EMPLOYMENT TRIBUNALS

Claimant: Mr P Kaminski

Respondent: CHEP UK Limited

Heard at: Liverpool (by CVP) **On:** 10 July 2024

Before: Employment Judge Buzzard

REPRESENTATION:

Claimant: In person (assisted by an interpreter)
Respondent: Mr McNaughton (Solicitor)

JUDGMENT having been sent to the parties on 17 July 2024 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

The Issue

1. The sole issue to determine at this hearing was whether the claimant's claim of unfair dismissal falls within the jurisdiction of the Employment Tribunal to consider. The jurisdictional doubt relates to time limits.

The Law

2. The time limit for presenting a claim of unfair dismissal is created by s111 of the Employment Rights Act 1996 ("ERA"). This states:

(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.*

3. The reference to *"subject to the following provisions of this section"* refers to the effect of ACAS early conciliation. Early conciliation can extend the time limit if the early conciliation is itself commenced within the three-month time limit.

4. The meaning of s111 is that if it was reasonably practicable for the claimant to present his claim in time, the Employment Tribunal is not permitted to consider it. The claimant has the burden of proving that it was not reasonably practicable to present his claim in time. It is not for the respondent to prove that it was. Only if it was not reasonably practicable to present the claim in time can an extension of time be granted. In that circumstance, an extension of time can only be for a period that is considered "*reasonable*".

Background and Relevant dates

5. This is a very usual case. The claimant had already presented a claim for discrimination against the respondent. That earlier claim (2409013/2023), is referred to as "Claim A". The current claim, the claim that his hearing relates to is referred to as "Claim B".

6. Claim A was presented to the Employment Tribunal on 24 August 2023. The claimant did not identify any representative in Claim A.

7. The claimant commenced early conciliation for Claim A on 13 June 2023, that conciliation ending on 25 July 2023. At the time that the claimant presented Claim A he was still an employee of the respondent. Claim A was presented in time and is proceeding.

8. The claimant attended a preliminary hearing for case management, listed to discuss Claim A. That case management hearing occurred on 24 January 2024 before Employment Judge Tobin.

9. The claimant was dismissed by the respondent on 9 November 2023. The claimant informed Employment Judge Tobin at the preliminary hearing for Claim A of his dismissal at the hearing on 24 January 2024.

10. The case management note records that there was no application to amend Claim A made before that hearing, although one was discussed. Employment Judge Tobin recorded he informed the claimant as follows:

> *"[The claimant] had made no written application to amend/add to his claim and I could not see any basis fora claim for a redundancy payment. I refused to deal with this as an oral application arising from our discussion of the background circumstances of this claim. I advised the claimant that he had some (i.e. sufficient) time to claim unfair dismissal (and any other sensible dismissal-related claim, if appropriate). I explained the relevant time limits and the effect that applying for a further ACAS Early Conciliation certificate would have on extending time to bring a claim. I said the claimant could make a written application to amend proceedings to add a further claim(s) but that he still had time to issue a further claim if he acted promptly. I said that the fact that I would record this carefully means that if he did not act promptly then he might have difficulty in bring further claims out-of-time."*

11. The written note following the case management hearing was sent to the claimant on 26 February 2024.

12. The claimant commenced early conciliation relating to his dismissal on 26 February 2024. That conciliation ended on 1 March 2024. The claimant presented Claim B, claiming unfair dismissal, on 12 March 2024.

13. At this hearing the claimant had the assistance of an interpreter. The claimant did not have the assistance of an interpreter at the hearing for Claim A on 24 January 2024. There is nothing in the note produced by Employment Judge Tobin following that hearing that suggests that the claimant either requested an interpreter or had any difficulty engaging fully with the hearing in English. The note actually records a comprehensive discussion occurred with the claimant regarding Claim A in English.

Evidence

14. The claimant presented evidence and was cross examined regarding the timing of his submission of Claim B. The evidence given by the claimant is discussed in the findings section below where it was relevant.

Findings

15. The claimant's dismissal took effect on 9 November 2023. Accordingly, the claimant had until 9 February 2024 to commence early conciliation for Claim B. The claimant did not commence early conciliation until 26 February 2024. The claimant then waited almost two weeks, from the conclusion of that conciliation on 1 March 2024, until 12 March 2024 to present Claim B to the Employment Tribunal. None of these dates were disputed.

16. The claimant has in the recent past submitted an Employment Tribunal claim. Whilst the claimant did suggest at this hearing that he was not familiar with Employment Tribunal process, it is clear that he had followed the appropriate process and presented a claim, Claim A, in the recent past. There is nothing in Claim A that states he had any assistance with that process and no representative is named. The inference drawn from this is that the claimant did not have a lack of knowledge or understanding of what is required that could have made it not reasonably practicable for him to present Claim B in time.

17. The claimant explained to the Employment Tribunal that he had received advice from three sources:

a. his Trade Union representative;

b. an unspecified ‘legal adviser’; and

c. an ACAS conciliator.

18. The claimant’s evidence was that none of these advisers at any point told him there were strict time limits in Employment Tribunals for unfair dismissal claims. This evidence was not found to be likely to be an accurate recollection of what he was told. Time limits in Employment Tribunal proceedings are short and for unfair dismissal strict. It is not likely that three independent sources of legal advice would all, separately, neglect to highlight this to the claimant. That is not to suggest they would have necessarily calculated when the claimant’s limitation period for Claim B expired, but that for all three to not even inform the claimant that there are short and strict time limits is found to be unlikely.

19. It is noted that the need to act promptly to present Claim B was explained to the claimant by an Employment Judge on 24 January 2024. That is clearly recorded by Employment Judge Tobin. Moreover, Employment Judge Tobin recorded that he explicitly informed the claimant of the difficulty he was likely to have in trying to pursue an unfair dismissal claim if he did not act promptly, and as a result presented a claim out of time.

20. Based on the above it is found that there was no evidence presented to suggest that it was not reasonably practicable for the claimant to present his claim in time because he was not aware of the need to act quickly. The record of the hearing in Claim A strongly suggests the reverse to be the case.

21. The claimant argued at this hearing that his health was such that he was unable to present Claim B in time. The claimant further stated that his health was the reason why, at the Claim A hearing when Employment Judge Tobin explained the time limits, he did not understand the significance of that advice.

22. The only medical evidence provided at this hearing was a letter from a counselling service in June 2024, stating that the claimant was undergoing counselling sessions.

23. The claimant made a reference during submissions, and in his evidence, to medication and effects of that medication. He produced no evidence to support that position. There was nothing produced by the claimant to suggest what medication he

was in receipt of, when he was in receipt of any medication or what the effects of any medication might be.

24. If the claimant has significant medical complaints that prevented him submitting Claim B on time, it was for him to produce the evidence of that. This could have been in the form of GP records, other diagnoses from mental health professionals, etc. The claimant produced nothing beyond a letter saying he was in attending '*talking therapy*' counselling sessions.

25. The claimant was unable to confirm when the talking therapy sessions had commenced. His evidence was that he attended sessions roughly once a fortnight, and the letter, which was dated mid-June 2024, stated he had had seven sessions. From this it can be inferred that the sessions are likely to have commenced sometime around early March 2024. This is after the critical time, up to 9 February 2024, and the date of the hearing for Claim A. It is unclear, therefore, whether the claimant was attending counselling sessions at these times.

26. There is no reference in Employment Judge Tobin's note of the Claim A hearing that there was before him any indication that the claimant was in any way unwell at that hearing. Whilst not evidence of good health, this is not consistent with the claimant's un-evidenced assertions at this hearing that he was in fact in very poor health at the hearing before Employment Judge Tobin, and as a result he had not understood what was explained to him.

27. The claimant mentioned in submissions that English is not his first language. This is not in dispute and the claimant has an interpreter today. The claimant, however, at the hearing before Employment Judge Tobin gave no indication that he was struggling to follow the discussion at that hearing.

Conclusions

28. Other than his oral evidence at this hearing, the claimant has not produced any evidence that shows it was not reasonably practicable for him to act upon the advice given by Employment Judge Tobin. Accordingly, it is found that it was reasonably practicable for the claimant to present Claim B in time.

29. This means that the Employment Tribunal does not have the power under the statutory time limit rules to grant the claimant an extension of time for Claim B.

30. Even if a lack of awareness from the claimant of the need to act was a sufficient basis to all the granting of an extension of time, the claimant's own position is that lack of awareness ended when her received the written note of the hearing before Employment Judge Tobin. The claimant did indeed commence ACAS conciliation with the appropriate priority and speed after this, albeit he was out of time so that conciliation could not itself extend time for the claimant.

31. That conciliation however ended on 1 March 2024. The claimant then failed to act for a further 12 days. The claimant was able to offer no explanation of why, when aware of the need to act quickly, he did nothing for nearly two weeks. The time limit

in unfair dismissal claims is strict, and that is simply too long a delay where no explanation for the delay is suggested.

32. Accordingly, even if it had not been reasonably practicable for the claimant to present his claim until he had sight of Employment Judge Tobin's written note of the Claim A hearing, the further time taken by the claimant to present his claim was not reasonable. An extension of that length would not have been granted in any event.

Employment Judge Buzzard
15 August 2024

REASONS SENT TO THE PARTIES ON
19 August 2024

FOR THE TRIBUNAL OFFICE

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