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**EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 4108018/2021**

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**Preliminary Hearing Held by Cloud Video Platform (CVP) on 5 July 2021**

**Employment Judge A Strain**

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**Mr David Millar**

**Claimant  
In Person**

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**Liberty Steel Dalzell Limited**

**Respondent  
Represented by:  
Mr D Godfrey**

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**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The Judgment of the Employment Tribunal is that:

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- (1) the claim of unfair dismissal has been presented out of time and it would have been reasonably practicable to have presented the claim in time;
- (2) the claim of unfair dismissal is accordingly dismissed

## REASONS

### Background

1. The claimant represented himself. He asserted a claim of unfair dismissal.
- 5 2. The respondent was represented by Mr D Godfrey, Peninsula.
3. The Open Preliminary Hearing had been fixed to determine the following issues:
  - a. Whether the ET1 had been presented out of time;
  - 10 b. If it had, would it have been reasonably practicable to have presented it in time;
  - c. If not, within what time would it have been reasonably practicable to have presented the claim thereafter.
4. The parties had lodged an Agreed Joint Bundle of Documents with the Tribunal.
- 15 5. The claimant gave evidence on his part. He also led evidence from Stewart Smart, a friend. The respondent did not lead any evidence.

### Findings in Fact

6. Having heard the evidence of the claimant and considered the documentary evidence before it the Tribunal made the following findings in fact:
  - 20 a) The claimant commenced employment with the respondent in April 2017.
  - b) His employment with the respondent was terminated on 21 June 2019. The reason given by the respondent for the termination was redundancy.

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- c) In or around June/July 2019 the claimant went to the CAB to obtain advice. He was advised to get in touch with ACAS.
- d) The claimant appealed his termination of employment by email of 14 June 2019. He attended an appeal hearing on 19 June 2019 and was advised that his appeal was unsuccessful.
- e) The claimant's friend, Stewart Smart, a loss adjuster with a law degree, helped the claimant submit the early conciliation to ACAS.
- 10 f) The claimant got in touch with ACAS, initiated early conciliation on 7 August 2019 and was issued with an early conciliation certificate from ACAS dated 16 September 2019.
- g) ACAS also issued an email to the Parties on 16 September 2019 which that the reference number would be needed for any application to the tribunal and "*ACAS cannot advise you about when a tribunal application should be submitted. It is your responsibility to ensure that any tribunal claim is submitted on time*".
- 15 h) The claimant suffers from anxiety and depression. He felt he went to pieces after losing his job and was on anti-depressant medication from September 2019.
- 20 i) The claimant's ET1 was submitted on 3 March 2021 by Stewart Smart on the claimant's behalf. The ET1 acknowledged that the claim may have been submitted out of time and that the claimant thought ACAS was dealing with it on his behalf.

### The Relevant Law

- 25 7. The claimant asserts a claim of unfair dismissal. Such a claim must be presented before the end of the period of 3 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 have been presented before the end of that

period of 3 months (section 111 (2) of the **Employment Rights Act 1996 (ERA 1996)**). The cases of **Marks & Spencer Pic v William-Ryan [2005] IRLR 562** and **Pora v Cape Industrial Services Ltd. UKEAT/0253/18** set out the approach that a Tribunal should take to the effect that the question of whether it was reasonably practicable for a complaint to be presented in time is a matter of fact for the Tribunal, taking into account all the circumstances of the case. Those circumstances can be quite wide and include, for instance, whether an employee was physically prevented from complying with the limitation period; it may also be relevant to investigate whether, at the time of dismissal (and, if not, when thereafter) the employee knew that he had the right to complain of unfair dismissal. In another case, the Tribunal may have to consider whether there was any misrepresentation about any relevant matter by the employer to the employee, and it will frequently be necessary for the Tribunal to know whether the employee was being advised at any material time and, if so, by whom. It may also be relevant for the Tribunal to consider the nature of any advice which is given to the employee and it may be relevant for the Tribunal to ask itself whether there was any substantial failure on the part of the employee or his adviser which led to the failure to comply with the time limit.

## 20 **Submissions**

8. Both parties made oral submissions.

## **Discussion and Decision**

### *Observations on the Evidence*

9. The claimant's evidence lacked credibility. His evidence was that he had submitted his claim for unfair dismissal to ACAS and ACAS were dealing with it on his behalf. At the same time he accepted that his friend, Mr Smart, had submitted the tribunal claim on his behalf in March 2021. That claim form made reference to the claimant having assumed that ACAS were dealing with matters on his behalf. The claimant's evidence was contradictory, confused and was not accepted by the Tribunal.

10. Mr Smart's evidence was clear. He had assisted with the early conciliation complaint to ACAS and also submitted the claim form in March 2021 . He was not a qualified lawyer and did not know of the time limits. He did, however, state in the tribunal claim form that the claim may be out side the time frame.

5 11. The claimant asserted that he had been ill, on medication with effect from September 2020 in the form of anti-depressents and had locked himself away. He suffered from depression. There was no medical evidence before the tribunal and no credible explanation as to why the tribunal claim had not been submitted or could not have been submitted before March 2021.

10 *Decision*

12. The Tribunal considered and applied the approach set out in **Marks & Spencer Pic v William-Ryan [2005] IRLR 562** and **Pora v Cape Industrial Services Ltd. UKEAT/0253/18**. The claimant had obtained advice from CAB and with the assistance of Mr Smart had submitted an early conciliation claim.  
15 The comunication from ACAS clearly indicated to the claimant that it was his responsibility to submitt an employment tribunal claim in time and they could not offer him advice. It was quite incredible for the claimant to assert to the tribunal that as far as he was concerned he had submitted an unfair dismissal claim and that ACAS were dealing with it for him. His evidence entirely  
20 contradicted the statement in his tribunal claim form lodged in March 2021 that he had assumed ACAS were dealing with it on his behalf.

13. The Tribunal did not accept there was any credible evidence that the claimant's depression played any part in preventing him from submitting his claim - in fact, by the claimant's own evidence the claim had been submitted  
25 and ACAS were dealing with it on his behalf.

14. The Tribunal consider that the claimant was (or ought to have been) aware of the time limit applicable having received advice from CAB and submitted the early conciliation claim. It would have been reasonably practicable for him to have presented his claim in time. He did not do so and accordingly his claim is dismissed.
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Employment Judge: A Strain  
Date of Judgment: 2 August 2021  
Entered in register: 2 August 2021  
and copied to parties