



# EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

**Miss Lucy Yeboah**

**v**

**Hayward Services Ltd**

**Heard at:** Watford  
**On:** 15 April 2024  
**Before:** Employment Judge Alliott (sitting alone)

**Appearances:**

**For the Claimant:** In person  
**For the Respondent:** Mr M Ramsbottom (consultant)

**JUDGMENT** having been sent to the parties on 27 June 2024 and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013, the following reasons are provided:

## REASONS

1. Section 111 of the Employment Rights Act 1996 provides 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.”

2. It is common ground that the claimant was unfairly dismissed on 6 January 2023.

3. Although a time point has not been taken by the respondent in its response, since time relates to jurisdiction and given jurisdiction cannot be waived or agreed, it is still necessary for me to deal with the issue.

4. Once the time issue was pointed out to the respondent it has been pursued by the respondent.

#### Time limits

5. It is common ground that the claimant was dismissed on 6 January 2023. As such, the primary three-month limitation period would expire on 5 April 2023. The Acas early conciliation certificate for the claim against Hayward Services Ltd is dated 11 May 2023 for both notification and certificate and so no time for early conciliation is to be disregarded. The claim was presented on 16 May 2023 and consequently the claim is 41 days or 5 weeks 6 days late.
6. The claim was originally brought against the respondent and “Theresa Kearney” (who should actually have been called Theresa Canning). The claimant had notified Acas in relation to Theresa Kearney on 16 February 2023 and the certificate is dated 30 March 2023. The period of that early conciliation would add 42 days to the limitation period which would therefore expire on 17 May 2023. As such, the claim form was issued in time as far as any claim against her is concerned. However, the claim against Theresa Kearney (Canning) has been dismissed pursuant to the orders of Regional Employment Judge Foxwell dated 12 February 2024 and Employment Judge Quill dated 12 April 2024.
7. The claim against both respondents cites the same early conciliation certificate number, namely R174718/23/90, against both. That is the early conciliation certificate against Hayward Services Ltd dated 11 May 2023. The administrative staff picked up that it was the same for both and out of time. The claimant was asked for an early conciliation certificate in respect of Theresa Kearney on 31 May 2023 and she subsequently provided the early conciliation certificate, namely R127313/23/32. With two early conciliation certificates the claim was accepted.

#### The law

8. From the IDS Employment Law Handbook on Employment Tribunal Practice and Procedure I take into account the following. At 5.46:-

“When a claimant tries to excuse late presentation of his or her ET1 claim form on the ground that it was not reasonably practicable to present the claim within the time limit, three general rules apply:

- Section 111(2)(b) ERA should be given a “liberal construction in favour of the employee” – Dedman v British Building and Engineering Appliances Ltd [1974] ICR 53, CA.
- What is reasonably practicable is a question of fact and thus a matter for the tribunal to decide. An appeal will not be successful unless the tribunal has misdirected itself in law or has reached a conclusion that no reasonable tribunal could have reached. As Lord Justice Shaw put it in Walls Meat Co Ltd v Khan [1979] ICR 52, CA:

“The test is empirical and involves no legal concept. Practical common sense is the keynote and legalistic footnotes may have no better result than to introduce a lawyer’s complications into what

should be a layman's pristine province. These considerations prompt me to express the emphatic view that the proper forum to decide such questions is the Employment Tribunal, and that their decision should prevail unless it is plainly perverse or oppressive."

- The onus of proving that presentation in time was not reasonably practicable rests on the claimant. That imposes a duty upon (her) to show precisely why it was that (she) did not present (her) complaint". – Porter v Bandridge Ltd [1978] ICR 943, CA.

Even if a claimant satisfies a tribunal that presentation in time was not reasonably practicable, that does not automatically decide the issue in his or her favour. The tribunal must then go on to decide whether the claim was presented "within such further period as the tribunal considers reasonable".

9. And at 5.50:-

"Ignorance of rights

A claimant's complete ignorance of his or her right to claim unfair dismissal may make it not reasonably practicable to present a claim in time, but the claimant's ignorance must itself be reasonable. As Lord Scarman commented in Dedman v British Building and Engineering Appliances Ltd [1974] ICR 53, CA, where a claimant pleads ignorance as to his or her rights, the tribunal must ask further questions: "What were his opportunities for finding out that he had rights? Did he take them? If not, why not? Was he misled or deceived?" In Porter v Bandridge Ltd the majority of the Court of Appeal, having referred to Lord Scarman's comments in Dedman, ruled that the correct test is not whether the claimant knew of his or her rights, but whether he or she ought to have known of them".

10. And at 5.54:

"Ignorance of the time limit. Where the claimant is generally aware of his or her rights, ignorance of the time limit will rarely be acceptable as a reason for delay. This is because a claimant who is aware of his or her rights will generally be taken to have been put on inquiry as to the time limit."

11. And at 5.67:

"Advisors at fault

Any substantial fault on the part of the claimant's advisor that has led to the late submission of his or her claim may be a relevant factor when determining whether it was reasonably practicable for the claimant to present the claim within the prescribed time limit. In the majority of cases, an advisor's incorrect advice about the time limits, or other fault leading to the late submission of a claim, will bind the claimant and a tribunal will be unlikely to find that it was not reasonably practicable to have presented the claim in time."

**The evidence**

12. I heard evidence from the claimant. Although not forewarned of this issue before today, I explained to the claimant the law and that she would be questioned about why she did not bring her claim in time.

**The facts**

13. The claimant was understandably somewhat bewildered when she was told not to come to work on 6 January 2023 and locked out of the workplace. Her evidence was that Ms Canning had told her that she could not work with her again.
14. The claimant went to Citizen's Advice Bureau Dacorum on 9 January 2023. She told me she went for advice to get her job back. When asked if she discussed bringing an employment tribunal claim she said they possibly discussed bringing a claim. Citizen's Advice Bureau tried ringing Ms Canning on the claimant's phone and then a Citizen's Advice Bureau phone. Neither were picked up. Citizen's Advice Bureau wrote a note for the claimant which she "screen shot" to Ms Canning. Ms Canning did not reply. Citizen's Advice Bureau told the claimant to come back next week.
15. The claimant did return to Citizen's Advice Bureau the next week. She was asked if she was told about the time limit for bringing a claim and said that they said something about months. In my judgment the three-month time limit for presenting a claim is so well known that if the Citizen's Advice Bureau mentioned months it is highly probable that the three-month time limit would have been mentioned.
16. Citizen's Advice Bureau gave the claimant the Acas number to call and referred her to a Mr Gordon Sankey who describes himself in his signature block as an "Employment Law Specialist". The first email the claimant received from Mr Sankey, which contained a client referral form, was sent to her on 1 February 2023. The claimant could not remember when she first contacted Mr Sankey, but it must have been shortly before 1 February 2023.
17. When asked why she waited so long to bring her claim the claimant replied she did not wait. She saw an employment lawyer, Mr Sankey; She has paid him fees.
18. The claimant told me Acas asked her who her employer was, and she showed them payslips and her contract of employment.
19. The claimant told me she did not know the law and had Acas and Mr Sankey to help her.
20. I do not know who notified Acas on 16 February 2023 to bring a claim against Theresa Kearney or why Hayward Services Ltd was not also referred. However, at this time she was represented by Mr Sankey.
21. The Kearney early conciliation certificate is dated 30 March 2023. The claim form records Mr Sankey as the claimant's representative. I do not know why the presentation of the claim form was delayed between 30 March and 16 May 2023.
22. The early conciliation certificate for Hayward Services Ltd appears to have been issued in a hurry as notification and certificate dates are the same. Yet a further five days went by before the claim was presented.
23. I find that the claimant was probably aware of the time limit of three months to present her claim from the earlier discussions with Citizen's Advice

Bureau and Acas. Any employment law specialist should be well aware of the time limit, the necessity for an early conciliation certificate and the consequences of presenting a claim out of time. The claimant not unreasonably relied on her employment lawyer to act properly for her. Her claim was presented in time against Ms Kearney. However, I find that it was reasonably practicable to issue proceedings against the respondent in time and consequently this claim must be dismissed as there is no jurisdiction to hear it.

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Employment Judge Allcott

Date: 23 July 2024

Judgment sent to the parties on  
08/08/2024

For the Tribunal office

**Recording and Transcription**

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here: <https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>