



## EMPLOYMENT TRIBUNALS

**Claimant:** Ms Z Rybanova

**Respondent:** Voyage 1 Limited

**Heard at:** London South via CVP                      **On:** 21/2/2022

**Before:** Employment Judge Wright

**Representation:**

**Claimant:** Ms B Szyjka (friend)

**Respondent:** Mr J Feeny - counsel

**JUDGMENT** having been given on 21/2/2022 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

## JUDGMENT AT AN OPEN PRELIMINARY HEARING

It is the Judgment of the Tribunal that the claimant's claim of unfair dismissal was not presented within the limitation period as per s.111 of the Employment Rights Act 1996 (ERA) and it was not persuaded to extend the limitation period in accordance with s.111(2)(b). The claim is therefore dismissed.

# REASONS

1. Ms Szyjka informed the Tribunal in accordance with the instruction from the SRA she was a solicitor, but not an employment expert and was representing the claimant at the hearing in her capacity as a friend.
2. A claim of unfair dismissal contrary to part X and in particular s.94 ERA has to be presented, in accordance with s. 111 ERA within three months of the date of termination. If that time limit is not complied with, as was the case in this claim, it has to be presented within such further period as the Tribunal considers reasonable where it is satisfied that it was not reasonably practicable for the compliant to be presented before the end of that three months.
3. Section 111 ERA provides:

*'(1) A complaint may be presented to an employment tribunal against an employer by any person that he was unfairly dismissed by the employer.*

*(2) Subject to the following provisions of this section, 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.'*

4. When a claimant tries to excuse late presentation of her ET1 claim form on the ground that it was not reasonably practicable to present the claim within the time limit, three general rules apply:

S.111(2)(b) ERA should be given a 'liberal construction in favour of the employee' — Dedman v British Building and Engineering Appliances Ltd 1974 ICR 53, CA;

what is reasonably practicable is a question of fact and thus a matter for the tribunal to decide. An appeal will not be successful unless the tribunal has misdirected itself in law or has reached a conclusion that no reasonable tribunal could have reached. Wall's Meat Co Ltd v Khan 1979 ICR 52, said: 'The test is empirical and

involves no legal concept. Practical common sense is the keynote and legalistic footnotes may have no better result than to introduce a lawyer's complications into what should be a layman's pristine province. These considerations prompt me to express the emphatic view that the proper forum to decide such questions is the [employment] tribunal, and that their decision should prevail unless it is plainly perverse or oppressive'; and

the onus of proving that presentation in time was not reasonably practicable rests on the claimant. 'That imposes a duty upon him to show precisely why it was that he did not present his complaint' — Porter v Bandridge Ltd 1978 ICR 943, CA. Accordingly, if the claimant fails to argue that it was not reasonably practicable to present the claim in time, the tribunal will find that it was reasonably practicable — Sterling v United Learning Trust EAT 0439/14.

5. Even if the claimant satisfies a Tribunal that presentation in time was not reasonably practicable, that does not automatically decide the issue in her favour. The Tribunal must then go on to decide whether the claim was presented 'within such further period as the tribunal considers reasonable'. Thus, while it may not have been reasonably practicable to present a claim within the three-month time limit, if the claimant delays further a Tribunal is likely to find the additional delay unreasonable and decide that it has no jurisdiction to hear the claim.
6. Here, the primary time limit as the claimant's employment was terminated on 28/10/2020 was 27/1/2021. The claim was not presented until 8/2/2021. It was therefore 11 days out of time.
7. Time limits in the Tribunal are noticeably much shorter than in general litigation. For the vast majority of claims, the time limit is three months and that is contrasted with the time limits in for example in the County Court, where generally the time limit is six years to bring a claim. The reason why the time limit is much shorter in the Tribunal are that so there is a finality to the litigation. Claims must be brought while the events are still fresh in the minds of the witnesses. Employees move on and that may mean that it is difficult to call witnesses, for example employees who leave employment and then relocate may be difficult to trace.
8. The fact that the time limit is in the Tribunal is short is well-known and is well published. A simple internet search will reveal information about the time limits in the Tribunal.
9. As far as the claimant's health impacted upon her ability to present the claim in time, the Tribunal did not accept that it was a material factor. Almost inevitably, any employee (even one with as long a service record

- at the claimant) will be upset if they are dismissed for gross misconduct. They will all have concerns about their future, how they are going to live without their usual income and how they are going to obtain another job. They are also anxious about their situation and many have mental health issues. Those factors of themselves do not mean the time limit does not apply. There was very limited medical evidence and it did not address the period of time after the appeal outcome was communicated, which is when the claimant said she thought the time limit ran from. In addition, the claimant was capable of producing detailed documents in response to letters from the respondent and that does not indicate that she was unable to set out her position or to engage with the process or the correspondence, due to her health.
10. The Tribunal did not accept that the claimant researched how to bring a claim for unfair dismissal, but did not research the time limit. It did not accept the claimant's partner somehow instructed solicitors on her behalf, without her speaking directly to them. Even if her partner did manage to do so, it is inconceivable that the solicitors would not have asked what was the date of dismissal and not have informed her partner of the time limit. If an enquiry was made about an unfair dismissal claim, the first question which a solicitor would ask is what was the date of dismissal and to then calculate the time limit?
  11. The Tribunal also finds that a competent friend such as Ms Szyjka would have realised that there was a time limit to bring a claim and could have found out what that time limit was within less than 20 seconds. All of the references to Acas and to bringing a claim in the correspondence lead the Tribunal to conclude that the claimant was aware of the time limits, or should have been, but for some reason did not comply with it.
  12. English is not the claimant's first language, however, she expressed herself competently and comprehensively in the communication and there was nothing to indicate that she did not understand. Notwithstanding that, Ms Szyjka was assisting the claimant and although she does not specialise in employment law and is a conveyancer, she is a qualified solicitor in England and Wales. A law student would be aware that time limits apply and would know that a short piece of research will reveal what the relevant time limit is.
  13. If the claimant thought the time limit ran from the date of the appeal and she believed she had until mid-March to present her claim, she would have believed the claim was in time, not out of time, when she did in fact present it on 8/2/2021.
  14. The Tribunal finds therefore, that the claimant did know of the time limit, that she did know it ran from the date of dismissal, but that for some

reason, she disregarded it. The claim was therefore presented late and it was reasonably practical for the claimant to have been presented in time. The Tribunal was not invited or persuaded to exercise the discretion provided for in s.111(2)(b) ERA. The claim is therefore dismissed as it was presented out of time.

28/3/2022

Employment Judge Wright

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