



**14**

**EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 4104552/2022**

5

**Held via Cloud Video Platform (CVP) in Edinburgh on 9 December 2022**

**Employment Judge M A Macleod**

10 **Mr David Dart**

**Claimant  
In Person**

**IKEA Limited**

**Respondent  
Represented by:  
Mr M Dulovic -  
Consultant**

15

**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The Judgment of the Employment Tribunal is that the claimant's claim is dismissed for want of jurisdiction, being time-barred.

**REASONS**

- 20 1. The claimant presented a claim to the Employment Tribunal on 17 August 2022, in which he complained that he had been constructively unfairly dismissed by the respondent.
2. The respondent submitted an ET3 response in which they resisted the claimant's claim, and argued that it was time-barred.
- 25 3. A Preliminary Hearing was listed to take place on 9 December 2022 in order to determine whether or not the Tribunal has jurisdiction to hear this claim. The Hearing took place by Cloud Video Platform (CVP), and throughout each participant was able to hear and see each other. I was satisfied that the Tribunal was able to hear the evidence and submissions presented by the parties, and that a fair hearing was conducted remotely.
- 30 4. The claimant appeared on his own behalf, and Mr Dulovic, Consultant, appeared for the respondent.

5. No bundle of productions was presented to the Tribunal in relation to this case, but I was able to have access to the Tribunal's digital file and to the documents which the parties referred to. In addition, the respondent presented a skeleton submission in support of their arguments.
- 5 6. The claimant gave evidence on his own account.
7. Based on the evidence and information presented, the Tribunal was able to find the following facts as admitted or proved.

### Findings in Fact

8. The claimant was employed by the respondent from February 2014 until 8  
10 March 2022. On 8 March 2022, he submitted his resignation, without notice, and accordingly, his employment with the respondent came to an end immediately upon that date, which was his effective date of termination.
9. The claimant explained that the reason for his resignation was that he was  
15 going through a disciplinary process, but felt that that process was not going the way it should have been going, nor was it just towards him.
10. Following the termination of his employment, the claimant presented his claim to the Employment Tribunal on 17 August 2022.
11. In the days after he resigned, the claimant said that he was extremely upset  
20 about the way he had been treated by the respondent, and became very anxious when he thought about it. He "buried my head", as he put it, to avoid considering the ending of his employment. However, although he attended at his GP for a variety of physical reasons, he did not consult his GP about any matters relating to his resignation. He did not require to be "signed off" with stress, as he was not working at that time.
- 25 12. In any event, he was able to make contact with ACAS to commenced the Early Conciliation Scheme on 4 June 2022. Approximately a week prior to that, he conducted internet searches to identify what rights he had in relation to the termination of his employment. These searches took him to a number of advice sites produced by employment lawyers, and from that he went to

the Employment Tribunals website, which directed him to ACAS. He was aware as a result of his internet searches (but not before) that he required to present his claim to the Tribunal within three months less one day of his date of termination.

5 13. When he contacted ACAS, he was allocated a conciliator by the name of Spencer, who advised him that while the Early Conciliation process was ongoing, the clock would be stopped on the time limits.

14. Spencer advised the claimant that the respondent was not willing to engage in the conciliation process, and that a certificate would then be issued. The  
10 Early Conciliation Certificate was issued by ACAS on 16 July 2022 by email. The claimant did not receive the certificate on that date. Spencer contacted him, by telephone, on 18 July, to advise that there had been a problem with the certificate such that it had not gone through to the claimant. As a result, he told the claimant that he would “force it through”, a phrase which the  
15 claimant did not fully understand. Nevertheless, the claimant received the Early Conciliation Certificate on 20 July 2022 by email.

15. The claimant understood that he had one month less one day from 16 July 2022 to submit his claim to the Employment Tribunal, that is, that he required to present his claim by no later than 15 August 2022.

20 16. He said that Spencer told him that sometimes a party who has not been willing to conciliate can change their mind when they see the Early Conciliation Certificate being issued, and so he decided to wait for a time to see if the respondent “wanted to do the right thing”. By 14 August 2022, knowing the deadline by which he had to act, the claimant decided that he needed to take  
25 action.

17. He attempted to submit his claim on 14 August (a Sunday), but received a number of error messages from the Tribunal website. He was unable, as he understood it, to contact anyone at the Tribunal Service on that day, being a Sunday, and so decided to leave it until the Monday. On the Monday morning,  
30 he received a call from his mother, who lives 400 miles away from him, approximately, to say that she was unwell. He required to take time that

5 morning in order to try to make arrangements for her, and turned his mind to the submission of his claim by approximately 3pm that afternoon. When he tried to submit his claim, he found on each occasion that he was unsuccessful, and again received error messages. Having tried on a number of occasions that day and evening, he concluded that he was unable to do it. He did not attempt to contact anyone in the Tribunal that day.

10 18. On 16 August, he submitted a complaint to Her Majesty's Courts and Tribunals Service (HMCTS) by email, expressing his frustration with the process which had failed to allow him to lodge his claim. Later that day, he emailed Spencer to tell him that he had tried and failed to do so.

19. On 17 August Spencer contacted him and advised him to submit his claim even if it were late, on the basis that the Tribunal may be prepared to allow the claim to proceed on that basis. As a result, he attempted again to submit his claim, and on this occasion he was successful.

15 20. Following that complaint, he said that he had received an acknowledgement of his complaint from HMCTS, and then on 20 August he had received a call from a Moira Thomson to discuss his complaint. He said that she told him that he had attempted to submit the claim with an ACAS reference number attached to it, and that the Tribunal was a separate organisation to which the ACAS reference number did not apply.

20

21. The claimant seemed to suggest in his evidence that when he had tried to submit his claim, the Tribunal's website was "down", but it is not clear that that is the case.

25 22. Following the Hearing, I made some inquiries, as agreed by the parties, and was able to establish the basis of the complaint submitted by the claimant on 16 August 2022:

*"Hi I have attempted to lodge my claim against my former employer online, but the system doesn't allow me to continue."*

*I've tried a memorable word reset, but against it doesn't recognise me. I'm using the correct ref number and the email address that it was emailed to, but it's also saying the email address was not recognised.*

*I've been trying this over a number of days, but I've not been able to log my claim."*

5

23. In response, the claimant was sent a short email directing him to the www.gov.uk website and setting out the steps he should follow.

10

24. In addition, there were no recorded online issues reported at that time, and accordingly there is no evidence that the system was inoperative when he sought to present his claim. I am informed that had he called the Customer Contact Centre he may have been helped through the process by a call handler.

15

25. The claimant confirmed that he had not received any advice, misleading or otherwise, from the respondent about the time limits to be complied with in presenting a claim to the Tribunal. He also advised that he had not sought any legal advice as he was not in receipt of any income at that stage and could not afford to pay legal fees. While he was aware of "no-win, no-fee" lawyers, he was not enthusiastic about approaching such a solicitor for advice, as he had formed a very negative view of them from advertising on television.

20

### **Discussion and Decision**

25

26. The respondent's representative presented a submission in the form of a skeleton argument, whose terms are considered and taken into account in this decision. The claimant chose to add nothing to what he had already said before me.

27. Section 111(2) of the Employment Rights Act 1996 provides:

*"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
28. What is reasonably practicable is essentially a question of fact 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***).
- 10
29. The best-known authority in this area is that of **Palmer & Saunders v Southend-on-Sea Borough Council 1984 IRLR 119**. The Court of Appeal concluded that “reasonably practicable” did not mean reasonable but “reasonably feasible”. On the question of ignorance of the law, of the right to make a complaint to an Employment Tribunal and of the time limits in place for doing so, the case of **Porter (supra)** ruled, by a majority, that the correct test is not “whether the claimant knew of his or her rights, but whether he or she ought to have known of them.” On ignorance of time limits, the case of **Trevelyan (Birmingham) Ltd v Norton EAT 175/90** states that when a claimant is aware of their right to make a claim to an employment tribunal, they should then seek advice as to how they should go about advancing that claim, and should therefore be aware of the time limits having sought that advice.
- 15
- 20
- 25
30. The Tribunal also had regard to the cases referred under this heading by the respondent.
31. In determining this matter, it is important to understand the reasons why the claim was presented out of time. The claimant said that he understood that the claim should have been presented on 15 August 2022; the respondent understood that the claimant had the period of one month from the date of issue of the Early Conciliation Certificate, namely 16 August 2022.
- 30

32. The claimant first attempted to present his claim to the Tribunal on 14 August 2022. It is not easy to understand his reasons for waiting until so close to the deadline for presenting his claim. He seemed to suggest that he was hoping that the respondent would have a change of heart, and “do the right thing” in relation to his case. When it became apparent that the respondent was not going to take any steps to resolve the claim, he decided then to take action. It would have been a simple matter for him to have prepared the claim well in advance of the deadline, and retain it until he needed to submit it.
33. However, there is no doubt that there is force in the respondent’s argument that the claimant only has himself to blame, because he left the matter to the last few days before the deadline.
34. It was reasonably feasible for him to have presented his claim well in advance of the deadline. He had more than 4 months from the date of his resignation to present the claim. He was not working, nor was he unwell to the extent that this affected his ability to compose and then submit his claim.
35. The most significant explanation given by the claimant is that when it came to the point when he wanted to submit his claim, he was unable to do so. His evidence on this was slightly unclear. On the one hand, it appeared that he was saying that the Tribunal’s website had crashed, and was therefore inaccessible, for at least two days (14 and 15 August); on the other, his complaint seems to have generated the explanation that he had in fact submitted the claim with an ACAS reference number on it, which for some reason prevented the website from accepting it.
36. What is difficult to understand about this second explanation is that although he had not had further advice from the Tribunal by 17 August, he was able to submit his claim effectively on that date, without knowing what had caused the previous obstruction.
37. I indicated to the parties that following the Hearing I would make inquiries of the Tribunal Service in order to establish what complaint was made, what explanation was given and whether there was a systemic problem which prevented the timeous presentation of the claimant’s claim.

38. Having made such inquiries, there is no basis for suggesting that the Tribunal system was unavailable for the presentation of claims on those two days. As a result, it appears to have been an error caused by the claimant's own mistake in including the ACAS reference number on the claim form when submitted, a reference number which was inevitably not recognized, and which appears to have prevented the effective presentation of the claim.
39. Given that the claimant was able to present his claim on 17 August 2022, without having been given any advice by the Tribunal Service as to what had frustrated his previous attempts, and that there is no evidence of a systemic problem on 14 and 15 August 2022, I am unable to conclude that it was not reasonably practicable for the claimant to have presented his claim within the statutory deadline. The difficulties he encountered arose at the very end of the more than 4 month period since the termination of his employment. He chose to leave the presentation of his claim to that very late stage in the process, and as the respondent submitted, he requires to bear the risks which arose as a result.
40. It is therefore my conclusion that it was reasonably practicable for the claimant to have presented his claim timeously in this case, and therefore that no extension of time should be granted to the claimant in these circumstances.
41. Accordingly, the claim having been presented late, the Tribunal lacks jurisdiction to hear it, and therefore the claim is dismissed.

**Employment Judge: M Macleod**  
**Date of Judgment: 12 December 2022**  
**Entered in register: 14 December 2022**  
**and copied to parties**