

EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4103643/2019

Held in Glasgow on 5 August 2019

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Employment Judge: M Kearns (sitting alone)

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Mr Garry McCulloch

**Claimant
In person**

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SAS International Limited

**Respondent
Represented by:
Mrs A Stobart
Advocate**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

30 The Judgment of the Employment Tribunal delivered orally with reasons on 5 August
2019 was that:-

- (i) the claimant's claims for unfair dismissal and arrears of pay are out of time;
- (ii) it was reasonably practicable for the claimant to have presented these claims in time; and
- 35 (iii) the claims for unfair dismissal and arrears of pay are dismissed.

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REASONS

1. The claimant worked for the respondent as a CNC Operator from June 2012 until his dismissal, along with others on 15 November 2018.

2. Having complied with the early conciliation requirements and obtained a certificate, issued by ACAS on 21 February 2019, the claimant had until 21 March 2019 to present his application to the Employment Tribunal. In the event, he did not present it until 5 April 2019, at which point it was just over two weeks late.

Issues

3. The case came before me for a Preliminary Hearing. The issue for determination was time-bar. The onus is on the claimant to show that it was not reasonably practicable for him to have presented his application in time and that it was presented within such further period as was reasonable in the circumstances.

Evidence

4. I heard evidence from the claimant himself. He was frank and honest about his situation, but his memory of events was somewhat vague. The facts found are as discussed below.

Discussion and decision

5. The claimant makes complaints of unfair dismissal, arrears of pay and redundancy payment. Section 111(2) of the Employment Rights Act 1996 ("ERA") applies to claims of unfair dismissal and the provision concerning arrears of pay is in the same terms. Section 111(2) states that;

"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."

6. The ACAS Early Conciliation extension of time provisions 'stop the clock' for the period of any ACAS conciliation. The claimant had one calendar month to get his claim in from the date of issue by ACAS of their early conciliation certificate on 21 February 2019. The claimant therefore needed to present his claim to the

Employment Tribunal by 21 March 2019. The claim was presented just over two weeks late on 5 April 2019.

5 *Was presentation in time not reasonably practicable?*

7. The time limits in employment cases are strictly enforced. The onus is on the claimant to prove that presentation of his claim in time was not reasonably practicable. That imposes a duty on him to explain precisely why it was that he
10 did not present his complaint by 21 March 2019.

8. In order to establish that it was not reasonably practicable to present a claim in time a claimant will ordinarily have to be able to point to some impediment or hindrance which made compliance with section 111(2)(a) not reasonably
15 practicable in the sense of not reasonably feasible.

9. In the present case the claimant's explanation in evidence for not presenting his claim in time was that he had split with his partner at the end of October 2018 and his head was not in a good place. This was made worse by only getting to see his
20 children, aged 10 and 17 once a week. The claimant said he had telephoned Digby Brown but could not afford their consultation fee.

10. I found the claimant to be an honest and sincere witness and accepted his evidence as far as it went. The facts are these: the claimant managed to make
25 the initial call to notify ACAS on 12 February 2019, within the three month time limit, and, as he put it, that set the ball rolling. However, his ET1 form was two weeks late. The claimant very honestly said that he realised the claim was late. He could not remember how he had come to that realisation, but it seems likely that ACAS would have made the time limit clear to him during the initial call, and
30 the claimant very fairly accepted in cross examination that he thought that they had done so. In any event, the claimant had access to the internet and was in touch with other colleagues who were in the same boat as himself.

11. I have great sympathy for the claimant's difficult personal circumstances. However, in the absence of medical evidence to the effect that the claimant's
35 health or circumstances affected his ability to submit the claim in time, there is, as Mrs Stobart submits not sufficient to make it not reasonably practicable. The claimant did manage to put the claim in on 5 April 2019 and it is unclear why it therefore could not have been submitted by 21 March.

12. I have concluded that on the evidence before me the claimant's circumstances do not meet the 'not reasonably practicable' test and that the Tribunal accordingly has no jurisdiction to hear the case in so far as it relates to unfair dismissal and
40 arrears of pay.

45 *Was the complaint presented within such further time as the Tribunal considers reasonable?*

13. This question does not arise in the circumstances.

Employment Judge: Mary Kearns
Date of Judgment: 05 August 2019
Entered in register: 09 August 2019

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