



EMPLOYMENT TRIBUNALS

Claimant: Mr B Majeed

Respondent: Shaw Trust Ltd.

Heard at: London Central

On: 11 September 2023

Before: Judge M Joyce

Representation

Claimant: In-person

Respondent: Ms B Devgon (Solicitor)

REASONS

Claims and Issues

1. This matter was before me on 11 September 2023. The preliminary issue to determine was whether or not the claimant's claim for breach of contract was within time. In particular, the issues were (1) whether or not it was not reasonably practicable for the claimant to file his claim within time; and (2) if I was satisfied that it was not reasonably practicable for the claimant to file the claim within time, I then had to consider whether the claim was filed within such further period as the Tribunal considers reasonable.

Hearing, Procedure and Documents

2. This was a preliminary hearing. The evidence was largely agreed. Both parties made oral opening and closing submissions. There was a bundle of documents containing 64 pages. Numbers in bold square brackets below are electronic page references to the preliminary hearing bundle.

Facts

3. The claimant was dismissed on 24 January 2023 with immediate effect. As such, his effective date of termination ("EDT") was 24 January 2023.
4. On 25 January 2023, the claimant wrote to the respondent advising that he would pursue an internal appeal in relation to his dismissal.

5. On 26 January 2023, the respondent emailed the claimant confirming that an independent manager would be appointed to hear his appeal.
6. On 3 April 2023, the internal appeals procedure concluded, upholding the decision to dismiss the claimant.
7. On 4 April 2023, the claimant had an initial meeting with a representative of ACAS. He was not provided with any advice on time limits, nor did he enquire about the existence of such time limits. ACAS did, however, advise the claimant to obtain independent legal advice.
8. On the same day, the claimant obtained independent legal advice through his insurance. The status of the individual who gave him advice (“Advisor”) was unclear. The claimant had further telephone consultations with the Advisor on 20 and 21 November 2023. The Advisor did not advise the claimant as to time limits, nor did the claimant enquire about them with his Advisor.
9. On 24 April 2023, the claimant had a further meeting with a representative of ACAS. The representative informed the claimant about the time limits for filing and told him to file his request for early conciliation without delay.
10. On the same day, the claimant filed his request for early conciliation with ACAS.
11. On 25 April, ACAS issued an Early Conciliation Certificate [10].
12. On 27 April 2023, the claimant filed his claim with the Tribunal [12].
13. By letter of 5 May 2023, the claimant wrote to the Tribunal setting out the circumstances as to why he had submitted his claim out of time.

Law

14. Section 111 (2) of the Employment Rights Act 1996 (“ERA”) provides:

Subject to the following provisions of this section, an [F1employment 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.
15. From **Porter v Bandridge Ltd [1978] ICR 943, CA, paragraph 948D** I derive the principle that the onus of proving that presentation in time was not reasonably practicable rests on the claimant.
16. In **Palmer and Sanders v Southend on Sea [1984] IRLR 119** (*Sanders*) provides further instruction on how to construe the “reasonably practicable” test:

To this end the Tribunal should consider: (1) the substantial cause of the claimant's failure to comply with the time limit; (2) whether there was any physical impediment preventing compliance, such as illness, or a postal strike; (3) whether, and if so when, the claimant knew of his rights; (4) whether the employer had misrepresented any relevant matter to the employee; and (5) whether the claimant had been advised by anyone, and the nature of any advice given; and whether there was any substantial fault on the part of the claimant or his adviser which led to the failure to present the complaint in time.

17. As to the receipt of erroneous legal advice as a basis for claiming that it was not reasonably practicable to file a claim in time, the general rule is set out in **Dedman v British Building and Engineering Appliances Ltd [1974] ICR 53, CA** ("*Dedman*") which provides that If a solicitor mistakes the time limit then the claimant's action is against them for professional negligence, but it will not mean that it was not reasonably practicable to file the claim in time.
18. From the authority of **Wall's Meat v Khan [1978] IRLR 499**, I was directed to the following excerpt by the respondent:

44. The performance of an act, in this case the presentation of a complaint, is not reasonably practicable if there is some impediment which reasonably prevents, or interferes with, or inhibits, such performance. The impediment may be physical, for instance the illness of the complainant or a postal strike. The impediment may be mental, namely, the state of mind of the complainant in the form of ignorance of, or mistaken belief with regard to, essential matters. Such states of mind can, however, only be regarded as impediments making it not reasonably practicable to present a complaint within the period of three months, if the ignorance on the one hand, or the mistaken belief on the other, is itself reasonable. Either state of mind will, further, 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, or from the fault of his solicitors or other professional advisers in not giving him such information as they should reasonably in all the circumstances have given him."

19. Lord Phillips MR in **Marks & Spencer Plc v Williams-Ryan [2005] ICR 1293** at paragraph 24 of that Judgment affirmed the principle from *Dedman* was a binding proposition of law, namely that:

if an employee takes advice about his or her rights and is given incorrect or inadequate advice, the employee cannot rely upon that fact to excuse a failure to make a complaint to the Employment Tribunal in due time. The fault on the part of the adviser is attributed to the employee.

20. In **Northamptonshire County Council v Entwhistle [2010] IRLR 740**, ("*Entwhistle*") the relevant facts were that the employer wrote to the claimant confirming his dismissal and, wrongly, informed him he had 3 months from date of the receipt of the outcome of his appeal against dismissal to file a claim with the Employment Tribunal. The claimant's solicitor did not check. The EAT (overturning the ET's decision) held that it was reasonably practicable to file the claim in time as the solicitor should not have relied on the employer's calculation of the time limit.

21. In arriving at its conclusions, the EAT again confirmed the *Dedman* principle but stated it might theoretically be possible for a claimant to successfully argue that it was not reasonably practicable to file a claim in time despite the involvement of a solicitor - for example where the claimant and/or the

solicitor had been misled by the employer on a factual matter such as the date of dismissal.

Parties' Positions

22. Broadly speaking, the parties' positions were as follows:
23. The claimant accepts that he missed the deadline for filing his claim. He accepts that he should have requested early conciliation with ACAS within three months, minus one day, of his EDT. That is, by 23 April 2023. However, instead he filed his request for early conciliation on 24 April 2023. As such, his request was one day out of time.
24. Nevertheless, the claimant stated that he had acted without delay. He stated that ACAS was the foremost authority on filing of claims and so is to be distinguished from the case law cited (such as *Dedman*) which refers to solicitors providing advice: he submitted that he should have been able to rely on ACAS's advice to an even greater extent than a solicitor's advice. He had no intention to delay filing his claim. On the contrary, all of his actions demonstrated that he was intent on pursuing his claim in as expeditious a manner as possible.
25. The respondent submitted that the claimant knew of his right to file a claim for Breach of Contract and that he exercised that right. The fact that he was unaware of the time limit and missed it was the fault of his Advisor and/ or ACAS and while he may have a claim for negligence against them, his claim before this Tribunal is out of time.

Conclusions

26. As accepted by both parties, the claimant should have filed his request for early conciliation with ACAS by 23 April 2023. However, he did not file his request until 24 April 2023. As such, his claim was, on the face of it, 1 day out of time. In considering the issue of reasonable practicability under s. 111(2)(b) ERA, I determined as follows;
27. I have considerable sympathy for the claimant's position. It is apparent that he acted expeditiously in pursuing his claim. It is apparent from the sequence of events as set out in the Facts that he did not intend to delay bringing proceedings. I also bear in mind that he missed the deadline by one day.
28. I considered, on the basis of the evidence before me, that the claimant was broadly aware of his rights. This is evident from how he pursued his claim: He told the respondent almost immediately upon being dismissed that he intended to file an appeal, and did so. He then approached ACAS and sought further, independent legal advice.
29. This is not a case, applying the principles in *Sanders* of there being any impediment, physical or otherwise, to prevent the claimant from filing his claim. Equally, he was not given any misleading or wrong information by his employer. The substantial cause of the failure to file his claim in time was that the claimant was not aware of the time limits. His Advisor did not inform

him of them. ACAS only did so on 24 April, the day after the time limits had expired. I also noted that the claimant did not inquire as to any applicable time limits with ACAS or his Advisor.

30. This is more a case of failing to provide adequate advice than giving incorrect advice: in other words, the importance of the applicable time limits was not communicated to the claimant in a timely manner by his Advisor or ACAS.
31. Regrettably, the legal position set out in *Dedman* as emphasised in *Marks and Spencer v Williams Ryan* and also in *Entwhistle* is that erroneous legal advice, (which includes not giving adequate advice when it should have been given), does not mean it is not reasonably practicable to file the claim in time. Rather, it means that any claim that the claimant may have lies in a claim for negligence against his Advisor and/or ACAS and he may wish to consider whether claims may be brought against them.
32. While the claimant refers to ACAS being the primary authority on employment law, the case law does not draw a distinction between solicitors and other legal advisors or bodies such as ACAS in terms of whether an error/omission on their part provides a claimant with a ground for contending it was not reasonably practicable to file a claim within time. In this regard, I noted that it was not the role of ACAS to provide the claimant with independent legal advice. This is underlined by the fact that, in their initial consultation with the claimant on 4 April 2023, a representative of ACAS told him to obtain independent legal advice. He obtained such advice from his Advisor, who failed to inform him of the applicable time limits and the importance of complying with them.
33. For all of the above reasons, I concluded that the claimant had not shown that it was not reasonably practicable for him to file his claim in a timely manner and I concluded that the claim was time-barred.
34. I appreciate that the claimant will find the Tribunal's position to be a strict one. However, time limits exist for a reason and may only be extended in certain limited circumstances, which are not in existence here.
35. In light of the above ruling, I did not need to consider the second part of s. 111(2)(b) – i.e. whether the claim was presented within a further reasonable period of time after expiry of the limitation period.

Employment Judge **M Joyce**

31/10/2023

JUDGMENT & REASONS SENT TO THE PARTIES ON

31/10/2023

FOR THE TRIBUNAL OFFICE