



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4101705/2019

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Held in Glasgow on 16 September 2019

Employment Judge L Wiseman

10 **Mrs M Mackay**

**Claimant
In Person**

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**Nicola Duddy
t/a Strathaven Tea Room**

**Respondent
Represented by:
Ms J Quinn -
Solicitor**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The tribunal decided it was reasonably practicable for the claim to have been
25 presented within the applicable time limit. The claim was presented late. The tribunal
does not have jurisdiction to consider a late claim and for that reason the claim
cannot proceed.

REASONS

1. The claimant presented a claim to the Employment Tribunal on the 6 February
30 2019 alleging she had been unfairly dismissed.
2. The respondent entered a response denying the claimant had been
dismissed.
3. The hearing today was to determine whether the claim had been presented
within the applicable time limit.

E.T. Z4 (WR)

4. I heard evidence from the claimant. I made the following material findings of fact.

Findings of fact

- 5 5. The claimant's employment with the respondent ended on the 28 September 2018.
6. The claimant contacted ACAS for advice and learned she could make a claim to the Employment Tribunal.
7. The claimant commenced the early conciliation process on the 3 October 2018.
- 10 8. The early conciliation certificate was issued on the 3 November 2018.
9. The claimant presented a claim on the 6 February 2019.
10. The claimant had read some information online regarding time limits for making a claim to the Employment Tribunal. She initially understood she had three months from the date of termination of employment in which to make a claim. She later believed it was three months from receipt of the early conciliation certificate.
- 15 11. The claimant did not act upon receipt of the early conciliation certificate because she was dealing with family issues arising from her brother's suicide.

Claimant's submissions

- 20 12. Mrs Mackay apologised for the claim being late. She had received the early conciliation certificate on the 7 November and thought she had three months from then in which to present a claim. She had delayed in presenting the claim because she had other things on her mind due to family circumstances.

Respondent's submissions

- 25 13. Ms Quinn noted there was no dispute regarding the key dates in this case: the effective date of termination was the 28 September 2018; the early conciliation certificate was dated 3 November 2018 and the claim was

presented on the 6 February 2019. Ms Quinn submitted the claim had been presented late: it should have been presented on or before the 27 January 2019.

- 5 14. Ms Quinn acknowledged the family circumstances would have made matters difficult but the claimant knew she wanted to bring a claim and knew of the early conciliation process, which she started very shortly after the end of her employment. The claimant had investigated the time limits for making a claim online.
- 10 15. Ms Quinn submitted the onus was on the claimant to investigate the time limits for bringing a claim, and mistaken belief regarding time limits was not sufficient to demonstrate it not being reasonably practicable to comply with the time limit.
- 15 16. Ms Quinn referred to the case of **Asda Stores Ltd v Kauser UKEAT/01 65/07** and to the Judgment of an Employment Judge where the applicable law had been summarised.
17. Ms Quinn submitted the claim had been presented late. The claimant had not said anything to show it had not been reasonably practicable to present the claim in time and accordingly the claim should not be allowed to proceed and should be dismissed.

20 **Discussion and Decision**

18. I firstly had regard to the relevant statutory provisions contained in section 111 of the Employment Rights Act 1996, which provide that a complaint of unfair dismissal must be presented to an Employment Tribunal before the end of the period of three months beginning with the effective date of termination.
- 25 19. I next had regard to the provisions governing the early conciliation process (The Employment Tribunals (Early Conciliation: Exemptions and Rules of Procedure) Regulations 2014). They provide that within the period of three months from the effective date of termination of employment, early conciliation must start, and this extends by a further month, the period of time for presentation of the claim form to the Tribunal. If a claim is not presented in
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time, a tribunal cannot consider it unless it was not reasonably practicable to have presented it in time, and the claim was then presented within a further reasonable period of time.

20. There was no dispute in this case regarding the fact the claimant's employment came to an end on the 28 September 2018. The claimant had a period of three months in which to present her claim, but this was extended by one month through the early conciliation process. The claimant had to present her claim on or before the 27 January 2019. The claim was not presented until the 6 February 2019. The claim was presented late.
- io 21. I must decide whether it had been reasonably practicable for the claimant to present the claim on time. The term "reasonably practicable" was explained in the case of **Palmer and Saunders v Southend on Sea Borough Council** **2984 IRLR 119** where the following guidance was given:

15 *"... we think that one can say that to construe the words "reasonably practicable" as the equivalent of reasonable is to take a view too favourable to the employee. On the other hand, "reasonably practicable" means more than merely what is reasonably capable physically of being done. ... Perhaps to read the word "practicable" as the equivalent of "feasible" ... is the best approach. ... What however is abundantly clear on all the authorities is that the*

20 *answer to the relevant question is pre-eminently an issue of fact for the Industrial Tribunal and that it is seldom that an appeal from its decision will lie. Dependent upon the circumstances of the particular case, an Industrial Tribunal may wish to consider the manner in which and reason for which the employee was dismissed including the extent to which, if at all, the employer's*

25 *conciliatory appeals machinery has been used. It would no doubt investigate what was the substantial cause of the employee's failure to comply with the statutory time limit, whether he had been physically prevented from complying with the limitation period for instance by illness or a postal strike or something similar. Any list of possible relevant considerations, however, cannot be*

30 *exhaustive and, as we have stressed, at the end of the day the matter is one of fact for the Tribunal, taking all the circumstances of the given case into account"*.

22. I was referred to the case of **Asda Stores Ltd v Kauser** (above) where it was stated that "... *the relevant test is not simply a matter of looking at what was possible, but asking whether, on the facts of the case as found, it was reasonable to expect that which was possible to have been done*".
- 5 23. The onus is on the claimant to prove that it was not reasonably practicable to present the claim in time. I understood from the claimant that there were essentially two reasons why she had not presented the claim form on time: firstly, she had understood she had three months from receipt of the early conciliation certificate in which to present her claim and secondly, she had
10 been dealing with "family issues" following the death of her brother.
24. I accepted the claimant's evidence that she had done some research online regarding the time limit for making a claim. The claimant's understanding of the time limit was erroneous. I could understand why the claimant's understanding of time limits was erroneous, however it is well established that
15 where a claimant is generally aware of the right to bring a claim, ignorance of the time limit will rarely be acceptable as a reason for delay. This is because a claimant who is aware of her rights will generally be taken to have been put on inquiry as to the time limit: in other words, the claimant was under an obligation to seek information and advice about how to enforce her right to be
20 bring a claim to the Employment Tribunal (**Trevelyan (Birmingham) Ltd v Norton 1991 ICR 488**).
25. I was satisfied the claimant knew of her right to bring a claim to the Employment Tribunal. She had started the early conciliation process which is a gateway through which she had to pass in order to bring her claim. The
25 onus is on the claimant to obtain information or advice to correctly inform herself of the position regarding time limits. She did not do so and accordingly I could not accept that her misunderstanding of the time limit made it not reasonably practicable to present the claim on time.
26. I next considered the fact the claimant had issues to deal with following her
30 brother's death. I did not doubt this was an emotional and difficult time for the claimant, however beyond this the claimant did not offer any explanation why

this prevented her from making the claim. There was, for example, no suggestion the claimant had been incapable of presenting the claim because of the emotional issues she was dealing with.

27. I accordingly concluded that it was reasonably practicable for the claim to have been presented in time and that the claimant had simply delayed in acting to present the claim. The claim could, for example, have been presented upon receipt of the early conciliation certificate.

28. I, in conclusion, decided it was reasonably practicable for the claim to have been presented in time. The claim was presented late and cannot proceed.

Case management

29. The claimant noted that at a previous hearing the Employment Judge had made a preparation time order, ordering the respondent to pay to the claimant the sum of £102 because the hearing had to be postponed to allow the respondent time to enter a response. The claimant confirmed the sum had not been paid by the respondent.

30. I considered it appropriate to allow a period of 14 days for the sum of money to be paid to the claimant. I explained to the claimant that if the money was not paid, she could seek an Extract of the Judgment and enforce payment of the money.

Employment Judge: Lucy Wiseman
Date of Judgment: 25 September 2019
Entered in register: 26 September 2019
and copied to parties