



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr L Mitchell

**Respondent:** Royal Mail Group Limited

**Heard at:** Manchester (by CVP)

**On:** 31 May 2023

**Before:** Employment Judge K M Ross

## REPRESENTATION:

**Claimant:** In person

**Respondent:** Mr B Brown, Solicitor

**JUDGMENT** having been sent to the parties on 8 June 2023, oral judgment and reasons having been given on 31 May 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. This hearing was to determine whether the claimant's claim was presented within time, if not whether it was reasonably practicable for the complaint to be present within time and if not whether it was presented within such further time as was reasonable.

2. I heard from the claimant. I also had witness statements from Mr W and Mr A from the claimant's trade union, although they did not attend

### The Relevant Law

3. The relevant law is section 11(2) Employment Rights Act 1996. The only claim brought to the Tribunal by the claimant was a claim for unfair dismissal pursuant to section 95 and section 98 Employment Rights Act 1996.

4. I had regard to the cases referred to by Mr Brown in his written submissions and **Alliance & Leicester PLC v Kidd EAT 0078/07**.

## The Facts

5. I found the following facts.

6. The claimant was employed by Royal Mail as a Postal Worker known as "Operational Postal Grade" based at the respondent's Manchester South West Delivery Office.

7. It is not disputed that the claimant was dismissed by the respondent for gross misconduct effective on 7 October 2022, without notice. 7 October 2022 is therefore the effective date of termination. The ordinary limitation period would expire on 6 January 2023.

8. The claimant entered into early conciliation with the respondent in respect of his claim via ACAS on 12 January 2023, ending on 16 January 2023. His claim was presented to the Employment Tribunal on 19 January 2023.

9. There is no dispute that the claimant did not have the benefit of any extension of time under the ACAS early conciliation provisions (section 207B Employment Rights Act 1996). Accordingly, it was agreed that the claim was presented outside the time limit. The issue for the Tribunal was whether the claimant could show that it was not reasonably practicable to present the claim within the time limit, and if not whether he presented it within such further time as was reasonable.

10. I find the claimant was represented throughout the disciplinary process by his trade union (CWU). A trade union representative attended at his investigation meeting and at his dismissal hearing on 7 October 2022. The representative was Mr W.

11. I found the claimant to be a clear and cogent witness. I accept his evidence is truthful.

12. Mr W states in his statement:

"About one week after the ACAS deadline I received a call off Mr Mitchell stating in a general conversation with his wife's friend they told him he had missed the deadline for ACAS as it is three months from dismissal not three months after appeal, which we believed to be the case as we wasn't told otherwise by anyone".

13. I rely on this from Mr W's evidence (he did not attend the Tribunal) to find that Mr W had told the claimant that the deadline was three months from the date of any appeal.

14. There was no statement from Mr R of CWU. I accept the claimant's evidence that he told Mr R that he wanted to take the matter "all the way" when he was dismissed and Mr R represented him, and I am satisfied that Mr R did not advise Mr Mitchell of the time limit. I find that this was implicitly accepted by Mr R in a WhatsApp message which post-dated the dismissal which states:

“Regarding advice on Employment Tribunals, I don’t give advice, never have done, I always refer members to Duncan Healy ACS at Branch as he deals as Branch Liaison between ACAS, ETs etc.”

15. I entirely accept the claimant’s evidence that neither Mr R (who the claimant described as a full-time union officer) nor Mr W nor Mr A (the union representatives who provided statements to the Tribunal, although they did not attend), informed the claimant of the correct time for bringing a claim of unfair dismissal to the Employment Tribunal. I accept the claimant’s evidence that he was told that he needed to appeal internally first and then they would look at the matter further. It was the claimant’s evidence that, “I pay my union to advise me” and “they are there to support and advise me at times like these”. He went on to explain that “times like these” (namely his dismissal) “do not come along very often”. He explained that he had only ever worked in three jobs since leaving school.

16. I rely on the claimant’s statement and the WhatsApp messages within the bundle to show that the claimant was regularly chasing the progress of his appeal.

17. I entirely accept the claimant’s evidence as set out in his statement that unfortunately his young daughter became seriously unwell and had to be taken to A & E in December 2022 and was admitted to hospital, being released just before Christmas on 23 December 2022. Medical evidence within the bundle confirms her hospital admission. I entirely accept the claimant’s evidence that this was an extremely stressful period of time for the claimant.

18. I find that Royal Mail had guidelines suggesting appeals were normally heard promptly within four weeks of dismissal. I accept the claimant’s evidence that that clearly did not happen, and his appeal was not heard until February 2023, a lengthy delay on the part of the respondent. I accept the claimant’s evidence he repeatedly chased his union and on their advice at times chased members of management too, for an appeal hearing.

19. I find that the claimant only became aware of the time limit when his wife met a friend on 12 January 2023 who explained there was a three month less one day time limit from the date of dismissal.

20. The claimant had been given some advice to suggest that the time limit would expire after the appeal had been heard, which is incorrect.

21. I find that the reason given to the claimant why his appeal was so delayed was, given the industrial action taking place at that time, managers who would normally have heard appeals were taking other roles and were not available to hear his appeal.

22. I find that once the claimant discovered via his wife that there was a three month less one day time limit, he contacted ACAS that very day. He presented his claim within a week on 19 January 2023.

## **Conclusions**

23. Firstly, I turn to the reason why the claimant did not present his claim within time. I find the reason was he was unaware of the correct time limit because he

relied on his union which did not advise of the time limit or informed him incorrectly that it was 3 months after his appeal was heard. I rely on the claimant's evidence to find that had he been informed there was a three month less one day time limit from the date of dismissal, he would have presented his claim to the Tribunal within the time limit.

24. Mr Brown in cross examination drew the claimant's attention a clause buried within his contract of employment at 15.3 which suggests he could contact an Employment Tribunal "at any time". I am not satisfied that this is a matter which had caught the claimant's attention.

25. The burden is on the claimant. Time limits in Employment Tribunals are strictly applied. In **Palmer & Another v Southend-on-Sea Borough Council [1984] ICR 372** the test of "reasonable practicability" is whether it was "reasonably feasible".

26. Case law states that where a claimant puts his case into the hands of an adviser, he is likely to struggle to show that it was not reasonably practicable to present the claim within time :see **Dedman v British Building and Engineering Appliances Limited [1974] ICR 53**. This is sometimes known as the "Dedman" principle.

27. Trade union representatives are lay people, doing their best to assist their members in the workplace but the law holds them to a high standard in terms of giving advice about time limits in Tribunal cases

28. Case law suggests that the scope of the Dedman principle applies to trade union representatives so that trade union representatives count as advisers in this context. If they are assisting a claimant with his case, they are assumed to know the relevant time limits and to appreciate the necessity of presenting claims within time (see **Alliance & Leicester PLC v Kidd EAT 0078/07**).

29. I find in this case the trade union representative who assisted the claimant failed to inform him there was a three month time limit which ran from the date of his dismissal. I find a trade union representative incorrectly told the claimant the time limit was 3 months from the date of any appeal.

30. In these circumstances the remedy of the claimant is a claim for negligence against the trade union which owes a duty of care to use ordinary skill and care in advising and/or acting for a member in an employment dispute (see **Friend v Institution of Professional Managers and Specialists [1999] IRLR 173** and **Langley v GMB & Others [2021] IRLR 309**).

31. I find that there were particular circumstances in this case which compounded the problems in this case. Royal Mail delayed the claimant's appeal. It was not heard promptly. Indeed it was not heard until many months after his dismissal, in February 2023. It may be that was due to the unusual circumstances, namely the industrial action which was taking place at the time.

32. However, unfortunately for the claimant the fact that an appeal is delayed due to the fault of the respondent is not sufficient grounds to show that it was "not reasonably practicable" for the claim to be presented within time, however harsh this

may sometimes be for claimants (see **Palmer v Southend-on-Sea Borough Council [1984] ICR 372**).

33. Finally, I turn to the last reason relied upon by the claimant, which was his daughter's illness. I entirely accept that it must have been extremely stressful for him to have such a young child admitted to hospital for a period of 9-10 days, being discharged on 23 December 2022. However, I find that is not the reason why the claimant did not present his claim within time. I find the reason he did not present his claim within time was because he was unaware of the correct time limit and relied on his trade union to advise him of the time limit, which they failed to do.

34. I accept the claimant's evidence that if he had known of the time limit, he would have presented his claim promptly within time.

35. Having found that the claimant had put his case in the hands of his trade union representatives and having found none of them advised him of the correct legal time limit for bringing a claim, I find that it was reasonably practicable for the claimant to have presented his claim within time, and accordingly the Tribunal does not have jurisdiction to hear his claim and it is struck out.

36. It is therefore not relevant for me to go on and consider whether the claimant presented his claim within such further time as was reasonable.

37. I note that the claimant contacted ACAS the same day as the claimant's wife discovered the real time limit. He engaged with ACAS for a short time and then presented his claim within one week, so I am satisfied that he did act within such further time as was reasonable, but as I have already stated that issue is no longer relevant because it was reasonably practicable for the claim to be presented within time.

38. Finally I apologise for the delay in producing these written reasons. This was due to being way on annual leave for 2 weeks in June and the pressure of other Judicial business including multi day hearings.

Employment Judge K M Ross  
Date: 10 July 2023

REASONS SENT TO THE PARTIES ON  
11 July 2023

FOR THE TRIBUNAL OFFICE

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