



EMPLOYMENT TRIBUNALS

Claimant: Mr T Martin
Respondent: Secretary of State for Justice

RECORD OF A PRELIMINARY HEARING

Heard at: Watford **On:** 17 September 2021

Before: Employment Judge Alliott (sitting alone)

Appearances

For the claimant: In person
For the respondent: Mr Bershadski (Counsel)

JUDGMENT

The judgment of the tribunal is that:

1. The claim was presented out of time and it was reasonably practicable for it to be presented in time. Accordingly, the claim is struck out.

REASONS

1. This open preliminary hearing was ordered on 26 June 2021 by Employment Judge Lewis to determine the following issue:

“To decide if the Employment Tribunal has power to hear the case, as it appears to have been brought out of time.”

2. Section 111(2) of the Employment Rights Act 1996 provides as follows:-

“An Employment Tribunal shall not consider a complaint [of unfair dismissal] unless it is presented to the tribunal –

- (a) before the end 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.”

3. The claimant was employed by the respondent on 7 January 2005 as a Prison Officer. He was dismissed on 7 June 2019. The claimant appealed and his appeal was heard on 1 August 2019. The appeal was unsuccessful, and he was informed of this in a letter dated 6 August, received by him on 7 August 2019.
4. It is common ground that the effective date of termination of the claimant's employment was 7 June 2019. Accordingly, the three-month primary limitation period would have expired on 6 September 2019.
5. The claimant presented his claim on 2 April 2020. Accordingly, the claim is nearly seven months out of time.
6. As per IDS Employment Law Handbook Employment Law Practice and Procedure at 5.46:-

“When a claimant tries to excuse late presentation of his or her ET1 claim form on the ground that it was not reasonably practicable to present the claim within the time limit, three general rules apply:

- Section 111(2) (b) ERA should be given a “liberal construction in favour of the employee” – Dedman v British Building and Engineering Appliances Ltd [1974] ICR53, CA
- What is reasonably practicable is a question of fact and thus a matter for the Tribunal to decide. An appeal will not be successful unless the Tribunal has misdirected itself in law or has reached a conclusion that no reasonable Tribunal could have reached. As Lord Justice Shaw put it in Walls Meat Co Ltd v Khan [1979] ICR52, CA –

“The test is empirical and involves no legal concept. Practical common sense is the keynote and legalistic footnotes may have no better result than to introduce a lawyer's complications in what should be a layman's pristine province. These considerations prompt me to express the emphatic view that the proper forum to decide such questions is the Employment Tribunal, and that their decision should prevail unless it is plainly perverse or oppressive”

- The onus of proving that presentation in time was not reasonably practicable rests on the claimant. “That imposes a duty upon him to show precisely why it was that he did not present his complaint” – Porter v Bandridge Ltd [1978] ICR943, CA. Accordingly, if the 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 – Stirling v United Learning Trust EAT 0439/14.

Even if a claimant satisfies a Tribunal that presentation in time was not reasonably practicable, that does not automatically decide the issue in his or her favour. The Tribunal must then go on to decide whether the claim was presented “within such further period as the Tribunal considers reasonable”

7. The claimant gave evidence on oath. The claimant told me that his understanding was that he did not have to present his claim to the tribunal until his appeal had been dealt with. I make plain that I have considerable sympathy for employees who delay until the internal appeal process is concluded before presenting a claim to the Employment Tribunal. I readily understand why an employee hoping to be reinstated to their employment following an appeal would

not want to aggravate the situation by presenting a claim to the tribunal. Nevertheless, the claimant was aware that his appeal had failed on 7 August 2019 which was still one month within time for bringing his claim.

8. The claimant told me candidly that he was aware of the three-month time limit for presenting a claim. At the conclusion of his appeal on 1 August 2019, Mr Monaghan, the Area Manager, told him after the appeal hearing that he had three months to present a claim to the Employment Tribunal. The claimant told me that another lady in the same office told him the same thing.
9. In addition, the claimant was represented at the disciplinary hearing and at the appeal hearing by a Trade Union Representative and the claimant accepted that he had access to Trade Union advice on bringing a claim before the Employment Tribunal.
10. Accordingly, I find that it was reasonably practicable for the claimant to bring his claim within the primary limitation period. Even if the claimant thought that time only started to run from 7 August 2019, then three months would have expired on 6 November 2019. The claimant missed that deadline and, in my judgment, did not present his claim within a reasonable period thereafter.
11. Accordingly, I find that the claim was presented out of time and it was reasonably practicable to present it within time. As such, the tribunal does not have jurisdiction to hear this claim and it must be struck out.
12. The claimant told me that he is a methodical individual who, aware of the three-month time limit, would have put in his claim in time. I explained to him that there were three ways to submit a claim. An online submission which would generate an online submission reference number sent by email on receipt of the online submission. He could post a paper claim to Leicester. Or he could attend at an Employment Tribunal and hand in his claim. In those circumstances he would get a receipt.
13. The claim form on file looks as if it has been submitted online. The claimant could not recall how he submitted his claim or if he had previously submitted one.
14. I indicated to the claimant that if he found evidence of an earlier submitted claim then he could apply for this decision to be reconsidered.

Employment Judge Alliott 23/9/21

Sent to the parties on:

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For the Tribunal:

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