# EMPLOYMENT TRIBUNALS

**Claimant:** **Mrs Linda Jackson**

**Respondent:** **Sabir 2015 Limited**

**Heard at:** **East London Hearing Centre (by Cloud Video Platform)**

**On:** **16 March 2021**

**Before:** **Employment Judge Barrett**

**Representation**
Claimant: In person
Respondent: Did not attend and was not represented

**JUDGMENT** having been sent to the parties on 18 March 2021 and written reasons having been subsequently requested, the following reasons are provided:

# REASONS

*This has been a remote hearing, which has not been objected to by the parties. The form of remote hearing was by videoconference (CVP). A face-to-face hearing was not held, because it was not practicable, and all issues could be determined in a remote hearing.*

## Introduction

1. This is a claim brought by the Claimant against the Respondent for unfair dismissal, notice pay and holiday pay. The Respondent has not provided an ET1 response or attended the hearing. The Tribunal has considered as a preliminary issue whether the claim was brought in time.

## Factual background

2. The Respondent is a business running a fish and chip and kebab shop. The Claimant was employed by the Respondent from 1 September 2014 to 17 April 2020. She worked as a telephone operator taking orders.

3. The Claimant's case is that she was unfairly dismissed by text message for taking one day off sick, she was not given her notice pay and she did not get any holiday pay for the duration of her employment.

4. The Claimant's employment terminated on 17 April 2020. She was shocked by this, having never received so much as a warning before, and did not know what to do. She sought advice on social media and was told to contact ACAS.

5. The Claimant telephoned ACAS in early May 2020. During a conversation with an ACAS conciliator, she was advised to try to settle her differences with her employer informally before making a formal ACAS notification of a possible tribunal claim. The ACAS conciliator did not tell her that there was a time limit for making a claim.

6. The Claimant did not look up whether there was a time limit herself. As far as she was aware, she was doing what she was told by ACAS in trying to resolve the matter informally with her employer. She says she did have access to the internet and could have searched for the information, but it simply did not occur to her that she needed to.

7. The Claimant initially communicated by text message with a former colleague. On 29 May 2020, she received an email from the Respondent's accountant, Ms Fikriye Nihat, which stated:

> **'I write on behalf of your employers SABIR 2015 LTD. I have been appointed to deal with your claim in respect of the alleged termination of your employment. Please be assured that I will do my upmost to settle this matter as quickly as possible. I would be most grateful to receive your account of the events that you believe which has led to your alleged dismissal. I look forward to hearing from you.'**

8. That correspondence then continued. On 23 June 2020, the Claimant wrote to the accountant Ms Nihat:

> **'Hi sorry to bother you but I'm still awaiting a response to my email I'm in the process of filing for conciliation and I am not sure whether to do that or not if we can come to some agreement thank you'**

9. Ms Nihat provided repeated reassurances that the matter was being dealt with. She told the Claimant that there would be a delay from July to mid-September 2020 due to her former manager being out of the country with his family.

10. When the September date came and went, the Claimant contacted Ms Nihat to ask what was happening. She wrote:

> **'It seems I have no option but go for conciliation which I will be doing at some point next week, I would appreciate some sort of response as I am finding this really frustrating.'**

11. Ms Nihat replied on 18 September 2020 that the additional delay was caused by a bereavement in the manager's family and continued to reassure the Claimant.

12. After that point in mid-September 2020, the Claimant realised that she was being "fobbed off" and the Respondent had no intention of settling the dispute with her. She got back in touch with ACAS.

13. There was then a period during October 2020 when the Claimant was in conversations with ACAS. She cannot fully recall what caused this period of delay

and stated that she did not know why it took so long, but it was not until late October that her ACAS conciliator told her that her claim was likely to be out of time already.

14. At that point, the Claimant made her formal ACAS notification, and her ACAS certificate was issued on the same day, 27 October 2020. She presented her ET1 claim form the following day, 28 October 2020.

**The law**

15. Section 111 Employment Rights Act 1996 ('ERA') provides (as relevant):

> **(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 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.**

16. Equivalent time limits apply to claims for breach of contract and holiday pay.

17. The Court of Appeal in *Palmer v Southend-on-Sea Borough Council* [1984] ICR 372 at [34] held that to construe the words 'reasonably practicable' as the equivalent of 'reasonable' would be to take a view too favourable to the employee; but to limit their construction to that which is reasonably capable, physically, of being done would be too restrictive. The best approach is to read 'practicable' as the equivalent of 'feasible' and to ask: 'was it reasonably feasible to present the complaint to the Industrial Tribunal within the relevant three months?'

18. In *Walls Meat Co Ltd v Khan* [1979] ICR 52 at p.56, Denning LJ held that the following general test should be applied in determining the question of reasonable practicability.

> **'Had the man just cause or excuse for not presenting his complaint within the prescribed time limit? 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 have been 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.'**

19. In the same case (at p.61), Brandon LJ drew a distinction between a Claimant who is ignorant of the right to claim, and a Claimant who knows of the right to claim but is ignorant of the time limit:

> **'While I do not, as I have said, see any difference in principle in the effect of reasonable ignorance as between the three cases to which I have referred, I do see a great deal of difference in practice in the ease or difficulty with which a finding that the relevant ignorance is reasonable may be made. Thus, where a person is reasonably ignorant of the existence of the right at all, he can hardly be found to have been acting unreasonably in not making inquiries as to how, and within what period, he should exercise it. By contrast, if he does know of the existence of the right, it may in many**

> **cases at least, though not necessarily all, be difficult for him to satisfy an industrial Tribunal that he behaved reasonably in not making such enquiries.'**

20. In *DHL Supply Chain Ltd v Fazackerley* UKEAT/0019/18/JOJ, an employee was wrongly advised by an ACAS conciliator to exhaust an internal disciplinary appeal process before commencing employment tribunal proceedings and failed to warn him of the tribunal time limit. The tribunal found it was not reasonably practicable for the employee to present his claim in time, and that reliance on the ACAS advice *"tipped the balance".* The EAT held this was a conclusion the tribunal was entitled to reach.

## Submissions

21. The Claimant explained that she had been doing what she thought ought to be done throughout. She did not understand the law. If she had realised there was a time limit, she would have met it.

## Conclusions

22. Was it reasonably practicable for the Claimant to present her claim within the original time limit, by 16 July 2020?

23. I have found this question finely balanced but conclude that it was not. I find that the Claimant acted reasonably in taking the advice of ACAS and attempting to resolve the matter informally before taking further formal steps. It was reasonable for her to rely on the advice of ACAS. She was in fact unaware of the time limit and I find that her ignorance was reasonable in circumstances where she had contacted an authoritative official body, ACAS, and not been told the clock was ticking.

24. However, I find that the claim was not presented within a reasonable further period after that. There was continued delay by the Respondent. By mid-September 2020, the Claimant realised that the Respondent was not serious about settling the dispute between them. She could have made an ACAS notification at that point – as indeed she had informed the Respondent's accountant that she was thinking of doing. The period from mid-September to the end of October is not fully explained and I find this delay was not reasonable.

25. For these reasons, the test for an extension of time is not met. The tribunal does not have jurisdiction to hear the Claimant's claim and it must be dismissed.

**Employment Judge Barrett**
**Date: 28 June 2021**