



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8000277/2023

Preliminary Hearing
Held on the Cloud Video Platform
on 4 September 2023

Employment Judge Jones

Mr T Swinfen

Claimant
In person

Britannia Hotels Limited

Respondent
Represented by:
Ms Fallone, of counsel

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Tribunal does not have jurisdiction to consider the claimant's claim.

Introduction

1. The claimant lodged a claim on 14 June 2023, claiming that he had been automatically unfairly dismissed. It was agreed between the parties that his employment with the respondent had ended on 12 December 2022.
2. A preliminary hearing took place to consider whether the Tribunal had jurisdiction to consider the claimant's claim. The claimant gave evidence on his own account. A joint bundle of documents was also lodged.
3. Having considered the evidence, the documents to which reference was made and the submissions of the parties the Tribunal found the following facts to have been established on the balance of probabilities.

Findings in fact

4. The claimant worked for the respondent as an Assistant Hotel Manger from 3 October until 12 December 2022, when he was dismissed.
- 5 5. The claimant raised a grievance around 13 December 2022. He was advised that this grievance was not upheld around 2 February 2023.
6. The claimant sought to appeal against the refusal to uphold his grievance.
7. The respondent did not deal with the appeal against the decision not to uphold his grievance.
- 10 8. The claimant contacted the Citizen's Advice Bureau in December 2022 for advice in relation to his employment situation and then again in either March or June 2023.
9. The claimant contacted a number of solicitors' firms seeking advice on whether he could make a claim in respect of his dismissal.
- 15 10. The claimant researched whether he would be entitled to legal aid in relation to pursuing a claim against the respondent.
11. The claimant contacted friends who studied law and his former university for assistance in relation to the exercise of any rights he may have.

20 Observations on the evidence

12. The claimant's evidence was somewhat contradictory. He initially said that he had contacted the Citizen's Advice Bureau in March 2023 when they informed him that he might be able to lodge a claim in relation to his dismissal, and
25 then said that this was in June 2023. He indicated that he had a bad memory which was the reason he had mixed up dates. The Tribunal did not find that explanation wholly credible. The claimant was clearly an intelligent individual. He indicated that he understood the issue to be determined by the Tribunal. He has been to University and is currently employed as an Assistant Hotel
30 Manager. He had initially said that the reason for the delay in lodging a claim between March 2023 and June 2023 was that he was seeking legal assistance and then indicated that he did not seek legal assistance until around June 2023

Relevant law

13. Section 111(2) provides that a claim of unfair dismissal should be presented to the Tribunal before the end of the period of three months beginning with
5 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 reasonably practicable for the complaint to be represented before the end of that period of three months.

10 Discussion and decision

14. The claimant accepted that his claim had been lodged outwith the statutory period. He put forward the following as reasons for the delay:

- 15 i. He was unaware of statutory time limits until after the expiry of the time limit
- ii. He believed that the respondent would deal with his grievance appeal and was 'strung along' by them in that regard
- iii. He was seeking advice and assistance in relation to a claim.

2. Whether it was not reasonably practicable to lodge a claim in time is a
20 question of fact for the Tribunal to determine and the burden is on the claimant to demonstrate the fact.

3. In some circumstances, a complete ignorance of a claimant's right to claim unfair dismissal may render it not reasonably practicable to have lodged the
25 claim in time. However as was established by the Court of Appeal in **Porter v Bandridge Ltd 1978 ICR 943**, the Tribunal should also be satisfied that it was not reasonable for a claimant to have known of their rights.

4. In the present case, the claimant is clearly an intelligent individual. He carried out research online, spoke to solicitors, the CAB and friends regarding the
30 matter. It is extraordinary that he did not also check whether there was a time limit applicable to the lodging of a claim. It is difficult to accept that anyone would not think to establish whether there was a time limit associated with presenting a claim of unfair dismissal and the failure to do so is entirely the responsibility of the individual concern. While the case referred to above was in 1978, it must be the case that a basic search online would highlight the

question of time limits. It is simply inconceivable that an individual exercising reasonable care would not discover after a search online that there was a three-month time limit in which to lodge a claim of unfair dismissal.

- 5 5. A delay in an internal appeal in relation to a claimant's dismissal may also be a relevant factor to consider in determining whether it was not reasonably practicable to have lodged a claim in time. However, in the present case, the claimant appears to have simply lodged a grievance rather than an appeal against his dismissal. Even if it could be said that the grievance amounted to an appeal (and the grievance was not produced before the Tribunal), it is notable that the respondent was simply not responding to the claimant's emails to them. The claimant emailed the respondent in February seeking to appeal and again in April. It must have been apparent to the claimant that the respondent was not advancing his appeal given that lack of contact. Therefore, in the present circumstances, the Tribunal does not accept that a hope that the respondent may deal with an appeal against the claimant's grievance rendered it not reasonably practicable to have lodged his claim in time.
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- 20 6. Even had the Tribunal come to the conclusion that it was not reasonably practicable for the claimant to have lodged his claim in time, his claim was not lodged for more than three months after the expiry of the initial three-month period. In these circumstances, even had the Tribunal come to the view that it was not reasonably practicable for the claimant to have lodged his claim within three months, the Tribunal concluded that a further three months was not a reasonable further period in which to have lodged the claim.
- 25 7. In all these circumstances, the Tribunal does not have jurisdiction to determine the claimant's claim of unfair dismissal.

Employment Judge: EJ Jones
Date of Judgment: 05 September 2023
Entered in register: 09 September 2023
and copied to parties