



# EMPLOYMENT TRIBUNALS

## Claimant

## Respondent

Mr Dimitar Stoilov

v Falcon Coachworks and Engineering  
Services

**Heard at:** Norwich (by CVP)

**On:** 21 May 2021

**Before:** Employment Judge Postle

## Appearances

**For the Claimant:** Mr Morris, Trade Union Representative

**For the Respondent:** Miss Nicolaou, Solicitor

## JUDGMENT on PRELIMINARY HEARING

It was reasonably practicable for the Claimant to have issued the claim for unfair dismissal within the three month period, together with any extension for Acas Early Conciliation, the claim having been filed on 13 May 2020 some four days late. The Tribunal therefore has no jurisdiction to hear the Claimant's claim for unfair dismissal.

## REASONS

1. This is a Preliminary Hearing to determine whether it was reasonably practicable for the Claimant to have issued his claim within three months from the date of dismissal, in accordance with Section 111(2) of the Employment Rights Act 1996, allowing for any extension provided by Acas Early Conciliation.
2. After some considerable debate with the Claimant's Representative, Mr Morris, it was finally agreed that the Claimant's effective date of termination was 7 January 2020, this being the Disciplinary Hearing in which the minutes of that Hearing provided, clearly show that the Claimant was notified at the Disciplinary Hearing that his employment was being terminated. There was a subsequent letter of 10 January 2020 to the Claimant which confirmed following the Disciplinary Hearing on 7 January

2020 the Claimant had been summarily dismissed with effect from 7 January 2020.

3. The effective date of termination is indeed acknowledged by the Claimant's Trade Union Representative in the claim form which confirms the date of dismissal was 7 January 2020.
4. Mr Morris was then given an opportunity on behalf of the Claimant to explain why it was not reasonably practicable to have issued within the requisite period. He blames the pandemic and says his offices were closed the week before the pandemic. However, what Mr Morris does not explain is why Mr Black or Mr Morris failed to protect the Claimant's position between 7 January 2020 and the end of March when lockdown commenced due to the pandemic.
5. Clearly, the Claimant was represented at the Disciplinary Hearing by Mr Black, a Trade Union Representative, who also represented the Claimant at the Appeal Hearing. These days Trade Unions are fully aware of the importance of time limits in Employment Tribunal proceedings.
6. The claim was not ultimately filed until 13 May 2020, nearly five weeks after the Acas Early Conciliation Certificate was issued. Again, there has been no explanation provided as to why it was not reasonably practicable to have issued following the Acas Certificate being issued on 9 April 2020.
7. The onus of proving that presentation in time was not reasonably practicable rests with a Claimant. That imposes a duty upon a Claimant to show precisely why it was that they did not present their complaint in time. If a Claimant fails to argue that it was not reasonably practicable to present the claim in time, the Tribunal will find that it was reasonably practicable.
8. What is the meaning of 'reasonably practicable'? There have been attempts to establish a clear and general useful definition of 'reasonably practicable', the best we find starts in the case of Palmer and Anr v Southend on Sea Borough Council [1985] ICR372, a Court of Appeal case which conducted a general review of the Authorities and concluded that,  
  

*“ ‘reasonably practicable’ does not mean reasonable which would be too favourable to an employee and does not mean physically possible, which would be too favourable to employers. But means something like ‘reasonably feasible’ “.*
9. Indeed, Lady Smith in Asda Stores Limited v Kauser EAT0165/07, explained it in the following words,

*“The relevant test is not simply a matter at looking at what was possible, but to ask whether, on the facts of the case as found, it was reasonable to expect that which was possible to have been done”.*

10. I conclude on the facts of this case that notwithstanding lockdown towards the end of March 2020, the Claimant / Union Representative had ample time in which to organise Acas Early Conciliation and issue a claim well in time. They failed to do so. It clearly was reasonably practicable to have done so, it was a feasible possibility. Therefore the Claimant's claim of unfair dismissal is dismissed as the Tribunal have no jurisdiction.

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Employment Judge Postle

Date: 3 June 2021.....

Sent to the parties on: .....

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For the Tribunal Office