



EMPLOYMENT TRIBUNALS

Claimant: Mr L Telford

Respondent: EE Limited

Heard at: Newcastle (CVP)

On: 6 October 2021

Before: Employment Judge A.M.S. Green

Representation

Claimant: In person

Respondent: Ms A Jervis – Legal representative

REASONS

1. The Claimant has requested written reasons in respect of a judgment issued on 6 October 2021.
2. The Claimant has claimed ordinary unfair dismissal and “other payments”. He confirmed that the claim for “other payments” related to a contractual claim to a bonus. That bonus is now been paid and he is no longer pursuing that claim. That claim is withdrawn, and I have dismissed it on withdrawal.
3. The Claimant’s claim form states that he was employed from 1 November 2015 until 13 January 2021. He was summarily dismissed. The ACAS Early Conciliation Certificate certifies that they received Early Conciliation notification on 26 March 2021. The Early Conciliation Certificate was issued on 7 May 2021. The Claimant presented his claim to the Tribunal on 8 June 2021. The last date on which he should have presented his claim to the Tribunal was 7 June 2021. He was one day late. The preliminary issue for the Tribunal is whether time should be extended. If the Tribunal does not extend time to allow late presentation of the claim, it does not have jurisdiction to hear his claims.
4. The Claimant appeared in person. The Respondent was represented by Ms Jervis, a legal representative who is imminently going to be called to the bar. The Claimant gave evidence in person. He had not prepared a witness statement and I examined him in chief. He was cross-examined. Ms Jervis and the Claimant made oral submissions. Given that the Claimant was not represented, I gave him 15 minutes to consider his submissions after hearing Ms Jervis’ submissions.

5. There was a two-page digital paginated bundle and Ms Jervis provided a skeleton argument to the Tribunal which she also relied on.
6. I carefully explained the provisions of Employment Rights Act 1996, section 111 (“ERA”) regarding time limits for presenting a complaint of unfair dismissal to the Tribunal and the exceptions that could be applied in circumstances where a claim has been presented out of time.
7. The Claimant must prove his case on a balance of probabilities. In reaching my decision I have considered the oral evidence, the documentary evidence, the submissions and my record of proceedings.
8. In his evidence in chief, the Claimant, gave his date of birth and his address as per the Claim Form.
9. Having considered the evidence, I make the following findings of fact:
 - a. The Claimant was summarily dismissed by the Respondent on 13 January 2021. He appealed that decision. The Respondent rejected his appeal and confirmed the original decision to dismiss on 15 March 2021.
 - b. Prior to presenting his claim form to the Tribunal, the Claimant was advised by a solicitor (albeit not during a face-to-face consultation) about the merits of his claim. He sent the bundle to the solicitor and was told that the Respondent had a case to answer. The solicitor did not assist the Claimant in preparing the claim form.
 - c. The Claimant consulted the Citizens Advice Bureau and went to the ACAS website for further information. He confirmed that the screenshot taken from the ACAS website and produced to the Tribunal in the hearing bundle was what he had looked at. From this, he understood that a claim to an employment tribunal must usually be made within 3 months less one day. The screenshot goes on to say “for example, if an employee wants to claim for unfair dismissal, they have 3 months less 1 day from the date their employment ended to make the claim”. He also understood from the screenshot that the limitation period for presenting his claim would be extended during Early Conciliation.
 - d. The Claimant believed that the time limit for presenting his claim ran from the date when the Respondent dismissed his appeal. He did not think that it ran from the date of the dismissal which was 13 January 2021. He believed, that if his appeal had been successful, he would have been reinstated and would have received back pay to 13 January 2021. Under cross-examination, he admitted that this was his assumption and there was no factual basis for him to believe that.
 - e. The Claimant did not present his claim to the Tribunal until 8 June 2021 which was some 12 weeks after he received his appeal outcome decision. He believed that the three-month period ran from 15 March 2021.
10. I now turn to the law. Time limits go to the Tribunal's jurisdiction. They are not simply procedural niceties that can be waived by the parties. This is because

they are frequently expressed in mandatory terms. If a claim is out of time and cannot be brought within a statutory formula, if there is one allowing for an extension of time, then the Tribunal must refuse to hear the case.

Section 111(1) of ERA provides that:

A complaint may be presented to an employment tribunal against an employer by any person that he was unfairly dismissed by the employer.

Section 111(2) of the ERA provides that:

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.

11. In relation to an unfair dismissal claim it is possible for the Tribunal to grant an extension of time at its discretion. These are colloquially known as "escape clauses". In the context of an unfair dismissal claim the relevant escape clause is based upon the "not reasonably practicable" formula. The starting position as set out in **Dedman v British Building and Engineering Appliances Limited 1974 ICR 53, CA** is that section 111 (2)(b) should be given a liberal interpretation in favour of the employee. What is reasonably practicable is a question of fact and thus a matter for the Tribunal to decide. In **Wall's Meat Co Ltd v Khan 1979 ICR 52 CA** Lord Justice Shaw stated that:

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 into what should be a layman's pristine province. These considerations prompted me to express the emphatic view that the proper forum to decide such questions is the tribunal, and their decision should prevail unless it is plainly perverse or oppressive.

12. The burden of proving that presentation in time was not reasonably practicable rests on the Claimant. The claimant must show precisely why it was that he did not present his complaint (**Porter v Bandridge Limited 1978 ICR 943, CA**).
13. The time for presenting an unfair dismissal claim runs from the effective date of termination. The effective date of termination is determined by reference to section 97 of the ERA. In particular subsection 1 states:

Subject to the following provisions of this section in this Part "the effective date of termination" –

(b) in relation to an employee's contract of employment is terminated without notice means the date on which the termination takes effect...

14. It need not matter how late the Claimant's submission was, as in **Beasley v National Grid Electricity Transmissions UKEAT/0626/06 the EAT** upheld the claim was out of time by 88 seconds and that it had been reasonably practicable to submit on time.

15. Employees who have been dismissed may feel that their chances at an internal appeal hearing will be prejudiced if they launch employment tribunal proceedings before the appeal takes place. However, there may be delays in organising the domestic appeal, or be several stages involved in the appeal procedure, which may mean that the three-month time limit will have expired before the internal appeal procedure has been completed. This gives rise to two questions:
- f. What is the effective date of termination (“EDT”) when there is an internal appeal procedure following a dismissal that may result in reinstatement? Is it the original date of dismissal or the date of termination of the appeal procedure?
 - g. Does the fact that dismissal was subject to a, possibly multi-stage, internal appeal procedure make it not reasonably practicable to present a claim to a tribunal before that procedure is completed?
16. The answer to the first question is that the existence of a contractual appeal procedure does not alter the EDT. If, for example, an employee is summarily dismissed and his or her domestic appeal succeeds, he or she will be reinstated with retrospective effect. If, however, the appeal fails — and these are the cases that come before employment tribunals — the dismissal takes effect from the original date of dismissal — **J Sainsbury Ltd v Savage 1981 ICR 1, CA**, expressly approved by the House of Lords in **West Midlands Co-operative Society Ltd v Tipton 1986 ICR 192, HL**. The only exception to this will be where there is an express or implied contractual provision to the contrary.
17. It follows that if there is a protracted appeal procedure, time is likely to run out before the procedure has been completed. However, the EAT ruled in **Bodha v Hampshire Area Health Authority 1982 ICR 200, EAT**, that the existence of an impending internal appeal was not in itself sufficient to justify a finding that it was not reasonably practicable to present a complaint to a Tribunal within the time limit and this view was expressly approved by the Court of Appeal in **Palmer and anor v Southend-on-Sea Borough Council 1984 ICR 372, CA**.
18. If the Claimant satisfies the Tribunal that presentation in time was not reasonably practicable, that does not automatically decide the issue in his favour. The Tribunal must then go on to decide whether the claim was presented "within such further period as the Tribunal considers reasonable". Consequently, while it may not have been reasonably practicable to present a claim within the three months, if the Claimant delays further, a Tribunal may find the additional delay unreasonable and decide that it has no jurisdiction to hear the claim.
19. Having heard the evidence and applying the law to the facts, I believe that it would have been reasonably practicable for the Claimant to present his claim to the Tribunal within the three-month time limit (plus the extension provided by ACAS Early Conciliation) on or before 7 June 2021 for the following reasons:
- a. The Claimant had taken advice not only from a solicitor and Citizens Advice Bureau but had also gone to the ACAS website which clearly indicates when a claim for unfair dismissal must be presented to the Tribunal. It cannot be said that he was ignorant of the time limits required.
 - b. The Claimant falsely assumed that the time limit for presenting his claim ran from 15 March 2021 which was the date that his appeal against his dismissal was rejected. He had no reasonable basis for reaching that conclusion. As the case law shows, unless there was an express or implied contractual provision to the contrary, his dismissal took effect from

13 January 2021, the EDT, and the clock started running from that earlier date.

20. For the sake of completeness, if I had found that it was not reasonably practicable for the Claimant to present his claim within the three-month time limit (plus the extension provided by ACAS Early Conciliation) I would not have accepted that his claim was presented within such further period as the Tribunal considers reasonable. The Claimant waited another 12 weeks to present his claim. There was no justification for doing that and he mistakenly believed that the time limit ran from 15 March 2021. That was a false assumption. He had the benefit of advice and he had accessed the ACAS website which would or ought to have put him on notice about when he needed to present his claim.
21. The fact that the claim was presented one day late makes no difference to my decision as exemplified in the decision in **Beasley**.
22. It follows, therefore, that the Tribunal does not have jurisdiction to hear the claimant's claim for unfair dismissal.

Employment Judge Green

Date 18 October 2021