



EMPLOYMENT TRIBUNALS

Claimant: Ms J Debowieckv

Respondent: Royal Mail Group Ltd

RECORD OF A PRELIMINARY HEARING

Heard at: Watford Employment Tribunal **On:** 14 July 2022

Before: Employment Judge Tuck QC (sitting alone)

Appearances

For the claimant: In Person

For the respondent: Mr R Chaudhry, solicitor.

JUDGMENT

1. The claimant's claim of unfair dismissal was presented out of time; it was reasonably practicable to have presented the complaints in time.
2. All claims are accordingly dismissed.

The claim

- (1) The claimant was employed by the respondent as a postwoman from 2 November 2015 until, according to the Respondent, 3 March 2021. In her ET1 the claimant put her effective date of termination as 23 March 2021, though today she said that it was 26 April 2021 – which is when she received notification that her appeal against dismissal had been unsuccessful. By a claim form presented on 21 June 2021, following a period of early conciliation from 18 June 2021 until 21 June 2021, the claimant brought a complaint of unfair dismissal.
- (2) The Respondent denies the claims, and also contends that the complaint was presented outside the three month time limit provided for in s111 of the Employment Rights Act.

Issues for Preliminary Hearing

- (3) By letter of 27 October 2021 the ET directed a Preliminary Hearing to consider whether the claim should be struck out or a deposit order made – this was on the basis of the Respondent’s application that the claim was presented out of time such that it has no reasonable (or little reasonable) prospect of success.

Today’s hearing

- (4) On 27 October 2021 notice was sent to the parties for a preliminary hearing to take place via video on 13 April 2022. At the outset of that hearing before EJ Tobin, the claimant had some technical issues, but when the hearing was able to commence, said that she needed a Polish interpreter. The matter was adjourned to be heard in person with the provision of an interpreter.

Facts.

- (5) The claimant worked for the respondent for over 5 years as a postwoman. On 23 January 2021 a customer reported that a bag of charitable donations which had been left on a chair in her front garden had been taken by a postwoman. The customer later made a formal complaint to the Respondent and also reported the matter to the police as a theft. The Respondent made enquires and established that the postwoman in question was the claimant. This is not in dispute.
- (6) On 5 February 2021 the Respondent during an informal meeting asked the claimant about the incident, and the claimant admitted she had taken the bag of items. On 8 February 2021 she was suspended pending investigation. An investigation meeting took place on 10 February 2021 and the claimant was charged with “dishonesty – theft of non-mail related items”. A conduct meeting took place on 19 February 2021 at which the claimant was provided with an interpreter and was represented by her union representative from the CWU. By letter dated 1 March 2021 she was dismissed with a last day of service on 3 March 2021. The claimant email ed on 3 March 2021 saying “I received your letter of decision” and seeking to appeal.
- (7) The claimant appealed against her dismissal by email which she sent on 5 March 2021 – she set out that she had offered to return the bag and apologise. An appeal hearing took place on 23 March 2021 at which the matter was re-heard; the claimant was again represented by a CWU representative. By email dated 26 April 2021 the appeal was dismissed such that the “penalty of dismissal stands”. The report which accompanied that 26 April 2021 email had on the front page, “length of service – 2/11/15 – 5 years 4 months” and “last day of service -3/3/21”.
- (8) The Claimant’s claim form was presented on 21 June 2021 on her behalf by a Mr Richard Jefferies of Veja and Co Solicitors. The claimant has disclosed

an email from him to her dated 18 June 2021 in which he wrote “please see herewith your claim to the employment tribunal which has been sent out by first class post today (18/06/21) to meet the deadline of 22nd June 2021. The claimant confirmed in evidence that she gave her lawyer “all documents” including the appeal determination report which set out the EDT as 3 March 2021.

- (9) Mr Choudhary asked the claimant if her union representative advised her about the fact of a three month time limit to contact ACAS and then go to an employment tribunal. The Claimant denied that the CWU representative who had been present was her “representative” and said he was just assisting her. She could not recall any advice about time limits – but told me that she had consulted Mr Jefferies in May 2021.
- (10) I invited the claimant to tell me anything else she wanted to, and she explained that she had hoped, having a good record for 6 years, she would be able to reach an internal resolution. She had admitted her wrong, apologised and shown remorse and had hoped for a second chance. She said nobody had wanted to represent her because of the mistake of her previous lawyer.

Submissions

- (11) Mr Choudhary provided written submissions dated 13 April 2021 which he supplemented orally. The Respondent says that the EDT (effective date of termination) in this case was 3 March 2021, such that the claimant needed to commence early conciliation on or before 2 June 2021. She did not do so until 18 June 2021, and so early conciliation did not serve to ‘stop the limitation clock’ for the three days it was underway. The ET1 having been presented on 21 June 2021 was, the Respondent states, 19 days out of time. The Respondent contends that it was reasonably practicable for the Claimant to have presented her claim in time.
- (12) The claimant told me that she wanted the opportunity for her case to go forward; there was a mistake on the part of the lawyer who told me the deadline was 22 June 2021. She said from 3 March 2021 when she was told she would be dismissed, until 26 April 2021 she was hoping to resolve the matter internally and so did not speak to any lawyers. After that, her lawyer established a timeframe.

Law

- (13) A claim of unfair dismissal must be presented within 3 months of the effective date of termination of employment unless that is not reasonably practicable, in which case it may be considered if it has been presented within such further period as is reasonable. This is provided for in section 111 of the Employment Rights Act 1996 (“ERA”). The three month period may be extended in accordance with section 207B ERA when compulsory early conciliation has been entered into; section 207B(4) provides that if a time limit would expire during the conciliation period, it will instead expire

one month after the end of the conciliation period. If early conciliation does not start within the primary limitation period, it cannot serve to extend the limitation period.

- (14) What it is “reasonably practicable” for a claimant to do is a question of fact (*Wall’s Meat v Khan* [1979] ICR 52), and there is a duty on the claimant to show why she could not present her claim within time (*Porter v Bandridge* (1978) ICR 943).
- (15) In *Schultz v Esso Petroleum* [1999] IRLR 488, the Court of Appeal confirmed that “reasonably practicable” means more than reasonably capable physically of being done, and the best approach is to ask whether it was reasonably feasible to present the complaint within the relevant three months. The injection of the qualification of “reasonableness” also requires a tribunal to consider the surrounding circumstances of a case.

Conclusions on issues.

- (16) The Claimant’s dismissal was clearly 3 March 2021. Whilst she had hoped she might be reinstated following an appeal, the appeal report confirms that the last day of service had been 3 March 2021. The claimant was accompanied by (even if not represented) by a union official at her dismissal and appeal hearings, and took legal advice in May 2021.
- (17) The limitation period under s 111 ERA is such that she was obliged to commence early conciliation via ACAS by 2 June 2021. Her lawyers did not do so until 18 June 2021. It appears that the claimant’s lawyer erroneously thought the EDT was 23 March 2021 – which he entered onto the claim form. This view is confirmed by his email of 18 June 2021 which referred to a deadline of 22 June 2021.
- (18) The only factor the Claimant relied upon for the late presentation of this claim was a mistake on the part of the lawyer. It appears this was a mistake of fact as to the effective date of termination. Given that she had provided him with all documents which clearly set out an EDT of 3 March 2021 it is not clear at all how such a mistake arose. I do not consider that this mistake rendered it “not reasonably practicable” to have presented the complaint in time. I have had regard in particular to the Respondent’s clear statements in the dismissal letter of 1 March 2021 and in the appeal determination report sent to the Claimant on 26 April 2021, that her final day of service had been 3 March 2021. I also note that the lawyer was instructed in May, so could have contacted ACAS prior to 2 June 2021.
- (19) The claim is accordingly presented out of time when it was reasonably practicable to have presented it within the primary limitation period.

Employment Judge Tuck QC

14 July 2022

Sent to the parties on:

31 July 2022

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For the Tribunal:

T Cadman

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