



THE EMPLOYMENT TRIBUNALS

RECORD OF A PUBLIC PRELIMINARY HEARING

Claimant: Mr G Bland

Respondent: Kasai UK Limited

Heard at: Newcastle upon Tyne Hearing Centre by CVP
On: Tuesday 16th November 2021

Before: Employment Judge Speker OBE DL

Representation:

Claimant: In Person

Respondent: Mrs Eleanor Wilkinson (Solicitor)

DECISION ON PRELIMINARY ISSUE

The claim was presented outside the statutory time limit as extended. The tribunal has no jurisdiction to hear the claim and the claim is dismissed.

REASONS

1. This preliminary hearing was held to determine the preliminary issue “whether the tribunal has jurisdiction to consider the claim given that the claim form appears to have been presented one day out of time”. The case had been listed for today as a final hearing but that hearing was postponed and instead the case listed for this preliminary hearing.
2. In the grounds of response the respondent pleaded that the tribunal had no jurisdiction on the basis that the employment was terminated with immediate effect on 26th March 2021, that contact with ACAS occurred on 20th April 2021 and the ACAS certificate was issued on 13th May 2021. The claimant’s ET1 was presented

on 19th July 2021. The respondent argued that the claim as presented was one day late, the extended time limit having expired on 18th July 2021 and the claim form was presented to the tribunal on 19th July 2021.

3. Mr Bland gave evidence to the tribunal confirming that he agreed that the effective date of termination was 26th March 2021 and that his claim form had been presented on 19th July 2021. He described having contacted an ACAS officer Angela Parr on a number of occasions during the early conciliation process. After that was ended, he contacted ACAS suggesting that he thought it would be ACAS who would be putting the matter forward on his behalf but it was confirmed to him that it was his responsibility to issue his claim and he was referred to earlier correspondence which made this clear. Mr Bland admitted that this was a mis-judgment on his part and that he had misread the e-mails. He stressed that he had never been involved in any dispute with an employer before and had never been dismissed in the past.
4. He conceded that he wrongly thought that ACAS would put in his claim, but the ACAS officer Angela Parr confirmed that this was his responsibility. He estimated that that occurred on 5th July 2021 and that he did not then put in his claim until two weeks later on 19th July. He could not give any reason for the delay of fourteen days other than that he had been married the week before, that he was out of work and worried about it. He had approached two separate firms of solicitors experienced in employment law but in the event did not instruct either of them. He put in the claim himself. Mrs Wilkinson did not have any questions for the claimant.

Submissions

5. On behalf of the respondent, Mrs Wilkinson stated that this was the first time that Mr Bland had argued that he was ignorant as to time limits. The tribunal needed to decide whether that ignorance was reasonable or not. The respondent argued that it was not reasonable. Mr Bland knew of the right to make a claim but there was no basis for saying there was reasonable ignorance as to time limits. Even if the ignorance was reasonable, the delay was not. Mr Bland had waited two weeks before presenting his claim. There was no suggestion that he had been misled as to time limits and in the circumstances the tribunal she submitted simply did not have jurisdiction to deal with the claim.

The claimant

Mr Bland accepted that he was ignorant as to the procedure having never been involved in such a situation. After being told by ACAS that he needed to put the claim in himself he contacted two solicitors but they had told him to do this himself. He said that he could not afford to instruct solicitors. He admitted that he had wrongfully let time slip.

The law

Employment Rights Act 1996
Section 111 (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.”

Section 207B (2)

“In this section –

- (a) day A is the day on which the complainant or applicant concerned complies with the requirement in subsection 1 of Section 18A of the Employment Tribunals Act 1996 (Requirement to Contact ACAS Before Instituting Proceedings) in relation to the matter in respect of which the proceedings are brought, and
 - (b) day B is the day on which the complainant or applicant concerned receives or, if earlier, is treated as receiving (by virtue of regulations made under Section 11 of that section) the certificate issued under subsection 4 of that section.”
- (3) “In working out when a time limit set by a relevant provision expires the period beginning with the day after day A and ending with day B is not to be counted.”
6. The relevant dates for the purposes of this preliminary application were agreed:
- (i) effective date of termination 26th March 2021
 - (ii) date of receipt by ACAS of the EC notification 20th April 2021
 - (iii) day A 21st April 2021
 - (iv) date of issue by ACAS of the EC certificate 13th May 2021 (Day B)
 - (v) expiry of preliminary time limit 25th June 2021
 - (vi) expiry of time limit as extended 18th July 2021
 - (vii) presentation of claim to tribunal 19th July 2021
7. None of these dates were challenged by the claimant. On the basis of evidence given including the documentation in the tribunal’s official file I find that the claim was presented out of time namely one day late.
8. The jurisdiction given to the tribunal to allow a claim of unfair dismissal to proceed in these circumstances is set out in Section 111 (2) (b) and is based on whether, where a claim is out of time, it is presented in such further period as the tribunal considers reasonable where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of three months, as extended. I explained the test of reasonable practicability to the claimant so that he was in a position to advance to me any evidence or circumstances to persuade me that it was not reasonably practicable for him to have presented the claim in time.

9. As to the meaning of the term 'reasonably practicable' I take note of the judgment in the case of *Palmer and Saunders v Southend on Sea Borough Council* [1984] IRLR119 CA where it was stated that the meaning of the words "reasonably practicable" in Section 111 (2) lies somewhere between reasonable on the one hand and reasonably physically capable of being done on the other. Practicable can be read as the equivalent of feasible and the question asked is "Was it reasonably feasible to present the complaint to the employment tribunal within the three months?"
10. Where a claimant expresses ignorance as to the precise circumstances of the time limit it is relevant to ask whether this is an acceptable reason for delay. A claimant who is aware of his rights will generally be taken to being put on enquiry as to the time limit. In *Trevelyan (Birmingham) Limited v Norton* [1991] ICR 488 EAT Mr Justice Wood stated that when a claimant knows of his or her right to complain of unfair dismissal, he is under an obligation to seek information and advice about how to enforce that right. Failure to do so will usually lead the tribunal to reject the claim. In some cases, a claimant may argue that he was misled by a legal advisor or trade union officer or other person or body in authority. There is no evidence in the present case that Mr Bland was so misled. There were no other circumstances which Mr Bland put to the tribunal on the basis of which it could be said that it was not reasonably practicable for him to have presented his application within the time limit as extended.
11. Ignorance of a fact which is crucial or fundamental to a claim may be a circumstance rendering it impracticable for a claimant to present a claim but ignorance of such a fact must be established and that is not the situation here. Ignorance of a fact will not render it "not reasonably practicable" to present a claim unless first the ignorance is reasonable and secondly the change of belief in light of that new knowledge is also reasonable. There is no evidence in this case that Mr Bland was ignorant of any crucial or fundamental fact. What he was unclear about was the process of issuing the application after having contacted ACAS and also of the precise calculation of the final date. These are matters which were available to him, particularly in correspondence from ACAS which he had admitted he had not read carefully. It is also significant that there was a fourteen day delay in putting in the application even after Mr Bland knew that it was his responsibility to take this step.
12. In these circumstances I find that this claim was presented out of time and that it was reasonably practicable for it to have been presented in time. In those circumstances and applying the clear law, this claim was out of time and the tribunal has no jurisdiction to hear the claim. Accordingly the claim is dismissed.

EMPLOYMENT JUDGE SPEKER OBE DL

**JUDGMENT SIGNED BY EMPLOYMENT
JUDGE ON
30 November 2021**

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