



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr P Allan Twilley

**Respondent:** Chassis Cab Ltd

**Heard at:** Cambridge (by CVP video) **On:** 1 September 2022

**Before:** Employment Judge Parkin

## **Representation**

**Claimant:** In person

**Respondent:** Ms A Greenley, Counsel

## **JUDGMENT AT A PRELIMINARY HEARING**

**The Judgment of the Tribunal is that** the claimant's unfair dismissal claim was presented out of time but it was reasonably practicable for him to present it in time. It is dismissed for want of jurisdiction.

## **REASONS**

### **1. The claim and response**

1.1 The claimant presented his claim originally on 15 April 2021 following Early Conciliation (EC) notification on 22 March 2021 and issue of the EC certificate on 23 March 2021. He claimed he was unfairly dismissed on 4 September 2020 and discriminated against because of his age. There was some difficulty and confusion about the address of the respondent and whether it had been served properly, such that it was later re-served.

1.2 From the outset in its response on 9 July 2021, the respondent resisted in full both the claimant's claims of unfair dismissal and of age discrimination and contended they were presented out of time. It then repeated and amplified its response on 3 December 2021 after re-service of the claim. The respondent maintained the claimant failed to give sufficient further particulars of the age discrimination claims, even when he did provide them on 12 May 2021.

### **2. The Preliminary Hearing**

2.1 By a notice of hearing dated 6 March 2022, this hearing was listed to determine whether the tribunal had jurisdiction to hear the claim, namely "whether the claim of Unfair Dismissal should be dismissed because the claimant is not entitled to

bring it if the statutory time limit has expired”. Strictly that is a 3-stage determination whether the claim was presented within the primary limitation of three months beginning with the effective date of termination, and if not whether it was reasonably practicable to present the claim in time and, if it was not reasonably practicable to do so, whether it was presented within such further period as the tribunal considers reasonable, applying section 111(2) of the Employment Rights Act 1996.

2.2 The hearing was held remotely by CVP video with an agreed bundle of documents pages (1-86). No witness statements were provided and no oral evidence was given; representations were made by both parties. The respondent applied to have the time issues relating to the claimant’s age discrimination claim determined as well, following up on its letter dated 10 August 2022. The claimant did not agree with this and I refused the application since Employment Judge Warren had expressly considered and rejected a very similar application as not being in accordance with the overriding objective, within the tribunal’s letter dated 26 June 2022; only the unfair dismissal time issue was listed for determination, with a general case management of the discrimination claim.

### **3. The parties’ representations**

3.1 The respondent contended that, whilst the claimant bore the burden of establishing jurisdiction to hear the unfair dismissal claim, he had provided no explanation for his claim being presented out of time. He had not provided a witness statement to explain the delay. The reasonable practicability test was a high test which was more than simply what was reasonable. The claimant’s ignorance of his rights and of time limits is not reasonable if it arises from his own fault in not making enquiries. He could not satisfy the burden, especially where the significant delay caused prejudice to the respondent such as by employees who were potential witnesses leaving.

3.2 The claimant accepted his claim was not presented within time and that he had acted naively. He felt it was likely that he first contacted ACAS just before the EC document was issued, after failing to contact his Citizens Advice Bureau in Bishops Stortford (finding that the office closed because of Covid-19). Having lost his job, he was not in a good place and during the pandemic lockdown was responsible for home schooling his son and looking after his wife who was extremely ill with Covid as well as trying to find a new job. He was unaware of the timeframe for commencing tribunal proceedings. He acknowledged that he had internet access throughout September 2020 to March 2021, having had this for many years although this was via mobile phone and tablet since he did not have a PC or laptop.

### **4. The facts**

I found the following key facts on the balance of probabilities for this hearing.

4.1 The claimant was born on 1 June 1969 and worked for the respondent from 1 June 2006 to 4 September 2020 as its Parts Sales Manager at Cambridge.

4.2 He was dismissed on 4 September 2020, following an earlier disciplinary hearing; after his dismissal, he appealed and his appeal was rejected on 22 September 2020.

4.3 This was during the major pandemic lockdown when many families and individuals faced major difficulties. For this claimant in particular: his son was engaging on home schooling which the claimant was very involved with and his wife was extremely ill with Covid-19. The claimant simply did not know what to do about his employment circumstances and loss of career, as he saw it. He gave priority to finding a new job and his domestic situation.

4.4 Therefore he did not research his employment protection rights or how to commence proceedings, although he and his family throughout this time had full internet access (although no personal laptop or PC at home).

4.5 Only in late March 2021 or thereabouts did the claimant seek to contact his local Citizens Advice Bureau (to no avail as the office was closed due to Covid) and then ACAS for advice. Soon after having done so, he gave formal notification to of Early Conciliation and his EC certificate was issued on 23 March 2021.

4.6 There was still some further delay from the date of issue until he presented his claim, initially on 15 April 2021.

## **5. The Law**

5.1 This was an unfair dismissal claim within the statutory provisions of part X of the Employment Rights Act 1996. Section 111(2) sets out in respect of time limits:

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...

5.2 The Early Conciliation time provisions under section 207B are not material here since the primary time limit had expired before EC commenced.

5.3 There has been extensive guidance to first instance tribunals from the Employment Appeal Tribunal and the Court of Appeal about the correct approach to the time limit in unfair dismissal claims, based on the “reasonably practicable” test. This is a strict test with the claimant bearing the burden of proving that the tribunal has jurisdiction to determine the claim at a final hearing. The stages are first to consider whether the claim was actually presented in time; if not, then to consider whether it was reasonably practicable to do so, and, only finally if it was not reasonably practicable to present it in time, whether it was nonetheless presented within such a further period as the tribunal considers reasonable, enabling it to proceed to a final hearing. The authorities show that the “reasonably practicable” test is empirical, based on common sense. In Palmer & another v Southend-on-Sea Borough Council [1984] ICR 372, it was held by the Court of Appeal that it means whether it was “reasonably feasible to present the complaint to the employment tribunal within the relevant three months”. Many factors may be relevant including for instance the reason for and manner of dismissal, use of internal appeals procedures, substantial cause for late presentation, knowledge of right to claim and time limits, extent of advice and any fault by the claimant or adviser in missing the time limit. The mere fact of appealing the decision to dismiss

and an ongoing appeal does not make it not reasonably practicable to present the claim in time and the tribunal will need, if it finds the claimant was ignorant of the right to claim or the time limit, to determine whether the claimant's ignorance was reasonable in the circumstances or not so.

## **6. Conclusion**

6.1 This claim was presented well out of time; the effective date of termination was 4 September 2020 and the 3-month primary limitation period expired on 3 December 2020. No conciliation was commenced within that period so there was no delay of or extension to that time limit as a result of the EC provisions. The claim was not presented for almost another 4½ months. Whilst it may have been entirely understandable for the claimant to make finding out about and bringing his unfair dismissal claim entirely subsidiary to his major domestic concerns and his jobsearch and re-employment, he has not established any real impediment to him being able to research, learn about and bring an unfair dismissal claim. In about late March 2021, he sought and obtained advice from ACAS without apparent difficulty and was able to present his claim the following month, again without difficulty. Accordingly, I conclude that he has not shown that it was not reasonably practicable to present his claim in time. The ignorance on his part was not reasonable, particularly in an age of readily available internet research.

6.2 The claim was presented well out of time but it was reasonably practicable for it to be presented in time. Even after the EC certificate was issued there was some further delay by the claimant; had I found it not reasonably practicable for him to present the claim before he had ACAS advice, I would not have found the further delay of some three weeks from the issue of the EC certificate to presentation of the claim reasonable.

Employment Judge Parkin

Date: 1 September 2022

JUDGMENT & REASONS SENT TO THE PARTIES ON

17 September 2022

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FOR THE TRIBUNAL OFFICE

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