



## EMPLOYMENT TRIBUNALS (SCOTLAND)

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**Case No: 4101867/2020 (V)**

**Preliminary Hearing Held by Video Conference Call  
On 14 July 2020**

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**Employment Judge M Robison**

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**Ms C Sloan**

**Claimant  
In person**

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**Boots Management Services Limited**

**Respondent  
Represented by  
Ms E Wood  
Solicitor**

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

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The Employment Tribunal, having decided that the claim has been lodged out of time, and not being satisfied that it was not reasonably practicable to lodge it in time, finds that it does not have jurisdiction to hear the claim, which is dismissed.

### **REASONS**

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1. This is a claim for unfair dismissal. At a case management Preliminary Hearing held by telephone conference call on 3 June 2020 the respondent intimated a time bar plea. This Preliminary Hearing was accordingly set down

to determine the question of whether the claim has been lodged out of time, such that the Tribunal does not have jurisdiction to consider it.

2. Following the issue of the Presidential Guidance on the Covid-19 pandemic, this hearing could not take place in person and therefore took place by way of video conferencing, neither party having any objection to that course of action.
3. At the hearing, the claimant affirmed and then gave evidence, following which she was cross examined by Ms Wood. Reference was made to a joint file of documents which had been prepared by the respondent (which are referred to by page number). I found the claimant to be a candid and credible witness, and accepted her evidence.

### **Findings in fact**

4. The claimant commenced employment on 3 June 2003. She was employed in a role which she described as a “dispenser” and which the respondent described as a “pharmacy advisor”, but these are different titles for the same job.
5. The claimant was dismissed on 26 September 2019.
6. The claimant contacted ACAS for advice in or around November 2019. She discussed her claim with an advisor who said that they could send out an early conciliation (EC) certificate which would allow her to lodge a claim against the respondent in the Employment Tribunal.
7. Initially she decided not to take the matter forward, and then she changed her mind because she had concerns about the process undertaken by the respondent in the lead up to her dismissal.
8. On or around 2 February 2020, she got in contact with ACAS again and asked for an EC certificate to be issued. This was issued on 6 February 2020 (page 27).
9. She thereafter intended to lodge a claim in the Employment Tribunal, but she did not get round to it until 21 March 2020, when she completed the ET1 form on the government’s website.
10. She recalls some mention of time limits in her discussion with ACAS, but she understood that she was to wait three months before she could lodge a claim. She now appreciates that was a misunderstanding.

11. Beyond her discussions with ACAS, she did not conduct any additional research into the question of time limits.

### **Claimant's submissions**

- 5 12. The claimant had nothing further to add to the evidence which she had given in regard to submissions. She was invited to add anything further after hearing Ms Wood's submissions but declined.

### **Respondent's submissions**

- 10 13. Ms Wood submitted that the claimant had failed to put forward any evidence to support an argument that it had not been reasonably practicable for her to lodge her claim in time, the burden of proof being on her to do so.
14. There was no apparent physical impediment to pursuing the claim, and she said that she knew at an early stage that she had the right to bring a claim,  
15 was aware that there were time limits, and admitted that she had misunderstood the advice from ACAS. Nor did the claimant seek advice from any other source, as would have been reasonable of her to do.
15. She ought to have lodged a claim by 25 December 2019, but waited a further three months before doing so. The only reason for the delay was because the  
20 claimant had changed her mind. She gave no reason why she waited a further six weeks after obtaining the EC certificate.
16. Further the ET1 form which she lodged contained only one sentence, and had no substance to it, although she also said that she had the full facts available to her at the time of her dismissal and there were no new facts or  
25 information which caused her to change her mind.
17. If the Tribunal take the view that it was not reasonably practicable for her to lodge the claim within the three month time frame, then waiting six weeks for no reason after obtaining the ACAS certificate was not a reasonable period of time.

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### **The relevant law**

18. The law relating to time limits in respect of unfair dismissal is contained in the Employment Rights Act 1996. Section s111(2) states that an Employment Tribunal shall not consider a complaint unless it is presented before the end

of the period of three months beginning with the effective date of termination or 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.

5 19. Where the claim is lodged out of time, the Tribunal must consider whether it was not reasonably practicable for the claimant to present the claim in time, the burden of proof lying with the claimant. If the claimant succeeds in showing that it was not reasonably practicable to present the claim in time, then the Tribunal must then be satisfied that the time within which the claim  
10 was in fact presented was reasonable.

20. The Court of Appeal has recently considered the correct approach to the test of reasonable practicability (*Lowri Beck Services Ltd v Brophy* [2019] EWCA Civ 2490). Lord Justice Underhill summarised the essential points as follows:

1. The test should be given “a liberal interpretation in favour of the  
15 employee” (*Marks and Spencer plc v Williams-Ryan* [2005] EWCA Civ 479, [2005] ICR 1293, which reaffirms the older case law going back to *Dedman v British Building & Engineering Appliances Ltd* [1974] ICR 53);

2. The statutory language is not to be taken as referring only to  
20 physical impracticability and for that reason might be paraphrased as whether it was “reasonably feasible” for the claimant to present his or her claim in time: see *Palmer and Saunders v Southend-on-Sea Borough Council* [1984] IRLR 119....

3. If an employee misses the time limit because he or she is  
25 ignorant about the existence of a time limit, or mistaken about when it expires in their case, the question is whether that ignorance or mistake is reasonable. If it is, then it will [not] have been reasonably practicable for them to bring the claim in time (see *Wall’s Meat Co Ltd v Khan* [1979] ICR 52); but it is important  
30 to note that in assessing whether ignorance or mistake are reasonable it is necessary to take into account any enquiries which the claimant or their adviser should have made;

4. If the employee retains a skilled adviser, any unreasonable ignorance or mistake on the part of the adviser is attributed to the employee (*Dedman*)...
5. The test of reasonable practicability is one of fact and not law (*Palmer*).

### **Tribunal decision**

21. It was not disputed that the claimant's employment ended on 26 September 2019. That therefore is the effective date of termination and the date from which any time limit should run.
22. The claim should therefore have been lodged by 25 December 2019. As 25 and 26 December are bank holidays, strictly a claim lodged on the next working day, that is 27 December 2019, would have been in time. The claimant ought therefore at least have contacted ACAS by that date to avail herself of the extension of time afforded by the early conciliation process.
23. The claim was not however lodged until 21 March 2020. There can be no question therefore but that the claim was lodged out of time.
24. The next question then is whether time should be extended in this case. There are two elements to the test, the first is the question whether it was reasonably practicable for the claimant to have lodged the claim in time, and if so, the second question is whether, when it became reasonably practicable to lodge the claim, the claim was lodged within a reasonable time thereafter.
25. It is clear that the reasonably practicable question relates not just to physical impracticability, but also to other forms of mental impracticability relating for example to the claimant's knowledge. The case law makes it clear that may include a claimant's ignorance or mistake about time limits, and the focus is on whether that mistake or ignorance was reasonable. It is not enough for the claimant to show that she was ignorant of her rights, but she must also show that she took reasonable steps to acquire the necessary knowledge.
26. The claimant was very candid in her evidence. She had thought that she would not pursue a claim but had changed her mind. Although she had contacted ACAS in November, had she asked for an EC certificate to be issued on that date, then the time limit could have been extended while any

conciliation took place. She did not however instruct ACAS to commence conciliation. It seems that she had decided not to take the matter forward.

27. However having reflected on the position, and believing that the respondent had acted unfairly, she decided that she would pursue a claim, and contacted ACAS again.

28. An EC certificate was issued, but again the claimant did not act quickly to pursue her claim. She waited for a further six weeks before lodging her claim in the Employment Tribunal.

29. The claimant said that she was aware of her right to claim unfair dismissal, and that she was aware that there were time limits, but appears to have misunderstood the advice given to her by ACAS. In any event, if the claimant's understanding was that she was to wait three months before she could lodge a claim, she did not lodge any claim after the passage of three months from her dismissal, and indeed it was a further three months before she did go ahead and lodge the claim.

30. The claimant accepted candidly in evidence that there was no physical impediment or barrier to her pursuing a claim; and although she said she could be forgetful, the essence of her evidence was that she "just did not get round to it".

31. Although I am aware that "reasonably practicable" test should be given a liberal interpretation in favour of the employee, time limits require to be strictly adhered to since they go to the question of jurisdiction.

32. While it may well be that the claimant misunderstood the advice that she was given about time limits, the claimant is expected to take reasonable steps to acquire the necessary knowledge. She thought that she needed to wait until three months had passed to lodge the claim, but she made no attempt to find out what window she might have after that to do so. She did not undertake any further research into the matter beyond contacting ACAS, and I am of the view that it would have been reasonable for her to have done so.

33. I should add that as I am not able to conclude that it was not reasonably practicable for the claimant to have lodged the claim in time, I do not require to consider the second element of the test. That said, clearly the claimant became aware of her right to lodge a claim in the Employment Tribunal in early February, but she did not act quickly even then to lodge her claim,

waiting some six weeks, which I took the view was not, in any event, a reasonable time thereafter.

**Conclusion**

- 5 34. This claim is lodged out of time. For the reasons set out above I cannot be satisfied that it was not reasonably practicable to lodge the claim in time. The Tribunal therefore does not have jurisdiction to hear the claim, which is dismissed.

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Employment Judge: Muriel Robison  
Date of Judgment: 15 July 2020  
Entered in register: 16 July 2020  
and copied to parties

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