



**EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 4103927/2022**

**Held in Edinburgh on 25 April 2023**

**Employment Judge M Sangster**

**Mrs B Nagy**

**Claimant  
In person**

**Sodexo Limited**

**Respondent  
Represented by  
Mr E Bruce  
Solicitor**

**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The judgment of the Tribunal is that the Tribunal has no jurisdiction to consider the claimant's complaint of unfair dismissal, which is dismissed.

**REASONS**

**Introduction**

1. The claim was set down for an open preliminary hearing to determine whether the Tribunal has jurisdiction to hear the claimant's complaint of unfair dismissal against the respondent, or whether it was presented out of time.
2. The Tribunal heard evidence from the claimant. The respondent also led evidence from Daniel Heaton, HR Business Partner.

**E.T. Z4 (WR)**

3. The respondent lodged a set of productions extending to 58 pages. The claimant lodged three additional productions.
4. The claimant requires a Hungarian interpreter and has hearing loss. Ms Gyongy, interpreter, was present at the open preliminary hearing. The claimant  
5 lip read Ms Gyongy's translation of the proceedings.

### Findings in Fact

5. The Tribunal found the following facts, relevant to the issues to be determined, to be admitted or proven.
6. The claimant's employment terminated on 5 September 2019. She submitted  
10 an appeal on the same day.
7. The claimant contacted Patricia Danson on a number of occasions in the period from September 2019 to March 2020 to try to secure a date for her appeal hearing. On 10 March 2020 she contacted Citizens Advice Edinburgh to see if they could assist her to secure a date for her appeal to be heard and to support  
15 her in the appeal process. In discussions thereafter, Citizens Advice Edinburgh mentioned to the claimant that there were time limits for raising Employment Tribunal claims. The claimant felt however that she could not proceed with an Employment Tribunal claim until she knew the outcome of her appeal. Citizens Advice Edinburgh provided ongoing support to the claimant in relation to her  
20 appeal.
8. The country went into lockdown, as a result of the Covid-19 pandemic, from 24 March 2020. Restrictions began to be lifted gradually from 29 May 2020.
9. The appeal hearing took place on 24 September 2020. On 27 October 2020, Citizens Advice Edinburgh, on the claimant's behalf and instruction, chased the  
25 respondent for an appeal outcome. The claimant was informed of the appeal outcome by letter dated 30 October 2020. Her appeal was rejected. The claimant did not seek further advice from Citizens Advice Edinburgh, following receipt of the appeal outcome.

10. Mainland Scotland commenced a second period of lockdown on 5 January 2021. Restrictions began to be lifted gradually from April 2021 onwards.
11. It remained possible for claimants to present Employment Tribunal claims throughout 2020 and 2021. The ability to present claims was unaffected by lockdowns imposed as a result of the Covid-19 pandemic.
12. In around April 2022, the claimant began to conduct internet research in relation to how she may pursue an Employment Tribunal claim. She looked at the Employment Tribunal website and the Acas website. She subsequently contacted Acas and engaged in early conciliation, in respect of the two individual respondents who the claim was initially raised against, between 6 June and 6 July 2022.
13. The ET1 was presented on 15 July 2022. While the claim was initially stated to be against the current respondent and the two named individual respondents, the claim against the current respondent was rejected as the claimant had not engaged in early conciliation in respect of them. She did so from 2-3 August 2022. Sodexo Limited were added as a respondent to the proceedings on 3 February 2023 and proceedings against the two individual respondents were dismissed on the same date.

### Submissions

14. The claimant submitted that she lodged her appeal on the day she was dismissed and delayed in presenting her claim to the Tribunal while that process was ongoing. It took over a year for the appeal to be heard and an outcome to be given.
15. Mr Bruce, for the respondent, provided a written skeleton submission, which he supplemented with a brief oral submission. In summary, he submitted as follows:
- a) It is clear the claim was lodged outside the time limit;
  - b) The claimant requires to demonstrate that it was not reasonably practicable for her to lodge his claim in time. She has not done so. The

mere fact that there is a pending appeal is not sufficient to justify a finding in fact that it was not reasonably practicable for the claimant to present her claim in time (*Bodha v Hampshire Area Health Authority* [1982] ICR 200); and

- 5 c) If the Tribunal find that it was not reasonably practicable for the claim to be lodged in time, it was not submitted within such further period as was reasonable. Covid was not a factor until March 2020. Even then, it did not prevent the presentation of Employment Tribunal claims. To the extent that the claimant was acting under a mistaken belief that the Employment  
10 Tribunal or ACAS were not open to deal with her claim, that mistaken belief was not reasonable (*Cairney v Cathkin Clean Scotland* ET/4103832/2020).

#### Relevant Law

16. The relevant time limits in relation to complaints of unfair dismissal are set out  
15 in section 111(2) of the Employment Rights Act 1996 (**ERA**).
17. This states that a Tribunal shall not consider a complaint of unfair dismissal unless it is presented to the Tribunal before the end of three months beginning with the effective date of termination, or within such further period as the Tribunal considers reasonable in a case where it is satisfied that it was not  
20 reasonably practicable for the complaint to be presented before the end of that period of three months.
18. S207B ERA provides for the extension of the three month time limit, in specified circumstances, to enable parties to participate in early conciliation, prior to raising proceedings.
- 25 19. In considering whether there is jurisdiction to hear complaints of unfair dismissal, Tribunals require to consider the following questions:
- a) Was the complaint presented within the primary time limit, as extended by early conciliation, where applicable?

b) If not, was it reasonably practicable for the complaint to be presented within that period?

c) If not, was the complaint presented within such further period as the Tribunal considers reasonable?

5 20. The question of a what is reasonably practical is a question of fact for the Tribunal. The burden of proof falls on the claimant. Whether it is reasonably practicable to submit a claim in time does not mean whether it was reasonable or physically possible to do so. Rather, it is essentially a question of whether it was reasonably feasible' to do so **{Palmer and Saunders v Southend-on-**  
10 **Sea Borough Council** [1984] IRLR 119).

21. Whether the claim was presented within a further reasonable period requires an assessment of the factual circumstances by the Tribunal, to determine whether the claim was submitted within a reasonable time after the original time limit expired **{University Hospitals Bristol NHS Foundation Trust v**  
15 **Williams** UKEAT/0291/12).

### Discussion & Decision

22. The Tribunal considered whether the claim was presented within the primary time limit. The Tribunal noted that the effective date of termination of the claimant's employment was 5 September 2019. The relevant time limit  
20 accordingly expired on 4 December 2019.

23. Whilst the claimant engaged in early conciliation in 2022, as this was done after the expiry of the primary time limit, it did not result in the extension of the primary time limit.

24. The ET1 was presented on 15 July 2022. The claim was accordingly not  
25 presented in the primary three month time limit. It was submitted over 31 months/2% years after it expired.

25. The Tribunal then considered whether it was reasonably practicable for the claim to have been presented within the primary time limit, i.e. between 5 September and 4 December 2019. The claimant relied upon the fact that her

internal appeal was pending in that period, and she was waiting for the outcome of that. Whilst the Tribunal noted the respondent's reference, in submissions, to the case of *Bodha v Hampshire Area Health Authority*, the claimant in that case was being advised by his trade union. The claimant in this case was not being supported by a trade union, had not sought advice and had not otherwise been put on notice of the time limit. In those circumstances, (and taking into account *John Lewis Partnership v Charman* UKEAT/0079/11) the Tribunal concluded that it was reasonable, initially at least, for the claimant to wait for the outcome of her appeal, before making further enquiries regarding Employment Tribunal proceedings. It was accordingly not reasonably feasible or practicable for her to present her Employment Tribunal claim in the period from 5 September to 4 December 2019.

26. The Tribunal then considered whether the claim, presented on 15 July 2022, was submitted in a reasonable further period. In doing so, the Tribunal considered each of the factors the claimant relied upon as causing the delay, while keeping in mind the public interest principle that litigation should be progressed promptly (*Nolan v Balfour Beatty Engineering Services* EAT 0109/11), and reached the following conclusions:

a) **Pending appeal.** The Tribunal noted that, by the start of March 2020, nearly 6 months after her appeal had been lodged, the claimant was becoming frustrated at the lack of any progress in the appeal process and contacted Citizens Advice Edinburgh to see if they could assist her in securing a date for the appeal and to support her in the process. She was advised by them, in/around March 2020, that there were time limits for the presentation of Employment Tribunal claims. She decided however that she wished to await the outcome of her internal appeal, before considering other options. The Tribunal concluded that it was not reasonable for her to delay in submitting an Employment Tribunal claim, once she had been put on notice by Citizens Advice Edinburgh, in/around March 2020, that there were time limits for doing so and taking into

account the significant delay which there had already been, as at March 2020, in the respondent progressing the claimant's appeal.

5 b) **Covid.** The claimant did not provide a satisfactory explanation for why the Covid-19 pandemic was a factor in the delay in her submitting her Employment Tribunal claim. Her focus, in her evidence and submissions, was on the respondent's delay in addressing her appeal and that it ought to have been addressed timeously, before the start of the pandemic. Employment Tribunal claims could be presented throughout the pandemic, even during periods of lockdown. The claimant was receiving  
10 advice from Citizens Advice Edinburgh from March to October 2020. Had she asked, they would have informed her of this. Had she conducted research on the internet, she would have been able to readily ascertain this. She was able to conduct internet research in relation to Employment Tribunal claims in April 2022. She did not assert that there was anything  
15 preventing her doing so at an earlier date. From her evidence, she took no action whatsoever from October 2020, when she was informed of the appeal outcome, to April 2022, when she decided to conduct some research to ascertain how she could pursue an Employment Tribunal claim. No satisfactory explanation was provided for that significant delay.  
20 Any mistaken belief that she could not present an Employment Tribunal claim as a result of the pandemic was not, in the circumstances, reasonably held.

27. Given these findings, the Tribunal reached the conclusion that, whilst it was not reasonably practicable for the claim to have been presented before 4  
25 December 2019, the claim was not presented within such further period as was reasonable.

28. The Tribunal accordingly concluded that it does not have jurisdiction to consider the claim. The claimant's complaint of unfair dismissal is therefore dismissed on the basis that it was presented out of time.

**Employment Judge: M Sangster**  
**Date of Judgment: 27 April 2023**  
**Entered in register: 27 April 2023**  
**and copied to parties**