THE EMPLOYMENT TRIBUNAL

SITTING AT: **LONDON SOUTH**

BEFORE: **EMPLOYMENT JUDGE MORTON**

BETWEEN:

Mr J Soltanimohammadi **Claimant**

AND

AM Construction and Engineering Limited **Respondent**

ON: **6 November 2023**

Appearances:

For the Claimant: **In person**
For the Respondent: **Mr R Wayman, Counsel**

Written reasons provided at the request of the Claimant

1. Oral judgment in this case was given at the end of the hearing on 6 November to the effect that the Tribunal does not have jurisdiction to deal with the Claimant's claims because they were presented outside the statutory time limits. The Claimant then made an application in writing for written reasons. The reasons given at the hearing are set out below, with an explanation of the relevant law.

2. The Claimant was assisted by a Farsi interpreter, Mr A Ahmadi at the hearing, but his standard of English was very high and he did not rely heavily on Mr Ahmadi's assistance.

Background

3. The Claimant did not expect the question of whether or not his claim could

proceed because it was out of time to be decided at the hearing. I therefore considered whether it would be in the interests of justice and more consistent with the overriding objective to adjourn the case to another day, but the Claimant agreed to proceed on the basis that he had addressed the time limit point in his witness statement and would be relying on only a small number of documents from the extensive bundle he had brought to the hearing. These were sent to Mr Wayman and the hearing was adjourned to allow both parties to prepare to address the point. A full day had been allocated to hear the various applications that had been put forward, and there was therefore adequate time to deal with the jurisdictional issue. It was furthermore clear to me from the witness statement and the documents I did consult, that the Claimant was well aware that time limits were an issue in this case and as the Tribunal does not have jurisdiction unless it is satisfied that the statutory test for extending time is met, I considered that it was necessary to determine the jurisdiction question in advance of any other issue that was potentially to be determined at the hearing.

Facts

4. The Claimant was employed until 9 October 2022. That date was not in dispute. There was a dispute about his start date, which I did not need to resolve for the purposes of the issue dealt with in these reasons. The Respondent said it was 29 October 202, but the Claimant said it was much earlier.

5. The Claimant did not approach ACAS with a view to obtaining an early conciliation certificate until 31 January 2023, some weeks after the expiry of the primary statutory time limit. However, he had become aware of the expiry of that time limit via a communication from the CAB on 10 January 2023. He received the ACAS early conciliation certificate on 2 February 2023 and submitted his claim to the Tribunal five days later on 7 February 2023. He complained of unfair dismissal and brought claims for holiday pay, arrears of pay and other unpaid wages.

The relevant law

6. The law on time limits in unfair dismissal cases is set out in s111 ERA as follows:

> **111 Complaints to employment tribunal.**
>
> **(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.**

7. The law on time limits in deductions claims is set out in s23(2) ERA as follows:

> **(2) Subject to subsection (4), an employment tribunal shall not consider a complaint under this section unless it is presented before the end of the period of three months beginning with—**
> **(a) in the case of a complaint relating to a deduction by the employer, the date of payment of the wages from which the deduction was made, or**
> **(b) in the case of a complaint relating to a payment received by the employer, the date when the payment was received.**
> **(3) Where a complaint is brought under this section in respect of—**
> **(a) a series of deductions or payments, or**
> **(b) a number of payments falling within subsection (1)(d) and made in pursuance of demands for payment subject to the same limit under section 21(1) but received by the employer on different dates, the references in subsection (2) to the deduction or payment are to the last deduction or payment in the series or to the last of the payments so received.**
> **(3A) Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (2).**
> **(3) Where the employment tribunal is satisfied that it was not reasonably practicable for a complaint under this section to be presented before the end of the relevant period of three months, the tribunal may consider the complaint if it is presented within such further period as the tribunal considers reasonable.**

8. The applicable test in relation to all of his claims was therefore the 'not reasonably practicable' test set out in the ERA 1996. The meaning of 'reasonably practicable' has been considered in a number of cases, including Palmer and anor v Southend-on-Sea Borough Council 1984 ICR 372, CA, where the Court of Appeal concluded that 'reasonably practicable' does not mean either 'reasonable', or 'physically possible', but something like 'reasonably feasible'. Lady Smith in Asda Stores Ltd v Kauser EAT 0165/07 gave this explanation: 'The relevant test is not simply a matter of looking at what was possible but to ask whether, on the facts of the case as found, it was reasonable to expect that which was possible to have been done'.

Evidence and submissions

9. Mr Wayman did not wish to cross examine the Claimant and I relied on the Claimant's written statement, which did address the time limit issue, and a small bundle of documents in reaching my decision.

10. Mr Wayman made submissions, which the Claimant was then able to reply to. He submitted that the Claimant had not been ignorant of his rights, had consulted others and was aware that there were time limits. He submitted that even if there is fault on the part of advisers (which he said was not the case here), then that is treated as a default on the part of the claimant in the case. He pointed to the case of Riley v Tesco Stores 1980 ICR 323 CA, which confirms that this principle applies when it is the Citizens Advice Bureau that is consulted. However, Mr Wayman said that there was no evidence in this case that the CAB did give incorrect advice and no evidence that the CAB had agreed to submit the Claimant's claim within the time limit for him. It appeared that the Claimant had raised a number of issues with the CAB, including a number related to his immigration status and that it was his immigration issue that was uppermost in his mind at the time. The Claimant had not provided to the Tribunal any evidence of

an ongoing discussion with the CAB about submitting a claim to the employment tribunal leading up to the expiry of the deadline. On the other hand, it was clear that the Claimant himself was aware of the possibility of bringing a claim, that there was a time limit for doing so and that he needed to contact ACAS first.

11. In response the Claimant denied that this was the case and sought to explain the delay in submitting his claim on the advice he had received from a variety of sources, including the CAB and ACAS. He maintained that he did not know that law and received the wrong advice form the CAB who were responsible for him missing the time limit. He said he had been actively working on his situation and not 'doing nothing'. He was in difficulty after losing his employment with the Respondent on whom he was reliant for his work visa.

Decision

12. The Claimant's own evidence was that he went to the Citizen's Advice Bureau in September 2022, before his employment actually terminated. Clearly, he had a lot on his mind – the loss of his employment would jeopardise his right to work in the UK and his priority, as he said in his own evidence, was to earn money and survive. His case is that he handed matters over to the CAB to bring proceedings for unfair dismissal and that the CAB missed the deadline. If this was the case then the Claimant's claim that it was not reasonably practicable for the claim to be presented in time must unfortunately fail. The test in the Employment Rights Act, which is the relevant statute is a strict objective test, and does not make allowances for the difficult and unexpected circumstances the Claimant found himself in at the time. If a claimant engages skilled advisers to act in presenting a claim, the presumption is that it was reasonably practicable to present the claim in time (Dedman v British Building and Engineering Appliances Ltd 1974 ICR 53, CA). In other words, if the adviser did not meet a deadline, that does not mean that it was not reasonably practicable for the deadline to adhered to. That principle was repeated as regards advice from the CAB by the Court of Appeal in Riley v Tesco Stored Ltd, an authority that the employment tribunal is bound to follow in a case with facts such as these. If that is the Claimant's case and the facts were as the Claimant wished to present them, then I am bound to find that it was reasonably practicable for the claim to be presented in time and accordingly the tribunal has no jurisdiction to hear it.

13. I have also considered whether, given the Claimant's unfamiliarity with legal procedures in the UK, that he might have been mistaken about what the CAB was doing for him. In fact I agree with Mr Wayman that the correspondence with the CAB tends to show that it had not in fact agreed to start the proceedings and conduct the claim for him. But even if the CAB had not in fact undertaken to present the claim for the Claimant, I am do not think that it was not reasonably practicable for the Claimant himself to have presented the claim in time. In answer to a question from me the Claimant said that he had known to contact the employment tribunal in September or October 2022 because he had conducted a Google search. I consider that if he had done so he would have quickly found out that there was a three-month time limit for bringing a tribunal claim and a necessity to contact ACAS. That information is readily and prominently available from multiple sources on the internet. On his own evidence the Claimant did also

contact ACAS at an early stage – he was therefore a resourceful and capable individual and at the hearing he came across as intelligent and capable of understanding a good deal about the process. I also note Mr Wayman's submission that it is inconceivable that ACAS would not have told the Claimant that the employment tribunal operates strict time limits.

14. The Claimant is a highly educated man and his grasp of English is also very good, even though he had the benefit of an interpreter at the hearing. So, if the Claimant was not as a matter of fact relying on the CAB to present the claim for him, I find that it was 'reasonably feasible' (using the test from Palmer v Southend on Sea Borough Council) for the Claimant to have presented the claim in time himself. He had spoken to the CAB and to ACAS prior to the expiry of the deadline, and, again on his own evidence, to the Tribunal itself. There was no evidence that he had actually been misinformed by any of the agencies he contacted. He had access to the internet and was able to find out about employment tribunals and ACAS – again well before the deadline. Accordingly, in my judgment, he was also able to find out about tribunal time limits.

15. Finally, even if I am wrong about both those arguments, the Claimant did not explain why there was a delay between him finding out about the expiry of the deadline (which he discovered on 10 January 2023) and his approaching ACAS to rectify the problem (31 January 2023). Three weeks' delay without an explanation creates an insurmountable problem for the Claimant under the second limb of the test in s111 ERA, as does the five-day delay between the Claimant receiving the ACAS certificate and his presenting his tribunal claim. Hence even if it had not been reasonably practicable for the claims to have been presented (by means of an approach to ACAS) within the three-month time limit, there is no evidence that they were presented within such further period as was reasonable.

16. Accordingly, it is the judgment of the Tribunal that the Claimant presented his claims of unlawful deduction from wages and unfair dismissal outside the statutory time limits set out in sections 23(2) and 111(2) Employment Rights Act 1996.

17. It was reasonably practicable for the claims to have been presented within the relevant time limits and even if it had not been, the Claimant did not present the claim within such further period as was reasonable in the facts of this case.

18. The Tribunal therefore has no jurisdiction to hear any of the Claimant's claims and they are hereby dismissed.

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Employment Judge Morton
Date: 6 December 2023

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