



EMPLOYMENT TRIBUNALS

Claimant: Mr Ai Neville Bailey

Respondent: Network Rail Infrastructure Limited

Heard at: (in public; by video) **On:** 15 March 2024

Before: Employment Judge S Connolly

Appearances

For the claimant: Mr Fray (Equality Officer)

For the respondent: Mr Welch (Counsel)

Written Reasons

Background

1. A Preliminary Hearing took place on 15 March 2024. Among other things, the Tribunal decided that it did not have jurisdiction to hear the claimant's unfair dismissal claim as it was not submitted within the timescales required by section 111 of the Employment Rights Act 1996.
2. The claimant gave evidence before the Tribunal and submissions were made on behalf of both parties.
3. The Tribunal gave oral reasons for the decision. The Judgment was sent by the Tribunal on 3 June 2024. The claimant made a request for written reasons in writing on 11 June 2024 and request this was shared with Employment Judge on 14 June 2024.

Law

4. Section 111 of the Employment Rights Act 1996 make it clear that there is a three month time limit for bringing unfair dismissal claims and that this runs from the Effective Date of Termination, which is defined by section 97 of the Employment Rights Act 1996.
5. Section 97(1)(b) of the Employment Rights Act 1996 provides that where a contract of employment is terminated without notice, the Effective Date of Termination is the date on which the termination takes effect.
6. The Tribunal has discretion to extend time if it satisfied that it was not reasonably practicable for the claim to be brought in time.
7. Section 207B of the Employment Rights Act 1996 (particularly section 207B(3) and 207B(4)) provides for the extension of time limits to facilitate ACAS

Early conciliation before institution of proceedings. This provides that Day A is the day on which the prospective claimant contacts ACAS and Day B is the day on which the prospective claimant receives the Early Conciliation certificate from ACAS.

Findings of Fact

8. The claimant contacted ACAS on 2 May 2023 (Day A) and the Early Conciliation certificate was issued on 4 May 2023 (Day B). The claimant's ET1 was received by the Tribunal on 5 June 2023. It was submitted by post.
9. There was some dispute on the Effective Date of Termination. The claimant was verbally dismissed on 7 February 2023. This was confirmed in writing dated 13 February 2023. The claimant accepted in cross examination that 7 February 2023 was the date he was dismissed.
10. There was no copy of the contract of employment provided to the Tribunal.
11. It is clear from the claimant's evidence that he relied on Mr Fray to support him with the Tribunal process. This is not a criticism of the claimant. It is perfectly appropriate for him to engage an adviser to advise him and to rely on that advice.
12. The claimant's statement stated that part of the reason for his delay was delays in relation to internal processes. He said there were delays due to him having to challenge the minutes and chase the appeal. He also made reference to his union (RMT) and their legal team refusing to provide legal assistance.
13. Mr Fray's letter of advice to the claimant stated that the deadline for the ET1 was 6 June 2023. Mr Fray confirmed that the claimant was waiving any privilege that may attach to this letter.

Submissions

Claimant submissions

14. The letter confirming the dismissal was dated 13 February 2023. This was the proper date of dismissal. All references to 7 February 2023 are irrelevant.
15. Mr Fray confirmed he advised the claimant based on the Equality Act 2010.
16. The RMT legal advice made reference to the date of one month after receipt of the ACAS Early Conciliation Certificate being the usual deadline for submission of an ET1.
17. Calculation of time limits is not easy. Mr Fray has seen many people make errors. Mr Fray added that if he was incorrect, he apologises.
18. Mr Fray submitted the ET1 by post as this was his preferred method.
19. Mr Fray submitted that the Tribunal has the power to extend time on just and equitable grounds.

Respondent submissions

20. Mr Welch provided written submissions and made oral submissions before the Tribunal.
21. The case of *Dedman v British Building & Engineering Appliances* [1974] ICR 53 sets out a clear position in regard to this situation where skilled advisers are instructed. If Mr Fray missed the time limit, the claimant's only remedy is against Mr Fray and This authority was approved in *Marks and Spencer v Williams-Ryan* 2005 ICR 1293, CA .
22. There are two relevant issues to be decided:
- a. Was Mr Fray a skilled adviser?
 - b. If so, was his mistake reasonable one?
23. Mr Fray is a skilled adviser. The authorities demonstrate that there is a broad interpretation. This includes Citizens Advice Bureau, Trade Unions, Free Representation Unit, Professional Associations. Mr Fray and/or the Northampton Rights and Equality Council comfortably fit into this interpretation.
24. Mr Fray is here today. He acts as an adviser and as an advocate. He should know how to look up time limits. He had the information he needed and could have done it. He could have used an online calculator. He didn't do it properly and this is not a reasonable mistake. The submissions highlight this as well as Mr Fray makes references to the wrong test for extension of time limits for Unfair Dismissal claims.

Conclusions

What was the Effective Date of Termination?

25. The claimant accepted that 7 February 2023 was the date of communication of the dismissal. Therefore, based on the application of section 97(1)(b) of the Employment Rights Act 1996, this is the date on which termination takes effect. The Effective Date of Termination was 7 February 2023.

What was the deadline for submission of the ET1?

26. The application of section 207B(3) and (4) mean that the extension period for submitting the ET1 ended "one month after Day B". This was 4 June 2023.
27. The Tribunal notes that given the Early Conciliation Dates, the date of submission of the ET1 would have been the same whether the Effective Date of Termination was 7 February 2023 or 13 February 2023.

Was the claim in time? Should time be extended?

28. The Tribunal reviewed the submissions and case law, including those in relation to submission by post.
29. Mr Fray sent the ET1 by post. Submitting online was available to him but post was his preferred method. No evidence was provided in relation to any significant postal delays or issues.
30. A number of different reasons were mentioned by the claimant as relevant to the delay. These are addressed below.

Internal Processes

31. The claimant suggested there were some delays with internal processes.
32. It is well established that Tribunal deadlines are strict and there is clear case law that the existence of an impending internal appeal was not in itself sufficient to justify a finding that it was not reasonably practicable to present a complaint to a tribunal within the time limit, and this view was expressly approved by the Court of Appeal in *Palmer and anor v Southend-on-Sea Borough Council 1984 ICR 372, CA*.
33. On this basis, the Tribunal does not accept that any delays in internal processes justifies the delay in submitting the ET1.

Advice from Mr Fray

34. Whilst the claimant mentioned several reasons for delay, including in relation to internal process and the RMT's refusal to assist, the Tribunal finds that the main reason for the late submission of the claim was the advice from Mr Fray.
35. This is reflected in the claimant's evidence and the letter of advice from Mr Fray, which stated a deadline of 6 June 2023.
36. Based on the broad definitions in the case law, the Tribunal has no hesitation in concluding that Mr Fray is a skilled adviser. Further, the Tribunal accepts the principle from *Dedman* case mentioned above. This establishes that if the reason for missed deadline is due to bad advice from a skilled adviser, then this does not mean it was not reasonably practicable to bring the claim in time. The remedy is against the adviser.
37. The cases referred to by the respondent are valid. In *Marks and Spencer plc v Williams-Ryan 2005 ICR 1293, CA* a thorough review of the relevant authorities was conducted.
38. The Tribunal notes that there is some scope for an extension to be allowed where the Tribunal accepts that the error was a reasonable one (*Northamptonshire County Council v Entwistle 2010 IRLR 740, EAT*). The Tribunal considers that this is an exception and that would not apply to the current case. Whilst there may be complexity with time limits, it is a key element for an adviser advising on tribunal claims. The Tribunal does not consider an error in calculating limits to be a reasonable error.

Summary of Conclusions

39. The deadline for submitting the ET1 was 4 June 2023. Mr Fray advised the claimant that the deadline was 6 June 2023. Mr Fray was a skilled adviser and the error was not a reasonable one. It was reasonably practicable for the unfair dismissal claim to be submitted on time but this did not happen. Therefore, the claim of unfair dismissal is struck out as out of time as the Tribunal has no jurisdiction to hear it.

Employment Judge S Connolly

Date 12 July 2024

SENT TO THE PARTIES ON

18 July 2024

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FOR THE TRIBUNAL OFFICE