



# EMPLOYMENT TRIBUNALS

London South Employment Tribunal (remote) on 23rd November 2022

*Claimant*

**Mr Talwar Amritpal Singh**

**Between**

**&**

*Respondent*

**Abellio London Limited**

**Before**

Judge M Aspinall (Sitting as an Employment Judge)

**Appearances**

Mr J Black for the Claimant  
Mr W Griffiths (Counsel) for the Respondent

## FULL MERITS HEARING Judgment

1. **Having heard from the advocate for the Claimant and Counsel for the Respondent, in relation to a preliminary issue, I find:**
  1. That the Claimant presented his claim of unfair dismissal after the time limit imposed by Section 111 of the Employment Rights Act 1996 had expired and the Tribunal has no jurisdiction to hear that complaint.
  2. That the claim is accordingly struck out.

## Reasons

2. This was a hearing conducted via CVP. The hearing was listed to commence at 10:00 but started late due to various participants experiencing technical issues. The hearing eventually commenced at 10:16 and was then paused after discussion of documents and witnesses in order that I could properly read the statements, pleadings, and other elements of the bundle to which the parties directed me.
3. On recommencing the hearing at 11:30, Counsel for the Respondent raised - for the first time - a question around whether the claim was presented to the Tribunal in time. It was, he said, the case that the Claimant was dismissed from his employment on 22 December 2021. This meant, he said, that the application to ACAS for early conciliation needed to be made by no later than 21 March 2022. In fact, he noted - by reference to the ACAS certificate - that it was only on 22 March 2022 that the Claimant lodged his application with ACAS meaning that he was out of time at that stage.
4. Mr Black, for the Claimant, told me that there had been a mistake in believing that the dismissal took effect from 24 December 2021 as that was the date on which it had been confirmed in writing. He accepted that, in fact, the dismissal had been announced at the disciplinary hearing on 22 December 2021 as being effective from that date. He also accepted that the confirmation letter on 24 December 2021 provided the date of termination as being 22 December 2021. He argued, however, that the issue had been exacerbated by the Respondent's handling of the appeal process which had been lengthy and delayed - primarily, he said, at the fault of the Respondent.
5. Mr Black also argued that the delay in presenting the claim was an unfortunate error caused by a misunderstanding around dates and an over-long appeal process.

6. Mr Griffiths referred me to the case of *Palmer and Saunders v Southend-On-Sea Borough Council [1984] IRLR 119*. This, he said, was authority that pursuing an internal appeal process did not pause, or otherwise affect, the statutory time limit for bringing a claim. He also argued that the same case clearly provided that pursuing an internal appeal was not a sufficient basis to argue that a late claim had been presented in time or as soon as reasonably practicable.
7. The material parts of the Section 111 of the Employment Rights Act 1996 are as follows:  
**111 Complaints to employment tribunal.**  
**(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.  
**(2A)** Section 207A(3) (extension because of mediation in certain European cross-border disputes) and section 207B (extension of time limits to facilitate conciliation before institution of proceedings) apply] for the purposes of subsection (2)(a).
8. **A two-part test**  
Where a claim is presented outside the period of 3 months it is necessary to ask firstly whether it was not reasonably practicable to present the claim in time and, only if it was not, go on to consider whether it was presented in a reasonable time thereafter. The two questions should not be conflated and must be addressed separately. There is no general discretion given to the Tribunal to extend time and the Claimant has the burden of establishing that the test is satisfied in both parts.
9. **The meaning of ‘reasonably practicable’**  
The expression “reasonably practicable” does not mean that the employee can simply say that his/her actions were reasonable and escape the time limit. On the other hand, an employee does not have to do everything possible to bring the claim. In *Palmer* it was said that reasonably practicable should be treated as meaning “*reasonably feasible*”.
10. *Schultz v Esso Petroleum Ltd [1999] IRLR 488* is authority for the proposition that whenever a question arises as to whether a particular step or action was reasonably practicable or feasible, the injection of the qualification of reasonableness requires the answer to be given against the background of the surrounding circumstances and the aim to be achieved.
11. It has been held that the question of whether bringing proceedings in time was not reasonably practicable turns, really, upon what the employee ought to have known (*Porter v Bandridge Ltd [1978] ICR 943, Avon County Council v Haywood-Hicks [1978] IRLR 118*). It is also possible to discover in those authorities that where an employee is aware that a right to bring a claim exists it will be considerably harder to show that they ought not have taken steps to ascertain the time limit within which such claims should be presented
12. In *Palmer* following a review of the earlier authorities including *Dedman and Wall’s Meat*, May LJ concluded that the question of whether a step was or was not reasonably practicable would include the advice given, or available, as a material consideration which would have to be considered along with all the other circumstances.
13. Time begins to run under Section 111 of the Employment Rights Act 1996 from the ‘effective day of termination’ (EDT). Where a dismissal is without notice, as here, the EDT is the date on which the decision to dismiss is communicated to the employee. In this case, that was at the conclusion of the disciplinary meeting on 22 December 2021.
14. Unless there are clear contractual provisions to the contrary then the existence of a contractual appeals process will not alter the date of the dismissal unless the appeal is successful (*J Sainsbury Ltd v Savage 1981 ICR 1, CA*). The same legal principle was approved in *Palmer*.

15. Therefore, in the circumstances, I find that the claim should have been presented to ACAS for early conciliation by 21 March 2022. It was, in fact, presented a day later 22 March 2022. The reasons given by the Claimant for this were to the effect that he had misunderstood the effective date of termination and believed it to be 24 December 2021 and that, in any event, they were awaiting the end of the appeal process - through which they had hopes of success - and that had the Respondent handled the appeal process promptly, they would have lodged their claim on conclusion of that.
16. Despite any sympathy I may have for the arguments advanced for the Claimant, the statutory framework is strict, and I do not have a general discretion to extend time. There is good and lawful authority to the extent that the time limit runs irrespective of the appeal procedure. There is also good authority that it is for the Claimant to satisfy the Tribunal that it was not reasonably practicable (or reasonably feasible) in the circumstances to lodge their claim in time. Only if I am satisfied on that point, can I move on to consider whether it was then filed as soon as possible thereafter.
17. In the circumstances as they were, whilst it is exceptionally unfortunate that the issue of time limits was not raised earlier, I cannot find that it was not reasonably practicable for the claim to be issued in time. The Claimant's own representative confirmed that it was their own mistake that led them into error. I find that I could not, reasonably, say that such an error was sufficient - where the EDT had been communicated both orally in writing as being the earlier date - that the Tribunal could lawfully exercise its powers to extend time.

### **Judge M Aspinall on Wednesday, 23rd November 2022**

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