EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4112566/19 & 432 Others (V)

Held on 10 January 2022

Employment Judge J M Hendry

Mr G Adams & 432 Others	**Claimant** **Represented by** **Mr D Hutcheon,** **Advocate,** **Instructed by** **Ms D Flanigan,** **Solicitor**
Cornerstone Community Care	**Respondent** **Represented by** **Ms L Fitzpatrick,** **Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Tribunal holds that the claims are not out of time as in terms of Section 147(b) of the Trade Union and Labour Relations (Consolidation) Act 1992, the Tribunal being satisfied that it was not reasonably practicable for the complaint to be presented before the end of the three month statutory time limit and that they were properly raised within such further period as it considered reasonable namely by the 19 November 2019.

REASONS

1. Employment Tribunal claims were made on behalf of 434 separate claimants under section 145(b) of the Trade Union and Labour Relations Consolidation Act 1992 (TULRCA). The claims were/are opposed. A preliminary hearing was arranged to consider whether or not the claims were out of time and the Tribunal had jurisdiction to hear them.

2. The claim forms did not contain the correct ACAS Early Conciliation reference and had initially been rejected. The claims were later accepted on the 19 November by Judge Whitcombe when they were resubmitted with the correct reference. The matter was appealed to the Employment Appeal Tribunal. The Judgment is helpful background to the claim. That appeal against Judge Whitcombe's decision was unsuccessful. The EAT observing that although the claim had been admitted other rights had been preserved including the respondent's right to assert that the claims were time-barred. This was the subject matter of this preliminary hearing.

Evidence

3. Parties lodged a joint chronology of events. I also heard evidence from Mr Ian Fitzpatrick, full-time Area Organiser with Unison who gave evidence in relation to the background circumstances which prompted the lodging of the claims. I therefore make additional findings of fact in relation to that evidence.

4. Parties also lodged a Joint Bundle of documents for the hearing, the contents of which were accepted by parties as being what they bore to be on their faces.

5. The issues for the Tribunal arose from section 145(1)(b) of TULCRA which governs the question of time limits and the well-known statutory test of whether or not it was not reasonably practicable for a claim to be lodged on time. The questions for the Tribunal were, therefore, whether or not it was

not reasonably practicable for the second ET1 to be lodged in time and if not whether it was lodged within such further period as the Tribunal considered reasonable.

Findings

6. Ian Fitzpatrick is a full-time Area Organiser with Unison. One of his responsibilities is representing Union members who are employed by the respondent company.

7. There were difficulties with employee/employer relations between the union members and the respondent's senior management for some time prior to the raising of Employment Tribunal proceedings in November 2020. Mr Fitzpatrick first became involved in supporting the Cornerstone members in about 2015.

8. The trade union takes very seriously the question of whether or not it is a recognised trade union in any workplace. The trade union and its members were in conflict with the respondent and in particular plans for changes the way the respondents operated were introduced by their CEO, Ms Edel Harris.

9. The respondent operates some care homes but mostly their staff provide "at home care" to service users in their own homes. The employees are scattered throughout Scotland from the north of Scotland to the central belt. The union members are in general low paid women. There was a history of collective bargaining. For some time the trade union suspected that the Board of the respondent company was not fully aware of these difficulties or of criticisms they had of the CEO's plans.

10. Matters escalated in May 2019 when the respondent's CEO Ms Harris wrote to employees (including Unison's members) setting out the reasons why they had decided to terminate the trade union recognition agreement. This matter was taken very seriously by the Unison who decided to apply to the CAC for

formal recognition and also, as they regarded the employer's actions as a possible breach of section 145E of TULCRA, to raise appropriate claims on behalf of their members who worked with the respondent.

11. It was not easy for Unison to organise the raising of claims on behalf of these members given the dispersed nature of the workforce. Mr Fitzpatrick was involved in meeting small groups of members in Elgin, Aberdeen, Dundee, Perth, Edinburgh and elsewhere to get their consent to raise proceedings. Members were approached and the circumstances explained to them that the union believed that there had been a breach of TULCRA. Members authorised the union to act for them and to raise appropriate proceedings on their behalf within the appropriate timer limit. This was a difficult, onerous and time-consuming task.

12. The raising of proceedings was discussed weekly at meetings of senior management at which Mr Fitzpatrick attended. The lodging of claims was delayed to ensure that as many members as possible were contacted and consented to being part to the proceedings and also to allow informal contact and negotiations with members of the respondent's Board and other senior managers to take place to resolve the outstanding difficulties. This was against a background where it became clear in late 2021 that the CEO was likely to leave the business. Accordingly, the union decided to wait until the statutory three-month time limit had almost expired before lodging proceedings.

13. Unison is in the habit of instructing Thompsons solicitors to deal with unfair dismissal and other common employment related matters for their members. Their own legal officers manage matters of particular importance which are regarded as of strategic importance. The current claims which ultimately involved 433 claimants were in this category.

14. It fell to the responsibility of Ms Suzanne Craig, a Unison Legal Officer to raise proceedings. She completed an ET1 form on behalf of the claimants and submitted it to the Employment Tribunal believing it correct. She had added

what she understood to be the correct ACAS reference. This was the reference that had been used in early conciliation correspondence. The forms were date stamped as having been received on 8 November 2019 (JBp.12-77).

15. Unison had arranged for early conciliation to take place prior to raising the proceedings. The "lead claimant" a Mr G Adams had received a letter from ACAS confirming the date of receipt of the ACAS EC notification was 27 August 2019 and the date of issue by ACAS of the certificate was 11 October 2019. The claim was required to be lodged by the 11 November.

16. The final ACAS reference R564439/19/36 was not transposed in full to the ET1 by Ms Craig. The digits 3 and 6 at the end of the run of numbers were not included.

17. The ET1 was considered by the Tribunal and rejected because of the failure to have a 10 digit ACAS certificate number. The Tribunal wrote to the union on 14 November 2019 (JB44-45). The 14 November was a Thursday. It is likely that the letter was received on 17 or 18 November. On 19 November Ms Craig responded (JB46-47). She wrote:

> "*I am writing to request a reconsideration of the decision to reject the above claim on the basis that the decision was wrong.*
>
> *The reason for rejection is given that the ET1 does not provide "a correct and complete early conciliation number in respect of your claim.*
> *The ACAS certificate should consist of a letter and ten digits e.g.: R123456/19/12)*"
>
> *The claim submitted provided early conciliation numbers for all 433 claimants, the lead claimant on page 2 of the ET1 and the others on a schedule submitted with the claim. If this decision is based on the early conciliation (EC provided not containing the last 2 digits added to the EC number on the EC certificate that decision is wrong. Rule 10 requires "an early conciliation number" the EC number submitted with the claim are those issued by ACAS, were used as unique identifiers throughout the early conciliation process, and can confirm that each claimant has complied with the requirements to engage with the ACAS process before submitting the claims.*

> *It is not in accordance with the overriding objective in detailing with this case justly and fairly including avoiding unnecessary formality, by introducing additional requirement that is not provided for in the rules.*
>
> *If the certificate numbers, as distinct from the EC numbers, were required for administrative purposes, they should have been requested by the Vetting and Registration Team in their e-mail of 11/11/19 (copy attached) requesting an electronic copy of the schedule of claimants provided by return so a schedule with the certificate numbers is attached to the electronic version of this e-mail. For the avoidance of doubt this does not constitute acceptance that the claim form submitted was defective.*"

18. The matter was put before Judge Whitcombe accepted the ET1 with the correct reference on 19 November 2019 accepted it. He did so without a hearing and indicated that the claims would be treated as presented as of 19 November 2019.

19. The claimants appealed to the Employment Appeal Tribunal who issued a Judgment concluding that the Tribunal had been correct to reject the claims under paragraph 10(1)(c)(i) of the Employment Tribunal Rules and that the Tribunal was correct to treat the claims as having been lodged on the date when they were resubmitted which was the 19 November 2019.

Witness

20. I found Mr Fitzpatrick to be wholly credible and reliable witness. He was intimately involved, at a senior level, in the lead up to the lodging of the claims and accordingly could give the Tribunal useful background information particularly around why the claims were lodged close to the primary time limit.

Submissions

21. The claimant's Counsel first of all set out the factual background which he asked Tribunal to accept. He reminded the Tribunal that a number of matters were uncontentious and set out in the agreed chronology. He took the Tribunal through the brief history of the original application and then the amended (accepted) application. He made reference to the appeal to the

EAT and indicated that this, in his view, did not change the Tribunal's role today as the EAT had accepted that Judge Whitcombe had reconsidered the original application and allowed it to be accepted on 19 November 2019 reserving issues of time-bar (this date being outwith the three month statutory time limit).

22. He turned to the bundle of authorities before the Tribunal. These dealt with the "not reasonably practicable" test in an unfair dismissal context but this made no difference for the present purposes. He first of all made reference to the case of ***Lowri Beck Services Ltd v. Brophy***, a Court of Appeal case (A2/2019/1034) and the guidance therein in relation to the role of a skilled adviser and the appropriate exercise of discretion by the Tribunal. In particular the statutory test should be given a liberal interpretation (paragraph 12). He then took the Tribunal through that case and then turned to the case of ***Adams v. British Telecommunication Plc*** UKEAT/342/15. He made reference to that case in some detail extracting what he believed were the relevant principles applicable to this case. The focus, he submitted, should be on the second applications and not the first.

23. Turning to the background it was, he said, clear from the information before the Tribunal that the trade union had good reasons to wait until near the expiry of the primary time limit before lodging proceedings. A delay at this stage was sometimes criticised. However, in the present case this delay had been part of their industrial strategy. It was an appropriate and reasonable strategy to adopt in the circumstances. It relied on hopes that informal negotiations might obviate the need for proceedings. Delay in issuing the proceedings also meant that more members could be contacted and become parties to those proceedings if ultimately raised.

24. Ms Craig clearly made an error transposing or omitting two of the digits. Her position was set out in her letter to the Tribunal seeking a reconsideration. That was the first time that she had become aware of the difficulty. The

primary time limit had now passed. In Counsel's view there were three simple points: firstly, it was clearly an unintentional and minor error: secondly it was not a case of a delay where the representatives were "resting on their laurels" and thirdly, they acted promptly to rectify the problem as soon as the difficulty became apparent. Counsel pointed out that the letter from the Tribunal rejecting the claims was sent on a Thursday. It was probably, he suggested, not considered until the Monday or the Tuesday of the following week by Ms Craig. There were three working days between the issue of the letter from the Tribunal and the request for reconsideration made by her.

25. The Tribunal, he submitted, should adopt a liberal interpretation. In terms of the overriding objective there should be flexibility and it should avoid unnecessary formality. There was, in Counsel's view, sufficient material before the Tribunal to draw the necessary inferences and this was a simple error that representatives had attempted to rectify as quickly and as possible as soon as it came to their attention. The case was in Counsel's view on all fours with ***Adams*** and even if there were some minor factual differences these were not in his view significant. The Tribunal should extract the appropriate principles from these cases and apply them here.

26. In response to Ms Fitzpatrick's submissions Counsel accepted that the "***Dedman***" principle was not explicitly dealt with in ***Adams*** but he suggested that did not make the authority weaker. The matter was in any event canvassed in the case of ***North East London NHS Foundation Trust v. Zhou*** EAT/0066/18. It was quite clear from the case authorities that a mistake such as the one made here is properly regarded as a trivial or minor mistake (although one with important consequences). It could not be said that the Union whom were the claimants' representatives had acted unreasonably and the matter was a minor technical oversight. In ***Zhou*** the authorities were reviewed and there was no attempt to distinguish or undermine ***Adams***. Counsel referred the Tribunal to paragraphs 44, 45 and 46. The Judge there suggested that the ***Dedman*** principle was not raised in ***Adams*** because of the minor role of the advisers (solicitors) but it is clear from ***Adams*** that the advisers had checked the claimant's ET1 which had been prepared by her.

27. Ms Fitzpatrick provided the Tribunal with a helpful list of authorities which she then touched on in her lengthy submissions. She made reference to the two arms of the test. It was clear she submitted that the claims were made outwith the primary time limit. The Tribunal, therefore, had to consider whether it was not reasonably practicable to lodge the claim in time and if it had been lodged in a reasonable period thereafter. Her position was that the claimants were unable to meet this test. She believed there was an onus on them which they had not discharged. Ms Craig had surprisingly not given evidence as to why she made the error she did.

28. Ms Fitzpatrick first of all referred to the case of ***Porter v. Bandridge Ltd*** [1978] ICR 943 particularly at page 948. It stated there that the onus of proving that it was not reasonably practicable to present the complaint within a period of three months was upon the employee (Mr Hutcheson intervened to observe that this referred to the first part of the test and not the second).

29. The solicitor then took the Tribunal to the well-known case of ***Walls Meat Company v. Khan*** [1979] ICR 52 and then to ***Dedman v. British Building & Engineering Appliances Ltd*** [1974] ICR 53. Dedman was in her view an important case as it enunciated a principle relating to the responsibility of representatives. This was pertinent here. Ms Craig was a senior solicitor and legal officer. She was experienced in Tribunal matters. She should have lodged the application successfully. She also had the assistance of Thompsons Solicitors.

30. Ms Fitzpatrick then took the Tribunal through the factual background referring to Rule 10(1)(c)(1). She accepted that the effect of this Rule had now been altered but that change was not retrospective. The Tribunal had to look at the state of mind of the claimants. They were entitled under the ***Dedman*** principle to rely on their representative, the trade union's legal officer, to lodge the claims properly. She believed that the ***Adams*** case should be distinguished. In ***Adams*** the legal representative's role was a minor one. That case had not engaged with the ***Dedman*** principle. In ***Adams*** the

solicitor was only instructed at the last minute and the ET1 completed by the claimant herself. The solicitor was therefore not legally responsible for lodging the defective claim (but the claimant was entitled to have some confidence that the claim was correct because it had been checked by the solicitor).

31. Ms Fitzpatrick disagreed that the Tribunal had sufficient evidence before it to make appropriate findings. It had not heard evidence from Ms Craig nor from any of the claimants as to their understanding of the matter. Ms Fitzpatrick made reference to the case of ***Zhou*** and spent some time discussing that case and how it might assist the Tribunal or not. The Tribunal had to consider whether or not the legal officer's actions were reasonable and it was difficult to suggest that making a mistake which was so fundamental was reasonable. The respondent's agent also did not accept that the claimants' representatives had good reasons to delay the lodging of claims. They could have lodged the first claim earlier and the second claim more quickly. This would have flushed out any difficulties. They also been contacted by the Tribunal who had asked for a schedule of all of the claimants. This was an opportunity for them to have engaged with the Tribunal and for the difficulties to come to light.

32. The Tribunal she continued had to weigh the evidence before it and balance the competing factors that the case authorities give guidance about before exercising its discretion. The Tribunal was referred to the comments by Lady Wise in ***Basely v. South Lanarkshire Council*** [2017] ICR 365 and the requirement for addressing the balance of prejudice. Ms Craig should have known that the failure to put in the correct ACAS number was a serious and fatal error with draconian consequences. The ET1 should have been given a careful check. She did not accept that it was reasonable to wait until near the expiry of the primary time limit before submitting the ET1. Parties could have been added at a later date. The claimants in her view had not discharged the burden of proof on them in relation to either leg of the test.

Discussion and Decision

33. The Tribunal had reference to the following statutory provisions and to the various authorities cited by parties in their very full and detailed submissions.

34. Time limits in this case are governed by s147 of the Trade Union and Labour Relations (Consolidation) Act 1992.

> "*147 Time limit for proceedings.*
>
> *(1) An employment tribunal shall not consider a complaint under section 146 unless it is presented—*
>
> *(a) before the end of the period of three months beginning with the date of the act or failure to which the complaint relates or, where that act or failure is part of a series of similar acts or failures (or both) the last of them , or*
>
> *(b) where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period, within such further period as it considers reasonable.*"

35. The section mirrors the comparable section in the Employment Rights Act 1996 (s111 (2)) which also provides a two stage test.

Background

36. The background disclosed that Unison delayed the issue of proceedings firstly to ensure that as many members as possible were contacted and given the chance to participate in the proceedings (no doubt this was also hoped to show the employers the depth of their members feelings and the level of support for the claims, and also to give time for informal discussions to take place up to the lodging of the claims. Mr Fitzpatrick indicated that the union was aware that attitudes might harden on both sides once proceedings were raised. As Counsel for the claimants put it this was not a situation where there was some inattention on the part of the claimant's representatives in allowing the primary time limit to expire but part of a rational strategy which took account of these factors and the practical difficulties of contacting their scattered members.

37. For these reasons I reject the submission that there was something unreasonable or untoward in the delay in lodging the proceedings. It seems to me that the delay was almost inevitable given the number of claimant's and the difficulties in reaching them. In addition, the delay was to the advantage of both sides in that it allowed more time for a resolution to be found. Ms Fitzpatrick is correct however in that a litigant who waits until the end of the primary time limit is losing as it were time to ensure that the proceedings are safely lodged but the matter is one for the particular circumstances and judgment of representatives in each case. I do not criticise the strategy that was adopted which would also show the strength of feeling of the union members if large numbers participated.

38. The nature of the error which had the consequence of delaying the acceptance of the proceedings was apparently straightforward. Ms Craig explained in her letter to the Tribunal that she had used the ACAS reference that had been used in correspondence when taking part in the Early Conciliation process. She did not seem to realise that the longer reference finally issued by ACAS (a ten digit reference) was what was required. This reference appears to have been the original reference plus two additional digits added when the early conciliation process was concluded.

39. Ms Craig did not give evidence. It was explained that she had left the union's employment but was still living in Scotland. That she had left her employment with Unison should have been no bar to her being cited as a witness and there could have been difficulties for the claimant's case in not having her speak to the error she made and how it occurred. There is always a danger in not leading such evidence especially if the circumstances are disputed. In this case the respondent did not actively dispute those circumstances rather they left it to the Tribunal to form a view on the material before it.

40. The respondent's position in effect was that as a senior solicitor working for the union Ms Craig should not have made this error. This was somewhat

undermined by the evidence that most of the claims made on behalf of union members were dealt with by Thompsons. In any event it is clear from the authorities and from the facts that the error here can be properly described as being a minor and technical one although an error with potentially serious consequences.

41. It was also suggested that the Tribunal did not have sufficient evidence from which to make findings. The evidence of Mr Fitzpatrick and the undisputed material in the form of correspondence before the Tribunal and the clear sequence of events was sufficient to allow appropriate findings to be made and to dispose of the case.

Legal Background

42. The starting point for a consideration of the way in which the law in this area has developed is to consider the relatively recent case of ***Adams*** to which both parties referred. As every case is fact sensitive especially in this area it would be wise to briefly narrate the circumstances. The claimant presented claims for unfair dismissal and race discrimination on the 16 February having obtained the ACAS certificate on the 18 January. The proceedings were raised on the last day within the primary time limit. A day later on the 17 February the Employment Tribunal rejected the claims as the ACAS conciliation number was incomplete. On receiving the rejection on the 19 February her solicitors represented the claims with the full number. An Employment Judge later held that the Tribunal had no jurisdiction to hear the claims as having been presented out of time. The claimant appealed. It is noteworthy that the claims were lodged by the claimant herself but she had instructed solicitors on the 16 February and they did have role in checking that the papers seemed in order.

43. At the Employment Appeal Tribunal Simler J the then President reviewed the applicable time limits and the basis (contained in the Tribunal Rules) on which the claim form was rejected. She observed that Rule 12(2A) contained an

escape route for minor errors but at that time did not apply to errors with the Conciliation number. She concluded that the Employment judge was correct that the claim form was properly rejected and the acceptance of the amended claim for would be subject to the reasonably practicable test in Section 111. The Appeal Tribunal held that the focus for the Employment Judge must be on the second leg of the test and the circumstances around the corrected claim being lodged and not the first leg of the test or the lodging of the first claim.

44. The court accepting that it was trite law that the question of reasonable practicability was a question of fact the focus should, it said, be on the claimant's objective state of mind. The EAT went on to consider the claimant's state of mind after the rejection of her claim pointing out that she no doubt thought that the claim was correctly made and would have had no reason to lodge a second claim at that point. In other words, at this point she laboured under the mistaken belief, as Ms Craig did, that the claims had been properly made. When the error was noticed the matter was quickly rectified. It was not ''immediately obvious'' that such a slip would render the claims invalid. The court indicated that delay in lodging the proceedings such as we have in this case is a factor to be considered. In passing the Tribunal Rules have now been amended to allow the Tribunal to accept a claim form with an incorrect ACAS reference if it is in the interests of justice to do so.

45. Disposing of the case the Judgment Simler J stated:

> ''*I am quite satisfied in light of the findings and circumstances, that when the Claimant lodged her first claim, on 16 February 2015, she had no reason to believe that it contained the defect that it did. Had she become aware of that defect either when transposing the conciliation certificate number or at any time after, I have little doubt that she would have done something about it given that she attended on 16 February and immediately on notification of the defect, again on 19 February. I accept, therefore, that in the period between 16 and 19 February the Claimant was proceeding in the mistaken belief that the first claim had been properly presented. She may have been comforted by the fact that she was accompanied by a solicitor when she completed the form in having that belief, so that contrary to the position*

advanced by Mr Rushmere it seems to me that the belief she held between 16 and 19 February - which was in fact a mistaken belief - may have in part been formed on the basis of the comfort of having solicitors' advice. Whilst it might not have been reasonable to make the mistake in completing the form that she did, in the absence of any evidence to the contrary, I accept that it was a genuine and unintentional mistake and that the Claimant, was altogether unaware of that mistake until notified of it on 19 February.''

46. One of the criticisms of the case advanced by Ms Fitzpatrick was that it had not grappled with the so called ''Dedman'' principle as the role of the claimant's solicitor in the case was neither particularly clear or addressed in submissions. As an observation it is unlikely that an experienced Judge would not have been both aware of the principle and would have commented on it if relevant to the facts. Nevertheless, the submission is apt in that the role of the claimant's representatives namely the union must be considered. It is clear that the union undertook to lodge the claims on behalf of it's members. Although obviously they were not a firm of solicitors they had the services of Ms Craig who is described in her letter as a legal officer. She appears is a qualified solicitor.

47. The role of the solicitors in the ***Dedman*** case was that they interpreted the date of dismissal from correspondence that was ambiguous, wrongly leading to the claim being lodged late. It is interesting to note that Lord Denning (Page 61) when summing up commented: ''if he (*the claimant*) was at fault, or if his advisers were at fault…he must take the consequences. By exercising reasonable diligence, the complaint could and should have been presented in time'' Essentially Ms Fitzpatrick's submission was that the solicitor had failed to exercise reasonable diligence'' The difference to that of the present case is that the solicitor was not exercising her talents as a lawyer to interpret a legal issue as in Dedman but to mechanically record correctly the appropriate ACAS reference an error has been described as being minor or trivial.

48. The Court of Appeal case of ***Lowri Beck Services Ltd v Brophy A2/2019/1034*** reaffirmed that the test to be applied was to be given a liberal interpretation in favour of the employee.

49. The Tribunal was also referred to the case of ***North East London NHS Foundation Trust v Zhou UKEAT/0066/18/LA*** That case referred to the case of ***Adams***. There was also a review of authorities including ***Dedman***. This case involved solicitors who were asked to lodge claims but the claimant to save costs had agreed to complete the formal aspects of the claim and in doing so had missed the last two digits. The claims were rejected and resubmitted by her solicitors with the correct reference. The employers raised the role of the solicitors arguing that the Dedman principles applied and that if fault could be attributed to the solicitors then the claimant was bound by that error. There was a discussion about the role of that principle (paragraph 11) in the light of more recent authority and concluded that the question was whether the solicitors had acted reasonably.

50. The EAT held that both the claimant and her solicitors thought that the initial claim had been properly submitted. Their belief was mistaken. Applying the reasoning in ***Adams*** the court held that the claimant's belief arose from her confidence in her solicitors and the solicitor's belief arose from failing to spot the error. The fact that the claimants were not as intimately involved in the present case as they were here does not prevent the application of the principles and reasoning set out in the case. The claimants here had been made aware of the submission of the claims (JBp8/9) and they were aware that Unison would be lodging them. They would have believed/expected that the claims had been lodged correctly. The role of the solicitors in ***Adams*** appears to have been was less that the role played here by Unison and their Legal Officer but the focus must be on the error made by them.

51. At paragraph 44, 45 and 46 the H.H Judge Eady wrote:

"44. For all that, I also agree with the Claimant that it is hard to characterise the error in question as anything other than minor and technical and I do not consider it could be said that this kind of mistake was anticipated by the earlier case law (such as Wall's Meat or Dedman); those cases plainly did not address the kind of additional requirements now imposed under the EC regime. And in this context, I consider the ET was entitled to make the observation that fault does not necessarily equal unreasonableness for these purposes. It seems to me that the particular nature of the error might, in particular cases, be a relevant factor for an ET to weigh in the balance when determining the reasonableness of the conduct for the purposes of UKEAT/0066/18/LA - 16 - A B C D E F G H reasonable practicability. That is not to suggest that the test of reasonable practicability should be taken to equate to that applicable to the just and equitable extension permitted in other contexts. As was acknowledged in Adams, however, the nature of the error may be relevant to understanding why there was an impediment to the in-time presentation of a claim 45. In circumstances in which it might not have been unreasonable for a Claimant or, I would allow, her advisers not to appreciate that an initial claim lodged in time contained a minor but a fatal error, an ET would be entitled to find it was not reasonably practicable for the corrected claim form to be presented in time. This question will inevitably be fact- and context specific but, as Lady Wise allowed in Baisley, it might not always be right to assume that every omission, however technical, is not reasonable. 46. As to whether this case is or is not on all fours with Adams, I do not think that is the real question. The Dedman principle point does not seem to have been raised in Adams. That might be because the solicitors in that case came in at a very late stage and did not advise on the content of the form - it is hard to tell from the EAT's Judgment - but certainly the Dedman principle does not appear to have been raised as an issue in that case. In any event, my focus has to be on the case that is before me and whether the ET applied the correct test and reached a permissible conclusion on the facts of this matter. I therefore return to the ET's Judgment in issue on this appeal."

52. The claims in this case were lodged by Ms Craig. It is apparent from her letter to the Tribunal (JB p46/47) that she was taken aback by the rejection of the claim. It is clear that she was labouring under the misapprehension that the ACAS reference used in the conciliation period (an 8 digit number) was the correct refence to use or a sufficient reference to use. This seems to militate against any suggestion that she commonly submitted claims herself and should have been aware through her practice of the law that the full or final reference needed to be used. We now know she was in error.

53. The evidence before the Tribunal was to the effect that Ms Craig as a Legal Officer is involved in important cases (ones with strategic importance as Mr Hutcheon put it) and against a background of employment cases mostly being raised on the union's behalf by solicitors it is apparent that the error was perhaps understandable. I am certainly prepared to categorise it as ''minor and technical'' in the same way that Judge Eady characterised an almost identical error in ***Zhou***. I accept that the matter before the Tribunal requires to balance the respective prejudice to parties of exercising it's discretion. It seems to me that that balance favours the claimants who would otherwise lose an important statutory right as against the respondents who suffer no obvious prejudice other than to lose their wish for what might be described as a technical knockout. Each case is fact sensitive but I noted that Lady Wise in ***Basely v. South Lanarkshire Council*** concluded that the argument advanced that there had been a failure by a solicitor to check that a properly faxed copy of the claim in question had actually been received been received was *''to demand something approaching a perfectionist method of working''* That seems to equally seems to apply to the simple error made here.

54. Although some issue was made about the time taken to relodge the proceedings I do not regard the time as being in any way unreasonable. Mr Hutcheon pointed out that it was likely to have been three working days and this is within a reasonable period as required by the statutory test.

Employment Judge **James Hendry**

Date of Judgement **2 February 2022**

Date sent to parties **2 February 2022**