



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr P Cooper

**Respondent:** Balfour Beatty Group Employment Limited

**Heard at:** East London Hearing Centre (in public, by video)

**On:** 18 April 2023

**Before:** Employment Judge Gordon Walker (sitting alone)

## Appearances

For the claimant: represented himself

For the respondent: Mr L Cheyne, solicitor

**JUDGMENT** having been sent to the parties on 19 April 2023 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

# REASONS

## Introduction

1. The claimant's employment with the respondent was terminated on 28 January 2022. The claimant presented a claim of unfair dismissal to the Employment Tribunal on 17 October 2022.
2. A public preliminary hearing was listed on 18 April 2023 to determine whether the claimant had presented his claim within the statutory time limits at section 111 Employment Rights Act 1996.
3. The claimant is dyslexic, and he cannot read or write. He does not operate a computer. Adjustments for the hearing were discussed at the beginning, and agreed as follows:

- a. The claimant's daughter had set up her computer for him and he had a good connection to the hearing. He provided his telephone number so that he could be contacted if he lost connection.
  - b. Regular breaks would be taken, when needed.
  - c. Very few documents would need to be referred to. If documents were referred to, the relevant part would be read out. If any legal authorities were referred to, I would summarise and explain the legal principle to the claimant.
4. The respondent prepared a file of documents for the hearing and produced a file of legal authorities. The claimant provided a written witness statement which his daughter had written on his behalf. He confirmed that the contents of the witness statement were true. He was asked questions of cross examination and from myself. The parties made oral closing submissions.

**Findings of fact**

5. The claimant was dismissed on 28 January 2022.
6. The claimant telephoned ACAS on 31 January 2022. His daughter found him the telephone number for ACAS by looking online for him. The ACAS officer told the claimant that he needed to follow the internal process with the respondent first before they could help.
7. The claimant raised a grievance with the respondent on 13 February 2022. The internal grievance process ended on 29 July 2022 with the appeal outcome.
8. The claimant contacted ACAS on 1 August 2022, which was the first working day after he received the appeal outcome. They issued the ACAS certificate on 3 August 2022. The ACAS officer told him about the time limits. The ACAS officer had not informed the claimant about the time limits on the other occasions that he spoke to them.
9. The claimant did not contact ACAS during the grievance process because he had been told that they could not help him until the internal process had completed.
10. The claimant tried to contact citizens' advice bureau for help. Given his dyslexia he prefers to do things in person. He therefore tried to visit his local citizens' advice bureau office, but it was closed due to covid-19.
11. The claimant submitted his claim on 17 October 2022.

12. The claimant is severely dyslexic and he cannot read and write. He cannot use the internet to carry out internet searches. The claimant relied on his daughter to help him with his internal grievance and Tribunal claim. He has other family members who live closer, or with him, but it is his daughter who is best placed to help him, given the formal and technical language that is used in these processes. His wife and other children do not have the ability to help him with this. His daughter lives in Peterborough. The claimant lives in Walthamstow. She has her own beauty business which keeps her busy, sometimes until 10pm at night.
13. The claimant was unaware of the time limits to bring a Tribunal claim until he was told about them by ACAS on 3 August 2022. The claimant had worked for the same employer for 26 years. He is a skilled labourer, but he did not have any legal or human resources experience or knowledge. He was not a member of a trade union.
14. The delay between 3 August 2022 and 17 October 2022 was because the claimant had to wait for his daughter to come and visit him from Peterborough. He needed his daughter to (1) read the documents he had received from ACAS; (2) explain these documents to him; (3) explain the process that he would then need to follow; (4) write his claim form; and (5) submit his claim form to the Tribunal.
15. Given the claimant's dyslexia, and his need to do things in person, he needed his daughter to be present with him to carry out these tasks.
16. The claimant's daughter was not available to help the claimant until October 2022 because of (1) the demands of her business; (2) the work and time required to complete these tasks; and (3) the fact that she lives in Peterborough, and the claimant lives in Walthamstow.

### **Legal principles**

17. Section 111(1)-(2) Employment Rights Act 1996 states:

*(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.*

18. There is a legal principle called the Dedman principle (named after the Court of Appeal's decision in **Dedman v British Building and Engineering**

**Appliances Ltd** [1973] IRLR 379) which provides that where a professional adviser is at fault in the advice which they gave to a claimant, and the wrong advice is the substantial cause of the missed deadline, the claimant cannot avail themselves of the reasonable practicability extension of time.

19. The respondent does not submit that the Dedman principle applies to advice from ACAS officers. In **Riley v Tesco Stores Ltd** [1980] ICR 323 the Dedman principle was extended to citizens advice bureau advisers who provided advice and issued the claim for the claimant. Advice from Employment Tribunal staff has been held not to attract the Dedman principle: **London International College Ltd v Sen** [1993] IRLR 333.
20. Where the mistake or ignorance on the part of the litigant in missing the deadline for presenting the claim was not the result of any faulty professional advice then the question for the Tribunal is whether the litigant's mistake or ignorance was reasonable: **Wall's Meat Co Ltd v Khan** [1978] IRLR 499.
21. The test of whether the claimant should reasonably have known of the employment right or the time limit is an objective one: **Porter v Bannardine Ltd** [1978] IRLR 278.
22. It was held by Brandon LJ in **Wall's Meat** that ignorance or mistake will not be reasonable if "*it arises from the fault of the complainant in not making such inquiries as he should reasonably in all the circumstances have made*".
23. The case law about litigants who have missed the Tribunal deadline due to conducting an internal appeal process suggests that there must be some factor, beyond the mere invocation of an internal appeal process, which justifies the failure of the claimant to meet the primary time limit (**Palmer v Southend-on-Sea Borough Council** [1984] IRLR 119; **Bodha (Vishnudut) v Hampshire Area Health Authority** [1982] ICR 200). A list of such factors was set out by May LJ in **Palmer** at 125. These include the question of the claimant's state of knowledge of his right to claim for unfair dismissal and of the time limit, and whether the employer had misrepresented any relevant matter to the employee.
24. The respondent produced the case of **DHL Supply Chain Ltd v Fazackerley** UKEAT/0019/18/JOJ. The employment judge in that case decided that the fact that the ACAS officer told the claimant he had to wait until the internal appeal was exhausted was a factor that tipped the balance into making it not reasonably practicable for the claimant to present his claim in time. That decision was upheld on appeal as it was found not to be perverse.

25. Where the claimant satisfies the Tribunal that it was not reasonably practicable to present his claim in time, the Tribunal must then consider whether it was presented within a reasonable time thereafter. Guidance on this issue is provided in **Cullinane v Balfour Beatty Engineering Services Ltd** UKEAT/0537/10 and endorsed in **Balfour Beatty Engineering Services v Allen** UKEAT/0236/11.

### Conclusions

26. The claimant did not present his claim to the Tribunal within the primary time limit at section 111(2)(a) Employment Rights Act 1996.
27. I find that the reasons for the claimant not presenting his claim within the primary time limit were:
- a. The claimant was ignorant of the time limits for presenting a Tribunal claim.
  - b. The claimant received wrong or incomplete information from ACAS. When he first spoke to ACAS, he was told he had to complete the internal process first, and he was not told about the Tribunal time limits.
  - c. These matters were compounded by the claimant's dyslexia and illiteracy.
28. The respondent does not say that the Dedman principle applies to the information provided by ACAS. I find that the Dedman principle does not apply. I find that the situation is more like the case of the information provided from Employment Tribunal staff, rather than the case about citizens' advice bureau staff. The ACAS officer was not giving advice or acting for the claimant. They did not issue the claim on the claimant's behalf. Alternatively, I find that the information from ACAS was a reason but not a substantial reason for the claimant missing the deadline. The main reasons were that he was ignorant of the time limits, and, given his dyslexia and illiteracy he needed help from his daughter to lodge his claim form.
29. I find that the claimant's ignorance of the time limits was reasonable, because:
- a. The claimant had worked for the same company for 26 years. He was not a member of a union. He was a skilled labourer who did not have knowledge of human resources' processes or employment law. It is understandable that a person in this position, who had not had an employment dispute before, may be ignorant of the time limits.
  - b. The claimant has severe dyslexia and is illiterate. He cannot simply "google" his rights like others can. He does not use a computer.

- c. The claimant contacted ACAS very soon after his dismissal and they did not tell him about the time limits. They told him to complete the internal process first.
  - d. The claimant tried to get advice from citizens' advice bureau, but this was not possible.
  - e. It was reasonable for the claimant not to contact ACAS again during the internal process as this was in accordance with the guidance they gave him when he first spoke to them.
30. The claimant became aware of the time limits on 3 August 2022. I find that it was reasonable for the claimant to wait until his daughter was available to help him as she was the person who had the skills to do so. I find that she was not able to help the claimant sooner.
31. I conclude that it was not reasonably practicable for the claimant to present his claim within the primary time limit at section 111(2)(a) Employment Rights Act 1996, because:
- a. The claimant was reasonably ignorant of the time limits until 3 August 2022.
  - b. On the advice of ACAS, which it was reasonable for the claimant to follow, he was waiting for the conclusion of the internal process. This concluded on 29 July 2022.
  - c. The claimant's dyslexia and illiteracy meant he could not access the internet or other sources of assistance without his daughter's support. The claimant needed his daughter to be present with him to complete and submit his claim form.
  - d. Although the claimant became aware of the time limits on 3 August 2022, it was not reasonably practicable for the claimant to present his claim until he had the assistance of his daughter, which was not until October 2022.
32. I find that the claim was presented within in a further reasonable period. The claimant presented his claim as soon as he had the assistance of his daughter to do so.
33. Alternatively, if (which is not my finding) it was reasonably practicable for the claimant to present his claim when he became aware of the time limits on 3 August 2022, I would still have found that he presented it within a further reasonable period. There were ten and a half weeks between the date when the claimant became aware of the time limits and the date when he presented the claim, which might ordinarily not be considered to be a reasonable further period. However, without his daughter's help, the

**Case Number: 3205379/2022**

claimant was reasonably unaware of the next steps he needed to complete after receipt of the ACAS certificate. The claimant needed his daughter's assistance for this and she was not available until October 2022.

**Employment Judge Gordon Walker  
Dated: 24 May 2023**