EMPLOYMENT TRIBUNALS

Claimant: Mr L Carberry

Respondent: Integrity Pub Management Limited

Heard at: **Manchester (by CVP)** **On:** **21 July 2022**

Before: **Employment Judge Leach**

Representation

Claimant: did not attend

Respondent: did not attend

JUDGMENT

1. The claimant's complaint of unfair dismissal was presented outside of the time limits at section 111 Employment Rights Act 1996 ("ERA"). It was reasonably practicable for the complaint to have been presented in time.

2. The claimant's complaint of unlawful deductions from wages was presented outside of the time limits at s23(2) ERA. It was reasonably practicable for the complaint to have been presented in time.

3. Accordingly, this claim is dismissed.

REASONS

A. This hearing

1. This hearing was listed in order to consider and determine whether the claim had been presented in time and, if not, whether the Tribunal should extend time for their presentation ("Time Limit Issues").

2. The parties were notified of the hearing (and the reasons for the hearing) by Notice sent to the parties on 27 April 2022.

3. The Notice of hearing included case management orders requiring the claimant to provide the Tribunal with documents and a witness statement relevant to the Time Limit Issues.

4. In breach of the Case Management Orders the claimant did not provide either documents or a witness statement. He did not attend this morning's hearing.

5. By earlier Judgment, the respondent's response had been struck out. The respondent was not represented at this morning's hearing either.

6. I considered whether to postpone the hearing or determine the Time Limit Issues based on the information available. I decided that it was in accordance with the Overriding Objective to proceed and determine the issues. It was apparent from a review of the case file that there had been a history of non-compliance by both parties. I note the following recent history:

a. A preliminary hearing listed for 16 August 2021 was postponed by the Tribunal because the parties had failed to provide a file of documents that they had been directed to provide.

b. Both parties failed to respond to correspondence from the Tribunal dated 13 August 2021 requiring them to inform the Tribunal by 20 August 2021, what steps they had taken to prepare for a hearing;

c. By letter dated 7 September 2021, the Tribunal provided the claimant with a strike out warning (he had not replied to the correspondence dated 13 August 2021).

d. The claimant replied to the letter of 7 September 2021, by email dated 20 September 2021. In summary, he explained that he had been ill and asked for the claim not to be struck out.

e. On 1 October 2022 the Tribunal wrote to the parties. The claimant was asked whether he had complied with existing Case Management Orders in preparation for a hearing. Both parties were asked to address case

management and agree to a new timetable if existing timetable had not been met.

f. On 19 January 2022 the parties were given a strike out warning. There had been no response to the Tribunal's correspondence of 1 October 2022.

g. On 1 February 2022 the claimant responded. In summary, he informed the tribunal of the seriousness of his illness, that his health was starting to improve and that he had just instructed a solicitor. He also gave written assurance *"that any further directions will be strictly adhered to and time limits will be complied with."*

h. The respondent did not provide any adequate response to the strike out warning and therefore the response was struck out by Judgment dated 7 April 2022.

i. This hearing was then listed and the case management orders noted at 3 above were made; orders that the claimant did not comply with.

7. In deciding to proceed I took in to account the need, so far as practicable, to avoid delay, save expense, deal with cases in ways which are proportionate to the complexity and importance of the issues. This was the third occasion that the hearing had been listed (there had been 2 previous postponements as the parties had not complained with previous case management and prepared for hearing); the claimant had informed the Tribunal that solicitors had been instructed by him and given assurances about compliance with CMOs. It is the claimant's case and for him to decide what importance to attach to it. A further postponement would be disproportionate. Further resources were applied to the case on the occasion of this hearing.

8. Whilst I recognised that a decision to proceed would mean that the claimant would not be able to contribute further to this hearing and my determination of the Time Limit Issues; weighing up all relevant factors I decided that it was fair and just to consider and determine the Time Limit Issues on the basis of the information available, thereby providing the parties with an outcome to the Time Limit Issues.

B. Relevant Law – Time limit issues.

Time Limits – ERA.

9. Section 111(2) of the ERA provides that a complaint of unfair dismissal must be

"*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.*

10. Section 23(2) ERA applies the same time limit requirements to complaints of unlawful deductions from wages.

11. Section 18A(8) of the Employment Tribunals Act 1996 prohibits an individual who wants to commence "relevant proceedings" in the tribunal , to do so unless that person has gone through the ACAS early conciliation process and obtained a certificate.

12. Section 207B of the ERA extends the time limits at s111(2) to take account of the statutory requirement for early conciliation, but only where the claimant has contacted ACAS within those time limits. That did not occur in this case and therefore the claim was not presented in time.

13. Where a complaint for unfair dismissal and/or being subjected to detriments has not been presented in time, an Employment Tribunal must consider whether or not it was "reasonably practicable" for the claim to have been presented in time. That is a decision that must be made on the facts.

14. The term reasonably practicable mean neither "reasonable", nor "something that is physically capable of being done". The term means somewhere between these 2 (see **Palmer v Southend on Sea BC 1984 IRLR 119).** I also note the following from paragraph 35 of Palmer:

> *What, however, is abundantly clear on all the authorities is that the 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 conciliatory appeals machinery has been used. It will 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. It may be relevant for the Industrial Tribunal to investigate whether at the time when he was dismissed, and if not then when thereafter, he knew that he had the right to complain that he had been unfairly dismissed; in some cases, the Tribunal may have to consider whether there has been any misrepresentation about any relevant matter by the employer to the employee. It will frequently be necessary for it to know whether the employee was being advised at any material time and, if so, by whom; of the extent of the advisors' knowledge of the facts of the employee's case; and of the nature of any advice which they may have given to him. In any event it will probably be relevant in most cases for the Industrial Tribunal to ask itself whether there has been any substantial fault on the part of the employee or his advisor which has led to the failure to comply with the statutory time limit. Any list of possible relevant*

considerations, however, cannot be exhaustive and, as we have stressed, at the end of the day the matter is one of fact for the Industrial Tribunal taking all the circumstances of the given case into account.

C. Findings and conclusion

15. I am satisfied, from my review of the Tribunal file, that it was abundantly clear to the claimant on the date of termination of employment that he and the respondent (acting by its majority shareholders and directors) were in dispute.

16. I am also satisfied that the claimant considered himself ousted from the respondent business without notice and without lawful reason and that he was of this view from the moment that he was ousted. I note for example the following sentence from the claim form:

> *" Eventually Mr Grieves and Mr Ashton called an EGM in December 2019 when, at the EGM I was removed from my position with the company without the correct notice period. Threats of intimidation were also made at the EGM against me."*

17. The claimant was therefore aware from the moment of dismissal that he was in dispute about his employment and his dismissal. Even taking account of the relatively short time limits in Employment Tribunal proceedings he had plenty of time before the expiry of those time limits to obtain relevant information and advice. If he did not do this, he could have.

18. There is no evidence to indicate that circumstances applicable to the claimant at the relevant time (end of 2019 and beginning of 2020) were such that it was not reasonably practicable for him to have brought the claim within the time limits set out in the ERA.

19. Accordingly, the claim is dismissed.

Employment Judge Leach
Date: 21 July 2022

JUDGMENT AND REASONS
SENT TO THE PARTIES ON
22 July 2022

FOR THE TRIBUNAL OFFICE

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