] ICR 1285. It is important to take into account that a claim form entered by a litigant in person may not put that claimant's case at its best as had it been properly pleaded – Hasan v Tesco Stores Ltd UKEAT/0098/16. The best course of action in such a scenario is to establish exactly what the claimant's

claim is, and, if still in doubt about prospects, make a deposit order – Mbiusa v Cygnet Healthcare Ltd UKEAT/0119/18.

Deposit order

35. The tribunal has the power to make deposit orders against any specific allegations or arguments that it considers have little reasonable prospect of success under r39 of the Rules:

> "39(1) Where at a preliminary hearing (under rule 53) the tribunal considers that any specific allegation or argument in a claim…has little reasonable prospect of success, it may make an order requiring a party ("the paying party") to pay a deposit not exceeding £1,000 as a condition of continuing to advance that allegation or argument.
>
> 39(2) The Tribunal shall make reasonable enquiries into the paying party's ability to pay the deposit and have regard to any such information when deciding the amount of the deposit."

36. The rationale of a deposit order is to warn a claimant against pursuing claims with little merit, which may leave them open to a risk of costs should they proceed with the claim and lose on the same basis as identified as the reason for making a deposit order.

37. The purpose of such an order is not to restrict disproportionately access to justice, hence any order made must be for an amount that is affordable by a party, and can be realistically complied with – Hemdan v Ishmail and anor [2017] IRLR 228.

38. If I decide to make a deposit order, I must give reasons, not only for the fact of the order, but also for the amount of that order – Adams v Kingdon Services Group Ltd EAT/0235/18.

Findings of fact

39. I have only made findings of fact so far as they are relevant to the applications before me. Where I have not covered certain facts, it is because they are not relevant to the issues I have set out above.

The Claimant's communications with ACAS

40. Having received notice that his appeal process had upheld his dismissal, the Claimant sought advice and assistance from his trade union representative, who suggested he contact ACAS. The Claimant duly did so on 14 March 2019. The Claimant's understanding was that ACAS would take his claim forward to the tribunal on his behalf if no settlement was reached at the end of the early conciliation period. The Claimant received the first ACAS early conciliation certificate on 9 April 2019, in which his name was misspelt as "*Masser*".

41. The Claimant waited for ACAS to get back in touch, and eventually chased them by telephone several months later, on 9 October 2019 (see the ACAS pdf). When asked why he contacted ACAS in October, the Claimant told me he "*contacted them when [he] needed them*": it remains unclear to me why the Claimant waited until 9 October to chase ACAS.

42. When the Claimant did eventually chase ACAS in October 2019, he was told that the ACAS certificate had been issued months before, and that was the end of ACAS's responsibility (see para 12 p29). The Claimant asked ACAS to issue a new certificate to correct the error in his name. This was done and sent to the Claimant on 10 October 2019. It was at this point in the chronology that the Claimant realised that, due to a language barrier, he had misunderstood ACAS's remit.

43. In cross-examination, the Claimant confirmed that he knew, as of 10 October 2019, that he needed to issue his claim urgently. The Claimant telephoned the tribunal service, at which point he was advised that he could still enter a claim form, explaining why it was late.

44. The Claimant instructed Kamberley Solicitors on 24 October 2019. In the Claimant's evidence to me he stated that, on that date, a solicitor informed him that his claim was out of time. The Claimant told me that, between 24 and 29 October 2019, he did not have the money to pay for a solicitor to present his claim.

Ignorance/mistake

45. I accept that the Claimant has difficulties (understandably) with the English language: he required an interpreter at today's hearing, for example. He accepted in his evidence that the misunderstanding regarding responsibility for submitting a claim was due to his lack of understanding, rather than any representation made to him by ACAS.

46. I record below a summary of the communications sent by ACAS to the Claimant, which are contained within the ACAS pdf:

    46.1. On 14 March 2019 at 1638hrs, the Claimant was sent two links, one being "Early Conciliation explained";

    46.2. On 21 March 2019 at 1459hrs, the Claimant was sent the same link;

    46.3. On 22 March 2019 at 1104hrs, the appointed ACAS conciliator emailed the Claimant, specifically including the sentence:

> "If you haven't told us already, you should tell me … if you cannot speak English …
> Further information about our conciliation role can be found at www.acas.org.uk/ic. If you would like a paper copy of this, please let me know"

    46.4. On 9 April 2019 at 1018hrs, on the date of release of the ACAS certificate, the Claimant was advised by email as follows:

> ACAS cannot advise you about when a tribunal claim should be submitted. It is your responsibility to ensure that any tribunal claim is submitted on time.

    46.5. On 9 April 2019 at 1018hrs, the Claimant was advised that the Respondent was not willing to settle the potential claim. The conciliator went on to say:

> Please be aware that there is no legal requirement for you to make a claim because you have notified ACAS of an intention to do so. If you go on to make a claim,

however, you may find this link to the Citizens Advice Bureau's website in respect of how to do so/time limits for doing so helpful…

46.6. On 10 October 2019 at 1648hrs, the Claimant was advised once again that it was his responsibility, not ACAS's, to ensure his claim was submitted in time.

47. The Claimant clarified in his evidence to me that received advice from his trade union representative following his dismissal. I find, on balance, that the Claimant had the opportunity to seek assistance from his trade union representative, based on this evidence, particularly when coupled with the following points:

47.1. During cross-examination, the Claimant confirmed that he had help from a trade union representative, who told him to contact ACAS;

47.2. The Claimant in his statement at para 9 specifically recalls "*I sought advice and assistance from my Trade Union*";

47.3. He had a trade union representative, Jason Kay, present at the internal investigation, the disciplinary hearing and the appeal hearing – pp68, 75 & 84. The Claimant told me that this was the same gentleman who advised him to contact ACAS;

47.4. At para 4 of the Claimant's submissions, it is reiterated that the Claimant sought help from his trade union at the time of his dismissal;

47.5. In cross-examination, the Claimant was asked whether he had access to Mr Kay at the time of his dismissal and thereafter. The Claimant said that Mr Kay was not available all the time. This implies that the Claimant was still able to contact Mr Kay, even if he did not always pick up the telephone.

48. The Claimant told me that, because of the language barrier, he did not understand everything that his trade union representative told him when he asked for advice.

<u>Error in the ACAS early conciliation certificate</u>

49. The Claimant's name is spelt incorrectly in the certificate dated 9 April 2019: it is spelt as "Masser". This error was corrected in the October certificate. The Claimant did not indicate why he asked for the error to be corrected, although I note in his submissions it is said that this was on the advice of the tribunal service in their telephone call in October 2019.

50. I consider that such a minor spelling error in a name would not be fatal to the Claimant presenting a claim. This is an error that could fall under the rejection provisions of the Rules, which provide at r12(1)(e) that a claim form can be rejected if the name of the Claimant on the claim form is not the same as the name of the Prospective Claimant on the early conciliation certificate. Such an error need not lead to rejection of the claim form when an employment judge is satisfied that the Claimant made an error and it would not be in the interests of justice to reject the claim – r12(2A).

51. In any event, and more importantly, the Claimant was provided with the original certificate containing the error on 9 April 2019. If he had felt it necessary for the mistake to be corrected before he submitted his claim form, he had the offending certificate from 9 April 2019. I have been given no other reasons, other than those already set out above, why the Claimant waited until 9 October 2019 to contact ACAS again.

52. Further, this is not a case where he presented an ET1 claim that was rejected due to this error; therefore, he cannot run the argument that this advice from the tribunal service in any way affected the timing with which he entered his claim form. The production of a second certificate does not alter the position regarding the primary time limit as set out above.

Illness

53. The Claimant mentioned in his evidence to me that, during the six month period between April and October 2019 (the occasions on which he contacted ACAS), he was in bed with depression. In his witness statement, he stated that he was extremely unwell around the time of his dismissal (see para 9 p29).

54. Nowhere in the bundle do I see any medical evidence or fit notes to support the Claimant's contention that he was extremely unwell (or had any health issues at all) at any time following his dismissal. He told me that he has no fit notes as he was not required to produce them for his work with Uber; work that he undertook during and after his employment with the Respondent. However, I also have no GP records, and no letters from any health care professionals at all to cover the period from 26 February 2019 onwards.

55. In the Claimant's claim form, he stated that, following his dismissal from the Respondent, he continued to work for Uber. This implies that there were at least some periods during the primary time limit during which the Claimant was fit enough to drive. In his evidence, the Claimant confirmed that, between April and October 2019, "*there were some periods when I felt good to drive and some where I did not feel good to drive*". He did however contradict himself: when asked whether there were periods he worked after his dismissal, he replied "*no, I was on sick leave, not working*". He contradicted himself yet again by saying "*I was poorly in that period, but when I feel good, I go to work on limited hours*".

56. On balance, I find that the Claimant continued to work for Uber following his dismissal from R. I have no evidence from Uber, or from the Claimant, to give me an indication of how sporadic or otherwise that work was. I am however satisfied that there were days in the period from his dismissal up to and including 29 October 2019 when the Claimant was well enough to drive professionally.

57. When asked by me whether his health had improved at all since 2019, the Claimant said, "*the problem I am having I will live with it*". On the Claimant's evidence therefore, it is not the case that there was a positive change in his health that enabled him to pursue litigation in October 2019.

58. I have no doubt that the news of dismissal was deeply troubling for the Claimant. However, given the lack of evidence as to the Claimant's health throughout the primary time period, or thereafter, I am unable to make findings

as to the nature of any illness, and the impact any illness had on his ability to pursue litigation throughout that period. Without supportive contemporaneous evidence, I cannot be satisfied that his health was so poor as to be an impediment to the Claimant taking steps to further his claim.

CONCLUSIONS

Why was the primary time limit missed?

59. The Claimant in his submissions (para 10) sets out five factors that I am asked to consider:

    59.1. The Claimant is a dutiful husband and loving father of four and has been employed by the Respondent for over seven years with no prior history of misconduct save for the verbal incident;

    59.2. English is not his first language and he has difficulties in understanding and communicating in complex terms, such as legal wordings and legal procedures;

    59.3. He was the subject of harassment, bullying and discrimination by his seniors during his tenure with the Respondent and the situation had worsened in 2017/2018;

    59.4. At all times, the Claimant has put his family's welfare as main priority [*sic*] and he has kept silent to his treatment [*sic*] to ensure he could continue to provide for his family;

    59.5. The verbal incident, the associated fallout and the need to provide for his family has proven too much for the Claimant and he was placed on official medical leave between 1 August 2018 and 25 February 2019.

60. Unfortunately, the only factor amongst those five that is relevant to my decision, and falls within the legal framework I have set out above, is "factor b", namely the Claimant's difficulties in understanding. The other factors may well lead to me having some sympathy with the Claimant, however they are not strictly relevant to the legal tests I have to apply. Although ill health is a relevant issue (and one that I will consider below), "factor e" only references ill health prior to the Claimant's dismissal: this therefore does not help to explain the delay in presenting a claim based upon that dismissal.

Ignorance/mistake

61. The question, as set out in Khan, then becomes whether the Claimant could reasonably be expected to have been aware of the fact that it was his responsibility to submit the claim, rather than the responsibility of ACAS.

62. I find that the language barrier relied upon by the Claimant did not mean that he was incapable of understanding everything told to him by ACAS and the trade union. I note that he has been able to work perfectly successfully, both at the Respondent and with Uber, with this language barrier. He was also able to go through the ACAS early conciliation process in March/April 2019 on his own.

63. The correspondence from ACAS, provided in black and white in email, is clear. Had the Claimant experienced any difficulty in understanding the emails from ACAS, or the advice given to him by his trade union representative, he could and should have asked someone, whether that be his trade union, ACAS, or another friend/colleague, to help him with that understanding. This is particularly so when one of ACAS's emails expressly references the option to contact them and let them know if one does not speak English.

64. I do not consider the Claimant's misunderstanding as to whose responsibility it was to present the ET1 to have been a reasonable one. Had he made such inquiries as I find he should reasonably have done in all the circumstances, the impediment (his lack of understanding) would have been removed. The Claimant was aware of his right to bring an unfair dismissal claim (as demonstrated by his initial approach to ACAS in March 2019): it then became incumbent on him to make the necessary inquiries to establish the correct procedure for pursuing a claim. Had the Claimant availed himself of either assistance from his trade union, or followed the links sent to him by ACAS, he could and should have understood that it was his responsibility to present his claim, and the requisite time period within which this needed to be done.

65. Further, the Claimant was later able to seek assistance from a legal professional (in October 2019). No good reason has been given as to why the Claimant did not obtain such advice at an earlier stage, during the primary time period.

Illness

66. I do not accept that any issue regarding the Claimant's health acted as a barrier to his presentation of this claim. I do not have sufficient, or in fact any, medical evidence, that would enable me to find that the Claimant was so incapacitated by his health so as to make it not reasonably practicable for him to present a claim by 20 June 2019. He was also well enough to work as a driver for Uber at various points throughout the primary time period, and therefore was evidently not in bed all the time as was suggested by him in his evidence to me.

Were there any changes in circumstances throughout the primary time limit?

67. This is not a case in which the Claimant has sought to suggest that his circumstances changed during the course of the primary time limit:

    67.1. There is no evidence that there was any change in his health. Indeed, he has not argued that his health suddenly improved in October which led him to take action, having not been able to do so before: quite the opposite. The Claimant's evidence was that his state of health has not changed;

    67.2. His lack of understanding as to responsibility for presenting the claim remained unaltered during the primary time limit;

    67.3. He was aware of his right to bring a claim for unfair dismissal from at least 14 March 2019.

68. I therefore conclude that it was reasonably practicable for the Claimant to have presented his claim within the primary time limit. In any event, I will go on to consider whether the claim was presented within a reasonable time after the end of the primary time limit.

Further reasonable period

69. Following the ending of the primary time limit, there is no good reason why the Claimant did not chase ACAS earlier than 6 months after he received the initial ACAS certificate. The Claimant told me that he contacted them when he needed them. I do not accept (even on the Claimant's misunderstanding of responsibility) that it is reasonable to wait for 6 months (from April to October) before chasing ACAS to see what has happened to a claim.

70. When he did contact ACAS on 9 October 2019, and received the second certificate on 10 October 2019, the Claimant then left it 14 days to make contact with a solicitor. I have been given no good reason or explanation for that delay.

71. Following instructing solicitors on 24 October 2019 (a Thursday), the claim form was still not presented until 29 October (a Tuesday), 3 working days later. I have been told that the Claimant did not have the money to pay a professional, hence the delay. Even if I accept this 3 day delay as being reasonable, it does not circumvent the delay between 10 October and 24 October, given the Claimant had been informed by the tribunal service that his claim was out of time. His conversation with the tribunal service appears to have been on or around 9 October 2019 (see para 4 of the Claimant's submissions).

72. Therefore, even if I were satisfied that it was not reasonably practicable for the Claimant to have presented his claim by 20 June 2019, I am not satisfied that he then did so within a further reasonable period.

73. I therefore find that the Claimant's claim is out of time, and, as such, the tribunal has no jurisdiction to hear his claim of unfair dismissal.

74. Given that I have found that the tribunal does not have jurisdiction, I will not go on to consider the strike out and deposit order applications.

75. In light of my decision, the preliminary hearing listed for 17 June 2021 is vacated.

Employment Judge Shastri-Hurst

Date: _____4th June 2021

JUDGMENT & REASONS SENT TO THE PARTIES ON
17th June 2021
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THY
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