



5

EMPLOYMENT TRIBUNALS (SCOTLAND)

Case Numbers: 4104966/2020 & 4104967/2020

10

Preliminary Hearing held remotely on 21 June 2021

Employment Judge: R Sorrell

15

Mr G Cooper

**Claimant
In Person**

20

Murphy Builders Limited

**Respondent
Represented by:
Mr B Doherty
Solicitor**

25

30

PRELIMINARY HEARING

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

35

The Judgment of the Tribunal is that the claims are time barred and therefore the Tribunal does not have jurisdiction to determine the claims.

REASONS

Introduction

1 The Claimant lodged two claims for unfair dismissal on 22 September 2020
and 13 October 2020 respectively. The first claim was lodged against Peter
5 Murphy and the second against Murphy Builders Ltd.

2 A Case Management Preliminary Hearing was held by Telephone on 29
January 2021. At that Hearing, the Tribunal issued an order combining the
claims on the basis that they both rest on the same facts. The Claimant
subsequently confirmed that Murphy Builders Ltd was the correct
10 Respondent.

3 This Hearing was scheduled because the claims appear to be time-barred.
The Tribunal was therefore required to determine whether the claims can
proceed to be heard at a Final Hearing.

4 The Hearing took place remotely given the implications of the COVID-19
15 pandemic. It was a virtual hearing held by way of the Cloud Video Platform.

5 Ms Mackie for the Respondent was also in attendance at the Hearing.

6 As the Claimant was a litigant in person I explained the purpose and
procedure for the Hearing and that in the event I determined the claims were
time-barred, the Tribunal would not have jurisdiction to consider the claims
20 further. I also explained the requirement for the Tribunal to adhere to the
Overriding Objective to deal with cases justly and fairly and to ensure parties
are on an equal footing.

7 The Respondent lodged a bundle of productions with the Tribunal in advance
of the Hearing which the Claimant had not received. This bundle was
25 therefore emailed to the Claimant at the start of the Hearing and he was given
time to consider it.

8 I advised the Claimant that the documents he had emailed to the Tribunal
prior to the start of the Hearing related to the merits of his claims and could
therefore be relied upon in the event the claims proceeded to a Final Hearing.

Findings in Fact

5 The following facts are found to be proven or admitted;

9 The Claimant's date of birth is 14 April 1981.

10 The Claimant commenced employment with the Respondent undertaking
Groundworks on 8 February 2015. He worked 39 hours per week and
occasionally at the weekend. He was paid an average of £440 gross per
10 week.

11 The Claimant was dismissed by the Respondent on 8 January 2020.

12 The Claimant contacted ACAS under the Early Conciliation scheme around
the middle of January 2020. The procedure for lodging a claim with the
Tribunal was explained to him. Around the same time, the Claimant also
15 contacted the Citizens Advice Bureau about bringing a claim who again
explained the procedure to him.

13 The Claimant did not lodge the claims in time as it was too much information
for him to take in. He didn't recall being told about time limits. He also
mistakenly thought ACAS were part of the Tribunal and were lodging his claim
20 for him.

14 The ACAS Early Conciliation process commenced on 7 February 2020 and
the Certificate was issued on 7 March 2020. (D13)

15 The statutory time limit for lodging a claim was 7 April 2020.

16 The Claimant contacted ACAS again around two months before he submitted
25 his claims because he hadn't heard from them. On this occasion he did recall
being advised about the time limits for lodging a claim with the Tribunal and
that he was required to do it himself.

17 The Claimant lodged a claim with the Tribunal against Peter Murphy on 20
September 2020 and a second claim against Murphy Builders Ltd on 13
October 2020. (D1-12)

Respondent's Submissions

5

18 Mr Doherty submitted on behalf of the Respondent that in accordance with
Section 111 and Section 207B of the Employment Rights Act 1996, the claims
should have been lodged by 7 April 2020. The Claimant was dismissed on 8
January 2020. The ACAS conciliation process began on 7 February 2020 and
10 ended on 7 March 2020. The second claim lodged on 13 October 2020
against the proper Respondent is the calculation date to take account of and
therefore the claim is 6 months and 6 days out of time. The Respondent
contends that it was reasonably practicable for the Claimant to submit the
claim in time. Whilst the Claimant cannot remember the exact discussion he
15 had with ACAS, it is clear from the ACAS certificate that the responsibility to
submit the claim within the time limit lies with the Claimant. Ignorance in itself
is not sufficient, particularly as the Claimant was in contact with ACAS and
the Citizens Advice Bureau. The additional delay is not reasonable anyway
as the claim was lodged 6 months late. The Claimant said he spoke to ACAS
20 a second time and then took another two months to lodge the claim and that
delay in itself is unreasonable.

Claimant's Submissions

19 The Claimant submitted that if it was a mistake on his part in not receiving
25 emails from ACAS or checking dates, he has sufficient information and
documents now to take his case forward.

Relevant Law

ACAS Early Conciliation Scheme

30 20 Details of the Early Conciliation Scheme are set out in sections 18A and 18B
of the Employment Tribunals Act 1996. An employee must obtain an Early
Conciliation certificate before presenting a claim of unfair dismissal. This

5 certificate will extend the usual time limits. The extension provision is set out in section 207B (3) – (4) of the Employment Rights Act 1996. This states that in working out when a time limit set by a relevant provision expires, the period beginning with the day after Day A (when ACAS are contacted under Early Conciliation) and ending with Day B (the date the Early Conciliation Certificate is issued) is not to be counted. If a time limit set by a relevant provision would expire during the period beginning with Day A and ending one calendar month after Day B, the time limit expires instead at the end of that period. The authority of **Luton Borough Council v M Haque UKEAT/0180/17/JOJ** sets out the correct approach to adopt in calculating the new time limit.

10

The Presentation of a Complaint

21 Section 111 (1) and (2) of the Employment Rights Act 1996 provide that where
15 a complaint relates to an unfair dismissal of an employee by an employer an employment tribunal shall not consider it 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.

20

22 What is reasonably practicable is a question of fact for the Tribunal to decide. In the well established authority of **Wall's Meat Company Ltd v Khan (1979) ICR 52, CA** LJ Shaw stated that: "The test is empirical and involves no legal
25 concept. Practical common sense is the key note and legalistic footnotes may have no better result than to introduce a lawyer's complications into what should be a layman's pristine province."

23 The authority of **Porter v Bandridge Ltd (1978) ICR 943, CA** held that the
30 burden of proving that presentation of a claim in time was not reasonably practicable rests on the claimant.

24 Where the claimant is generally aware of his right, ignorance of the time limit will rarely be acceptable as a reason for delay. This is because a claimant who is aware of his rights will generally be taken to have been on enquiry as to the time limit. In accordance with the authority of **Trevelyan (Birmingham) Ltd –v- Norton [1991] ICR 488, EAT**, Mr Justice Wood said that when a claimant knows of his 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. It was further held in the case of **Sodexo Healthcare Services Ltd –v- Harmer EATS/0079/08** that the crucial question for the Tribunal was whether in the circumstances, the employee was reasonably ignorant of the time limit. If an employee is reasonably ignorant of the relevant time limit it cannot be said to have been reasonably practicable for him or her to comply with it.

15 **Issues to be Determined**

- 25 The Tribunal identified the following issues as requiring to be determined:-
- a. What is the (extended) time limit to lodge a claim in accordance with the ACAS Early Conciliation provisions?
 - b. Has the claimant shown that it was not reasonably practicable to present his claim within the three month statutory time limit / or as extended by the ACAS Early Conciliation provisions?
 - c. If so, was the further delay in presenting his claim reasonable?
 - d. Does the Tribunal have jurisdiction to consider the claims?

30

35

Conclusions

26 In applying the ACAS Early Conciliation provisions and the approach to be
adopted in accordance with **Luton Borough Council v M Haque**
5 **UKEAT/0180/17/JOJ**, I have calculated the time limit in which the Claimant
had to lodge a claim to be 7 April 2020. This is because the Claimant was
dismissed on 8 January 2020 and the ordinary three month time limit in which
to lodge a claim was 7 April 2020. The Claimant made contact with ACAS
under the Early Conciliation Scheme on 7 February 2020 and the ACAS Early
10 Conciliation certificate was issued on 7 March 2020. Therefore, the three
month time limit did not expire during the period between the Claimant's first
contact with ACAS and one calendar month after the ACAS certificate was
issued.

15 27 The Claimant was honest in his evidence that his failure to lodge the claims
in time was probably his fault as it was too much information at the same time
to take in. In particular, he said that although ACAS and the Citizens Advice
Bureau advised him to contact the Tribunal if he wanted to bring a claim, he
was new to the process and didn't recall being told about time limits. He also
20 mistakenly thought ACAS were part of the Tribunal and were lodging his claim
on his behalf.

28 However, I found that the Claimant was aware of his right to bring an
Employment Tribunal claim well before the expiry of the time limit. Soon after
25 his dismissal, he made enquiries with ACAS about the Tribunal process and
had contact with them under the Early Conciliation Scheme. He also sought
advice about it from the Citizens Advice Bureau.

29 In accordance with **Trevelyan's (Birmingham) Ltd ("supra")**, when a
30 claimant knows of his right to complain to an Employment Tribunal, he is
under an obligation to seek information and advice about how to enforce that
right. However, even though the Claimant had sought advice from ACAS and
the Citizens Advice Bureau and received the ACAS certificate on 7 March

2020, that refers to making an employment tribunal application, he did not lodge the first of his claims for another 6 months.

30 I am therefore satisfied that in applying **Sodexo Healthcare Services Ltd**
5 (**“supra”**), the Claimant’s ignorance of the time limit was not reasonable on these facts.

31 For these reasons, I have concluded that the Claimant has not shown that it was not reasonably practicable to lodge his claim within the statutory time limit.

10 32 In these circumstances, I am not required to determine whether the further delay in presenting his claim was reasonable.

15 33 Accordingly and for all of these reasons, I have determined that the claims are time barred and the Tribunal does not have jurisdiction to consider these claims further.

Employment Judge: R Sorrell
Date of Judgment: 27 June 2021
Entered in register: 2 July 2021
and copied to parties