



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr V Nwama

**Respondent:** Accomplish Group Limited

**Heard at:** Birmingham (Hybrid hearing)

**On:** 16 December 2024

**Before:** Employment Judge McGough

## REPRESENTATION:

**Claimant:** In person

**Respondent:** Mr N Brockley (Counsel), by CVP

## PRELIMINARY HEARING RESERVED JUDGMENT

The judgment of the Tribunal is as follows:

The Claimant's claim of unfair dismissal was not presented within the applicable statutory time limit. It was reasonably practicable to do so. The Claimant's claim of unfair dismissal is therefore dismissed.

## REASONS

### BACKGROUND

1. By a claim form presented on 12 April 2024 (early conciliation having taken place between 22 & 26 March 2024), the Claimant brought a complaint of unfair dismissal (under section 98 of the Employment Rights Act 1996 ("ERA")).

### THE HEARING

2. The case was listed for a preliminary hearing on 16 December 2024 to consider:
  - *whether it was reasonably practicable for the complaint to be made to the Employment Tribunal within the time limit;*
  - *if it was not reasonably practicable for the complaint to be made to the Employment Tribunal within the time limit, was it made within a reasonable period?; and*

- *should the claim be dismissed on the basis that the Employment Tribunal lacks jurisdiction to deal with it, due to time limits?*
- 3. The Claimant and I attended at the Tribunal hearing centre in Birmingham, and Mr Brockley (Counsel for the Respondent) attended by CVP.
- 4. The Claimant gave evidence by way of: his witness statement and another document provided by the Claimant headed "Documents relevant to the time limit"; in response to cross examination; and also in response to questions from the Tribunal. I found the Claimant to be honest and straightforward in his evidence. I had before me a bundle of documents prepared by the Respondent ("**Bundle**"). I also had written outline submissions prepared by Mr Brockley, for the Respondent.
- 5. During the hearing the Claimant asked to include some additional documents relating to the damage to his car during a car accident. I adjourned the hearing for 15 minutes for the documents to be scanned and emailed to Mr Brockley. After reading the documents, Mr Brockley confirmed the Respondent had no objection to the inclusion of the documents and had no comments or questions about the documents.
- 6. Having finished evidence and submissions, I adjourned the hearing for a reserved decision to be made.

## THE ISSUES

7. Determining whether the Claimant's complaint for unfair dismissal was presented within the time limit set out in section 111(2)(a) & (b) of the ERA involves considering whether it was not reasonably practicable for a complaint to be presented within the primary time limit and if not, whether it was presented within a reasonable time thereafter. Therefore, the issues to be determined were:
  - a. Was the claim made to the Tribunal within three months (plus early conciliation extension) of the effective date of termination?
  - b. If not, was it reasonably practicable for the claim to be made to the Tribunal within the time limit?
  - c. If it was not reasonably practicable for the claim to be made to the Tribunal within the time limit, was it made within a reasonable period?

## THE RELEVANT LAW

8. The relevant statutory provisions are at section 111(2) and (2A) of the ERA and further at section 207B of the ERA. They state that:

### *Section 111*

*"(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 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."*

*"(2A) Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (2)(a)."*

Section 207B

"(2) In this section—

(a) Day A is the day on which the complainant or applicant concerned complies with the requirement in subsection (1) of section 18A of the Employment Tribunals Act 1996 (requirement to contact ACAS before instituting proceedings) in relation to the matter in respect of which the proceedings are brought, and

(b) Day B is the day on which the complainant or applicant concerned receives or, if earlier, is treated as receiving (by virtue of regulations made under subsection (11) of that section) the certificate issued under subsection (4) of that section.

(3) In working out when a time limit set by a relevant provision expires the period beginning with the day after Day A and ending with Day B is not to be counted.

(4) If a time limit set by a relevant provision would (if not extended by this subsection) expire during the period beginning with Day A and ending one month after Day B, the time limit expires instead at the end of that period.

(5) Where an employment tribunal has power under this Act to extend a time limit set by a relevant provision, the power is exercisable in relation to the time limit as extended by this section."

9. The authorities on this provision are clear that the power to disapply the statutory time limit is very restricted.
10. The statutory test is one of practicability. It is not satisfied just because it was reasonable not to do what could be done as per Bodha (Vishnudut) v Hampshire Area Health Authority [1982] ICR 2000.
11. In London Underground Ltd v Noel [1999] ICR 109 - it is not just a question of considering what was reasonable but of considering what was reasonably practicable. The power to dis-apply the statutory time limit is,  
  
*"...very restricted. In particular, it is not to be exercised, for example, 'in all the circumstances,' nor even when it is 'just and reasonable' nor even where the Tribunal 'considers that there is good reason' for doing so."*
12. The onus of proving that presentation in time was not reasonably practicable lies on the Claimant – Porter v Bandridge [1978] ICR 943.
13. There has to be some impediment, which reasonably prevents or interferes with the ability of the Claimant to present in time as stated by the Court of Appeal in the case of Walls Meat v Khan [1979] ICR 52.
14. The issue is pre-eminently one of fact for the Tribunal and that whether something is "reasonably practicable" is a concept which comes somewhere between whether it is reasonable and whether it is physically capable of being done - Palmer v Southend Council [1984] ICR 372.
15. If a Tribunal finds that it was not reasonably practicable for a Claimant to present a claim within the time period, it must go on to decide whether the claim was then presented within a further reasonable period under section 111(2)(b) ERA, which is a less stringent test. This is a matter of fact for the Tribunal but requires objective consideration of the factors causing delay and what period should reasonably be allowed in the circumstances – Cullinane v Balfour Beatty Engineering Services Limited EAT 0537/10. This assessment should be made against the general background of the primary time limit and the strong

public interest in claims being made promptly. Furthermore, when deciding what would have been a reasonable time within which to present a late claim, the Tribunal should have regard to all the circumstances of a case, including what the Claimant did; what he or she knew, or reasonably ought to have known, about time limits; and why it was that the further delay occurred – Nolan v Balfour Beatty Engineering Services Limited EAT 0109/11.

### Ignorance of rights

16. A Claimant's ignorance of his or her rights may make it not reasonably practicable in exceptional circumstances, but the Claimant's ignorance must itself be reasonable. 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. A Claimant has to satisfy the Tribunal that he or she did not know of their rights and that there was no reason why he or she should make inquiries or should know of his rights – Porter v Bandridge (as above).
17. Where a Claimant is generally aware of his rights, ignorance of a time limit will rarely be acceptable because if aware of rights, a Claimant then has an obligation to seek information or advice about the enforcement of those rights – Trevelyan (Birmingham) Limited v Norton [1991] ICR, 488.

### Internal appeal proceedings

18. The existence of a pending internal appeal does not of itself sufficient to justify a finding that it was not reasonably practicable to present a claim – Bodha v Hampshire Area Health Authority (as above).
19. A mistaken belief that an unfair dismissal claim need not be brought until after an internal appeal procedure has been exhausted cannot of itself render it not reasonably practicable to commence proceedings. The Tribunal must look at why a Claimant was labouring under such a misapprehension, which depends on whether it was reasonable to expect the Claimant to take steps to find out about the enforcement of his or her rights. For example, could the Claimant have been expected to look up information on the internet, seek advice from sources available to him or her, or take legal advice - Inchcape Retail v Shelton EAT 0142/19

### Incapacity

20. A debilitating illness may prevent a Claimant from submitting a claim in time. The test is one of practicability — what could be done — not whether it was reasonable not to do what could be done - Schultz v Esso Petroleum Co Ltd [1999] ICR 120.
21. If a person asserts that they were unwell, then it is up to them to produce medical evidence of the extent and effect of the illness – Midland Bank plc v Samuels EAT 672/92. However, whilst medical evidence is not essential, it is desirable - Norbert Dentressangle Logistics Ltd v Hutton EATS 0011/13.

### Legal or professional advice

22. Ignorance or a mistaken belief will not be reasonable if it arises either from the fault of the Claimant's solicitors or other professional advisers in not giving him or her such information as they should reasonably in all the circumstances have given him - Walls Meat Co Ltd v Khan [1979] ICR 52, applying Dedman v British Building and Engineering Appliances Ltd [1974] ICR 53.

### THE RELEVANT FACTS

23. The Respondent is a provider of support for people with mental health needs and delivers support in registered residential and supported living settings in England and Wales. The

Claimant was employed by the Respondent as a Support Worker at its Maple Leaf Lodge service from 17 June 2018.

24. The Claimant was dismissed on 7 December 2023 after a disciplinary hearing on 27 November 2023. An email on 7 December 2023 from the Respondent's HR advisor to the Claimant (page 33 of the Bundle) informed the Claimant that the outcome of the disciplinary hearing was that he was "*summarily dismissed with effect from today*" and that "*a letter with the deliberations will follow*". The letter also informed that once he had received the letter he would "*have 7 calendar days in which to lodge an appeal if you choose to do so*".
25. There is no dispute between the parties about the date of the dismissal or the time limit for the Claimant's unfair dismissal claim (6 March 2024).
26. The Claimant did not receive the letter he had been promised for a considerable period of time. He emailed the Respondent's HR advisor on 23 January 2023 asking for the letter to be sent (page 34 of the Bundle). The Respondent sent the Claimant a letter setting out the reasons for his dismissal on 26 January 2024 (pages 36 – 37 of the Bundle) and the Claimant submitted his appeal by email on 28 January 2024. In his appeal email (page 38 of the Bundle), the Claimant said "*I feel I have been unfairly dismissed and I thereby challenge the decision*". The Claimant enclosed a document outlining his reasons for his appeal (pages 39 - 41 of the Bundle).
27. The Claimant attended an appeal hearing on 6 February 2024. The Claimant was promised a decision within a week or two. By the time of this preliminary hearing, the Claimant has yet to receive the outcome of this appeal from the Respondent.
28. The following day, 7 February 2024, the Claimant contacted MHL solicitors by email, asking for guidance. He explained to the Tribunal that he did this by checking on the internet what he should do, and that the information he found was to see an employment solicitor. The Claimant found lots of solicitors to call, but when he contacted them, many of them directed him elsewhere. When he contacted MHL solicitors they arranged for the Claimant to speak to a solicitor the following week. At this stage, the Claimant was not aware of ACAS or the procedure for submitting an unfair dismissal claim. He was hoping that his appeal would be granted and the dismissal overturned.
29. On 11 February 2024, the Claimant was involved in a road traffic accident, resulting in his car being written off. A discharge letter from West Midlands Ambulance Service dated 11 February 2024 in respect of the Claimant states that the Claimant had "*seatbelt related ache across shoulder/chest*" but "*no obvious injuries on assessment*", that the Claimant was given 1g oral paracetamol and that the Claimant was advised to rest and visit his GP if aches or pains developed or worsened (page 42 of the Bundle). A "Full Case Summary" from West Midlands Ambulance Service (pages 49 – 51 of the Bundle) states that the Claimant "*self-extracted immediately and was able to independently mobilise outside of vehicle*" (page 49 of the Bundle).
30. The Claimant visited his GP on 12 February 2024 and the GP notes refer to the Claimant having pain over his right shoulder and right upper chest wall and describe this as a seatbelt injury. The notes refer to over the counter paracetamol not helping and the Claimant is prescribed Ibuprofen gel and Co-codamol (page 44 of the Bundle).
31. The Claimant explains in his witness statement that the accident exacerbated a pre-existing back injury and that the severity of his injuries required him to rest and recuperate at home for nearly five weeks. He goes on to explain that he primarily spent his days lying in bed, managing his pain, and that he was prescribed Pregabalin by his GP (with the dosage increased after a time). The Claimant's witness statement explains that he has been on the waiting list for surgery on his back to deal with this pre-existing condition.

32. The Claimant states he was unable to contact ACAS for early conciliation purposes before the 6 March 2024 time limit as a direct consequence of his injuries and not being mobile.
33. Regrettably, in the medical evidence submitted by the Claimant (pages 42 – 51 of the Bundle) there is no reference to the Claimant's pre-existing back injury, his pending surgery, or him being prescribed Pregabalin for his worsening pain. There is an ophthalmology report relating to an eye condition (pages 46 – 48 of the Bundle), but the Claimant confirmed in response to cross-examination that this was not relevant for the purposes of him not being able to lodge his claim in time.
34. On 19 March 2024 the Claimant contacted a different solicitor by registering online for a call service and, after speaking to a solicitor on 21 March 2024, he received an email advising him to lodge his early conciliation with ACAS without delay. The Claimant did this on 22 March 2024. The Claimant's early conciliation certificate was issued on 26 March 2024, however he did not submit his claim to the Tribunal until 12 April 2024.
35. It was put to the Claimant in cross-examination that once he had been advised that contacting ACAS was a matter of urgency on 21 March 2024, he could have issued his claim on 26 March 2024, at the latest, when the early conciliation certificate was issued. The Claimant explained that he had been advised by the solicitor he spoke to that there would be a period of mediation after he received the certificate from ACAS and that he had one month to submit his claim once the certificate had been issued.
36. The Claimant explained that during the period from 21 March 2024 to 9 April 2024 he was trying to get more information about how employment law works and to broaden his knowledge about what to do. He explained that he needed that advice from someone who understood employment law, and that he was looking for a solicitor to explain that and to represent him. On 9 April 2024 he phoned another adviser to discuss his dismissal and they asked him to send a summary of his issues. He sent that summary on 10 April 2024 and on 11 April 2024 was advised to enquire about a public access barrister. The Claimant completed the required online forms that day, only to discover that there were no barristers available. (See pages 55 & 56 of the Bundle.)
37. It was at this stage, on 12 April 2024, that the Claimant submitted his claim online to the Employment Tribunal. In answer to a question I asked the Claimant, he explained that he did this by using a search engine to learn how to lodge his claim, and lodged his claim the same day.

## CONCLUSION

38. I have approached each of the issues identified above in turn and my conclusions on each are set out below.
- a. Was the claim made to the Tribunal within three months (plus early conciliation extension) of the effective date of termination?
39. The Claimant should have commenced early conciliation by 6 March 2024 in order to take advantage of the extension of time provisions in respect of early conciliation (paragraph 8 above). It was not commenced until 22 March 2024 and the claim was not presented until 12 April 2024. The claim was therefore made 5 weeks and 3 days out of time and was not made within three months of the effective date of termination.
- b. If not, was it reasonably practicable for the claim to be made to the Tribunal within the time limit?
40. The Claimant has the burden of proof in showing that it was not reasonably practicable for his claim to have been presented in time (see paragraph 12 above).

41. His submission on this is, firstly, that he was unaware of the process for enforcing his employment rights and the time limits that applied. He points out that he was still awaiting the outcome of his appeal and was optimistic of the dismissal being overturned. He also points out that he had made arrangements on 7 February 2024 to speak to a solicitor but was unable to attend that appointment due to being involved in a road traffic accident on 11 February 2024.
42. Secondly, the Claimant submits that he was unable to obtain legal advice or lodge his claim after the accident due to severe back and shoulder pain which meant he had to stay in bed and was not mobile. He submitted that the pain was due to a pre-existing condition (for which he was awaiting surgery) being exacerbated by the road accident.
43. Mr Brockley, for the Respondent, points to the fact that the medical evidence submitted by the Claimant does not include any references to the Claimant's pre-existing back condition, his immobility following the accident or the strong painkillers the Claimant submits he was prescribed. Mr Brockley submits that there is inadequate medical evidence in respect of the Claimant's inability to lodge his claim within the three month time limit and that the evidence does not show that the Claimant was unable to pick up the telephone or email during the time of his illness. He also points out that from a comparatively early stage (7 February 2024) the Claimant knew he needed to do something and undertook research to find a solicitor, but not how to bring an Employment Tribunal claim. He submits there was an unexplained period of delay between 11 February 2024 (the date of the road traffic accident) and 19 March 2024 (when the Claimant contacted another solicitor to make an appointment for advice).
44. I have considered carefully all that the Claimant has said, but on balance I prefer the submissions of the Respondent on this issue.
45. I am satisfied that the Claimant did not know about the time limits or the requirement to contact ACAS in order to present an Employment Tribunal claim. However, I do not conclude that this was reasonable in these particular circumstances, following the guidance of the case of Porter v Bandridge set out at paragraph 16 above. The Claimant had the ability to conduct research on the internet to find out about how he could enforce his rights not to be unfairly dismissed. The Claimant had done some research about finding a solicitor and knew that he could make a legal complaint about his dismissal, and so was put on enquiry as to how to pursue that complaint, including any applicable time limits (see Trevelyan's (Birmingham) Limited v Norton at paragraph 17 above).
46. Whilst the Claimant was not legally qualified and could not necessarily be expected possess legal knowledge, the appeal email and enclosed document written by the Claimant were clear, and challenged the decision to dismiss him on the basis that he had been unfairly dismissed. Had the Claimant carried out reasonable investigation (as he later did on 11 or 12 April 2024 before submitting his claim on 12 April) he could have quickly determined what was required to be done and by when. There has been an inexplicable delay by the Respondent in communicating the outcome of the appeal to the Claimant, however the Claimant could reasonably have found out that the pursuance of an internal appeal did not mean he was absolved of the need to act promptly and to start proceedings within the relevant time limits. It is therefore reasonable in my view for the Claimant to have found out the basic information about how to enforce his rights not to be unfairly dismissed in the Tribunal and what time limits applied.
47. I am satisfied that the Claimant was suffering from severe back pain after his road accident on 11 February 2024. However, the medical evidence submitted by the Claimant did not show the extent or effects of his medical condition as the Claimant described to the Tribunal or explain why the Claimant would not have been able to use a telephone or the internet during this time (see Midland Bank v Samuels at paragraph 21 above). Therefore, I do not conclude that it was not reasonably practicable in the circumstances for the

Claimant to commence early conciliation or submit his claim by email during his period of illness.

48. I therefore have to conclude that it was reasonably practicable for the Claimant to have issued his claim in time, for the reasons outlined above.

c. *If it was not reasonably practicable for the claim to be made to the Tribunal within the time limit, was it made within a reasonable period?*

49. The Claimant has given detailed evidence about the period before and after the expiration of the three month time limit, and I wish to address the points he has raised about the period after 6 March 2024.

50. Even if it had not been reasonably practicable for the claim to be made within the time limit, the Claimant's claim was submitted 5 weeks and 3 days after the end of that time limit. The Claimant submits that it was only once he had obtained legal advice on 21 March 2024, after his period of illness, that he was aware of the need to start early conciliation via ACAS and that at this stage he was told that he would have one month to bring his claim after the ACAS early conciliation certificate was issued. He submits that he therefore spent more time, after the date of the early conciliation certificate (26 March 2024), seeking advice and representation.

51. Mr Brockley submits that by 21 March 2024, when the Claimant contacted another solicitor seeking advice, he was seized of the need to contact ACAS without delay and knew the matter was important. He submits that there is no adequate explanation about the further period of delay, from 26 March to 9 April 2024 (when the Claimant contacted another advisor who recommended he seek a public access barrister). He also submits that the steps the Claimant took on 12 April 2024, researching how to submit a claim and then submitting his claim online, were steps he should have been taking on 26 March 2024 at the very latest, when the early conciliation certificate was issued.

52. I have considered these points carefully, and I prefer the Respondent's submissions on this issue also.

53. I am satisfied that the Claimant was advised (incorrectly) that there was an extension of one month once the early conciliation certificate was issued. However, as set out in the case of Walls Meat Co Ltd v Khan at paragraph 22 above, a mistaken belief will not be reasonable even if arises from the fault of a Claimant's solicitors or other professional advisers.

54. I am also satisfied that the Claimant was genuinely seeking further support, advice and representation during the period up to 12 April 2024. However, for the reasons set out at paragraphs 45 and 46 above, it is reasonable in my view for the Claimant to have found out the basic information about how to submit his claim and the applicable time limits by the time the early conciliation certificate was issued on 26 March 2024. The delay during the period from 26 March 2024 to 12 April 2024 was not reasonable in the circumstances.

55. I have sympathy for the Claimant, who gave his evidence sincerely and earnestly. He has lost his employment and is now unable to test in the Tribunal whether that dismissal was unfair. However, the jurisdiction of the Employment Tribunal is strictly defined by legislation and can only hear claims that satisfy all the legal tests for such claims to be brought, including time limits. Claims such as unfair dismissal have a particularly strict time limit, with limited room for manoeuvre.

56. I therefore have to conclude that it was reasonably practicable for the Claimant to have issued his claim in time. Even if it had not been reasonably practicable to do so, the claim was not made within a reasonable period after the end of the time limit.

57. The Claimant's claim for unfair dismissal is therefore dismissed.

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Employment Judge **McGough**

2 January 2025

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