



EMPLOYMENT TRIBUNALS

Claimant: Miss C Smith

Respondent: Just Paper Tubes Ltd

Heard at: Leeds Employment Tribunal
Before: Employment Judge Deeley

On: 5 October 2023 and 23 October 2023 (in private)

Representation:

Claimant: Representing herself (with assistance from Ms M Docherty (charity worker) and support from Ms T Maltby (friend))

Respondent: Mr H Wiltshire (Counsel)

PRELIMINARY HEARING - RESERVED JUDGMENT

1. Miss Smith's complaint of unfair dismissal was not presented validly within the Tribunal's time limit and is struck out.

REASONS

INTRODUCTION

Tribunal proceedings

1. The hearing of this claim was originally arranged by Employment Judge Shepherd for three hours to consider the questions set out at paragraph 4 of his case management orders:

RESERVED JUDGMENT – PRELIMINARY HEARING

“4. The purpose of the Public Preliminary Hearing is to determine:

4.1. Whether the Tribunal has jurisdiction to hear the claims of unfair, notice pay and detriment related to whistleblowing and/or asking for time off for dependents.

*4.2. This will entail determining whether it was **reasonably practicable for the claims of unfair dismissal and notice pay** to be submitted and, if not whether they were submitted in a reasonable time thereafter.*

*4.3. Whether the **claims for detriment** were issued within time and, if not, whether it is **just and equitable** to extend time.*

4.4. To provide case management orders in respect of the claim or any part of it which survives.”

2. I was unable make a decision before the end of the hearing because it took until 12.45pm to hear evidence and submissions from both sides. This reserved judgment will be emailed to both sides.

3. During the hearing the Tribunal considered:

3.1 a file of documents;

3.2 a witness statement and oral evidence from Miss Smith.

4. The Tribunal also considered the helpful submissions made by both representatives.

Adjustments

5. I asked both sides if they wished us to consider any adjustments to these proceedings. Miss Smith stated that Ms Docherty might need to speak on her behalf during the proceedings.

6. I reminded both parties that they could request additional breaks at any time if needed. We took additional breaks when Miss Smith became upset during her evidence.

Clarification of claims

7. Employment Judge Shepherd had referred to claims for detriment. I asked the claimant at the start of the hearing whether she was complaining about anything other than her dismissal. I explained to both sides that any detriments that form part of a dismissal must be brought as part of a complaint of automatic unfair dismissal and cannot be brought as separate detriment complaints. The claimant confirmed that she was only complaining about her dismissal.

RESERVED JUDGMENT – PRELIMINARY HEARING

8. In any event, I note that Judge Shepherd had mistakenly referred to the ‘just and equitable’ test for extending time limits. This is the test for time limits in relation to discrimination claims under the Equality Act. It does not apply to health and safety or to whistleblowing detriments, which are subject to the ‘reasonably practicable’ test under s48(3) of the Employment Rights Act 1996.

Miss Smith’s evidence

9. Please note that references to “**the Tribunal**” in this part of the Judgment are to the Leeds Employment Tribunal.

10. Miss Smith’s email of 19 December 2022 stated:

“I wish to make a complaint to the Employment Tribunal.

Please find attached completed ET1 form.

Please contact me if you require further information.”

11. The Tribunal’s automatic response email to Miss Smith of 19 December 2022 stated (with relevant words underlined for emphasis):

“Subject: *Automatic reply*

Thank you for your email which has been safely received by the Employment Tribunal. There is no need to call us for further confirmation of receipt. This will allow us to deal with your email more efficiently.

...

** Please note that new claims (ET1 form) cannot be accepted by email. The quickest and easiest way to send us a claim form is by using our online submission service which you can access here: <https://www.gov.uk/employment-tribunals>”*

...

12. The Tribunal wrote to the claimant by letter dated 21 December 2022, stating:

RESERVED JUDGMENT – PRELIMINARY HEARING

Date 21 December 2022

Case Number:

Claimant
Carol Smith

v

Respondent
Just Paper Tubes Ltd

Madam,

RETURNED CLAIM FORM NOTICE

Your claim form is being returned because there are only three prescribed methods of presenting an Employment Tribunal Claim form (ET1) which are detailed below:

1. Online by using the online submission service provided by HMCTS accessible at www.gov.uk/employment-tribunals/make-a-claim
2. By post to the Employment Tribunals Central Office – England & Wales at PO Box 10218, Leicester LE1 8EG.
3. By hand to a designated Employment Tribunal office within business hours (Monday to Friday excluding public holidays – see overleaf for designated offices)

The attached claim form has not been presented using one of the prescribed methods; it therefore cannot be accepted and is returned to you accordingly.

Yours faithfully,
Jasmine Burnley
For the Tribunal Office

13. Miss Smith's email of 12 February 2023 to the Tribunal stated:

“Subject: Carol Smith requesting an update

Dear Sir/Madam,

Please can you provide an update on my ET claim?

I sent you my completed ET1 form on 19 December 2022. I have only received an automatic acknowledgement, but no other communication from you.

The allocated ACAS early conciliation number is R267469/22. I don't yet have an ET number?”

...

14. Miss Smith's letter of 7 June 2023 stated:

“Re: my application to Employment Tribunal made 19 December 2022 (ACAS early conciliation number R267469/22/19)

On 19 December, following the guidance in your published booklet T420, I sent my completed ET application, on the proper form, within the time limit, and including my ACAS early conciliation number (R267469/22/19) to the ET North East Regional Office (Leeds), using the contact details provided in booklet T420.

RESERVED JUDGMENT – PRELIMINARY HEARING

I checked its receipt was acknowledged, which it was, as follows:

“Thank you for your email which has been safely received by the Employment Tribunal. There is no need to call us for further confirmation of receipt. This will allow us to deal with your email more efficiently.”

When I had not heard anything (including the allocation of an ET number or the ET3 sent to my former employer) I again contacted the ET North East Regional Office (Leeds) to ask about the progress of my claim. I did this on 12 February. Again I received an automatic acknowledgement, from the ET office, but did not receive any response to my enquiry.

That is why I am writing to you. I have also copied this letter to the ET Leeds office, and ask you to respond. Thank you.

Please find enclosed a copy of my completed ET1 form as sent to, and received by, the ET North Eastern office on 19 December. If my application was not processed when it was received by the ET in December 2022, I would be grateful if you would now action this.”

Time limit – unfair dismissal claims

15. There is a strict time limit for bringing claims of unfair dismissal (including claims for automatically unfair dismissal) in the Employment Tribunal. The time limit is set out in section 111 of the Employment Rights Act 1996:

s111(1) A complaint may be presented to an employment tribunal against an employer by any person that he was unfairly dismissed by the employer.

s111(2) ...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;

(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 three months.

16. The time limit for presenting an unfair dismissal complaint is also extended by the ACAS early claim conciliation rules.

17. The key dates in this claim for time limit purposes are set highlighted in bold the table below:

RESERVED JUDGMENT – PRELIMINARY HEARING

Date	What happened	Points to note
28 October 2022	Miss Smith was dismissed with immediate effect	
27 – 29 October 2022	ACAS early claim conciliation (certificate issued 29 November 2022)	Miss Smith states that ACAS told her about the three month time limit
19 December 2022	Miss Smith emailed her claim form to the Tribunal and received the Tribunal's automatic response email	Miss Smith received the Tribunal's response. Miss Smith states that she did not read the automatic response email, but forwarded it to Ms Ibbott (who was assisting the claimant with her claim)
21 December 2022	The Tribunal wrote to Miss Smith by post, returning her claim form and stating that the claim form could not be accepted because it had not been submitted using one of the prescribed methods	Miss Smith says that she did not receive this letter
29 January 2023	Primary time limit ends (27 January 2023, extended by three days for ACAS ECC period)	
12 February 2022	Miss Smith emailed the Tribunal asking about the progress of her claim. She received the Tribunal's automatic response email	Miss Smith states that the Tribunal did not respond to her email
7 June 2023	Miss Smith emailed a letter to the Tribunal's Central Office (copied to the Tribunal), enclosing a further copy of her ET1 form that was previously emailed to the Tribunal on 19 December	
8 June 2023	Miss Smith submitted an online ET1 to the Tribunal	
12 June 2023	The Tribunal wrote to Miss Smith stating that they had previously written to her on 21 December 2022, returning her claim form as it had not been presented in the correct way	

RESERVED JUDGMENT – PRELIMINARY HEARING

18. I therefore have to decide two questions:

18.1 was it “reasonably practicable” for Miss Smith’s claim to be presented to the Tribunal by 29 January 2023;

18.2 if not, within what further period of time would it have been reasonable for Miss Smith to present her claim to the Tribunal (i.e. a reasonable period)?

19. The courts have considered the definition of “reasonably practicable”, including in the following cases:

19.1 Lady Smith in *Asda Stores Ltd v Kauser* EAT 0165/07 explained that: “*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.*”

19.2 Lord Justice Underhill in *Lowri Beck Services Ltd v Brophy* [2019] EWCA Civ 2490) summarised the essential points as follows (with words underlined for emphasis):

“1. *The test should be given “a liberal interpretation in favour of the employee” (Marks and Spencer plc v Williams-Ryan [2005] 20 EWCA Civ 479, which reaffirms the older case law going back to Dedman v British Building & Engineering Appliances Ltd [1974] ICR 53);*

2. *The statutory language is not to be taken as referring only to physical impracticability and for that reason might be paraphrased as whether it was “reasonably feasible” for the claimant to present his or her claim in time; see Palmer and Saunders v Southendon-Sea Borough Council [1984] IRLR 119....*

3. *If an employee misses the time limit because he or she is ignorant about the existence of a time limit, or mistaken about when it expires in their case, the question is whether that ignorance or mistake is reasonable. If it is, then it will [not] have been reasonably practicable for them to bring the claim in time (see Wall’s Meat Co Ltd v Khan [1979] ICR 52); but it is important to note that in assessing whether ignorance or mistake are reasonable it is necessary to take into account any enquiries which the claimant or their adviser should have made;*

4. *If the employee retains a skilled adviser, any unreasonable ignorance or mistake on the part of the adviser is attributed to the employee* 5 (*Dedman*)...

5. *The test of reasonable practicability is one of fact and not law (Palmer).*”

RESERVED JUDGMENT – PRELIMINARY HEARING

20. Miss Smith's witness statement provided evidence regarding her complaints about her employer's conduct during her employment. However, I have to consider what happened after Miss Smith was dismissed on 28 October 2022. I therefore (with the respondent's consent) asked Miss Smith questions about this period before the respondent's representative cross-examined Miss Smith.
21. I accept Miss Smith's evidence that:
- 21.1 Miss Smith was very upset during late 2022 and early 2023. Miss Smith felt depressed and stressed throughout this period, due to a close family bereavement and her dismissal. She sought medical treatment for her condition from her GP;
 - 21.2 Miss Smith did not seek legal advice during this period and did not perform an internet search on how to present a claim in the Tribunal. She struggles with technology and had only recently learned how to check emails on her mobile phone at the time that she emailed her claim to the Tribunal;
 - 21.3 Miss Smith relied heavily on assistance from her friend, Ms J Ibbott, in submitting her claim. Ms Ibbott is not a lawyer but she completed all of the Tribunal paperwork for Miss Smith, including drafting the ET1 form and drafting the emails to be sent from Miss Smith's email address to the Tribunal;
 - 21.4 Miss Smith said that she and Ms Ibbott were aware of the three month time limit. Miss Smith contacted ACAS on 27 November 2022 who also told Miss Smith about the three month time limit;
 - 21.5 Miss Smith did not read the Tribunal's automatic email response of 19 December 2022, including the paragraph that set out the correct ways in which an ET1 form could be submitted. Even reading that paragraph during this hearing, Miss Smith still did not understand it. Miss Smith sent the email response to Ms Ibbott and assumed that Ms Ibbott was dealing with this;
 - 21.6 Miss Smith did not receive the Tribunal's letter of 21 December 2022, stating that her claim had been rejected;
 - 21.7 Miss Smith asked Ms Ibbott in February to contact the Tribunal to check the progress with her claim. The Tribunal did not respond;
 - 21.8 neither Miss Smith (nor Ms Ibbott on Miss Smith's behalf) contacted the Tribunal again until June. Miss Smith said that Ms Ibbott thought that the Tribunal were busy;
 - 21.9 Ms Ibbott prepared the letter of 7 June 2023 that Miss Smith sent to the Tribunal, with a further copy of her claim form. Miss Smith filled in the Tribunal's online claim form on 8 June 2023.

RESERVED JUDGMENT – PRELIMINARY HEARING

22. Miss Smith and Ms Ibbott were aware of the Tribunal's time limit from late November 2022. However, they were mistaken about when it expired for the purposes of submitting Miss Smith's claim. This was because Miss Smith and Ms Ibbott mistakenly believed that they had presented Miss Smith's claim on 19 December 2022.
23. I must decide whether Miss Smith and Ms Ibbott's continued mistaken belief regarding the presentation of Miss Smith's claim was reasonable. In making that decision, I must taken into account any enquiries which Miss Smith and/or Ms Ibbott (on Miss Smith's behalf) should have made (see point three in Lord Justice Underhill's summary in *Brophy*).

CONCLUSIONS

24. I have concluded that:

- 24.1 it was not reasonably practicable for Miss Smith to present her claim form within the primary time limit because she mistakenly believed that her claim form had been presented validly on 19 December 2022;
- 24.2 however, Miss Smith did not present her claim form within a reasonable period after the expiry of the primary time limit.

25. The key reasons for my conclusions are:

- 25.1 Miss Smith relied heavily on the assistance of her friend, Ms Ibbott, to present her claim form and deal with any enquiries. Ms Ibbott was not a lawyer. I accepted Miss Smith's evidence that Ms Ibbott drafted the claim form and all correspondence to the Tribunal for Miss Smith to send from her email address;
- 25.2 Miss Smith and Ms Ibbott believed that Miss Smith's claim form was presented validly on 19 December 2022 by email. Miss Smith failed to read the Tribunal's automatic response which stated that new claim forms could not be presented by email. I accept her evidence that even if she had read the Tribunal's response, she would not have understood it;
- 25.3 Ms Ibbott did not give evidence at this hearing. However, Miss Smith's emails of 12 February 2023 and 7 June 2023 demonstrate that Miss Smith and Ms Ibbott still believed mistakenly that Miss Smith's claim form had been presented validly on 19 December 2022;
- 25.4 Miss Smith became concerned about the lack of contact form the Tribunal and asked Ms Ibbott in February 2023 to check the progress of her claim. There was no response to Miss Smith's email of 12 February 2023;

Case Number: 1803410/2023
RESERVED JUDGMENT – PRELIMINARY HEARING

- 25.5 in mid-February 2023, Miss Smith and Ms Ibbott should have telephoned the Tribunal or made other enquiries regarding the status of Miss Smith’s claim. However, they did not do so;
- 25.6 I have concluded that any ‘reasonable period’ for Miss Smith to present her claim form validly would have ended by 28 February 2023. This is the time during which Miss Smith (or Ms Ibbott on her behalf) should have attempted to contact the Tribunal again and would have then realised that Miss Smith’s claim had not been presented validly;
- 25.7 Miss Smith did not in fact contact the Tribunal again until 7 June 2023, i.e. three months later.
26. Miss Smith’s claim form was not presented to the Tribunal within the time limits set out at section 111 of the Employment Rights Act 1996 and her claim is therefore struck out.

Employment Judge Deeley

Date: 30th October 2023

JUDGMENT SENT TO THE PARTIES ON

Date: 31st October 2023

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FOR EMPLOYMENT TRIBUNALS

All judgments (apart from those under rule 52) and any written reasons for the judgments are published, in full, online at <https://www.gov.uk/employment-tribunal-decisions> shortly after a copy has been sent to the claimants and respondents.