



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8001860/2024

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Held in Glasgow via Cloud Video Platform (CVP) on 11 February 2025

Employment Judge P O'Donnell

10 **Mr R Frost**

**Claimant
In Person**

15 **John Miller Limited**

**Respondent
Represented by:
Ms G Scriven -
Solicitor**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Employment Tribunal is that the claim was lodged out of time and the Tribunal does not exercise its discretion to hear the claim out of time. The claim is hereby dismissed for lack of jurisdiction.

REASONS

25 **Introduction**

1. The claimant has brought a claim of unfair dismissal against the respondent. The respondent resists that claim and their primary defence is that the Tribunal does not have jurisdiction to hear the case because it was lodged out of time.
- 30 2. The present hearing was listed to deal with the issue of time bar and, in particular, whether the Tribunal exercises its discretion to hear the claim out of time.
3. The hearing was conducted remotely by way of Cloud Video Platform (CVP). The claimant had difficulty connecting by video and so proceeded by way of

audio only. There was no objection to proceeding on this basis made by either party and the Tribunal considered that it would be in keeping with the Overriding Objective as it avoided the hearing being delayed.

Findings in fact

- 5 4. The Tribunal makes the following relevant findings in fact.
5. The claimant was dismissed by the respondent on 10 June 2024.
6. On 22 August 2024, the claimant contacted ACAS to start the Early Conciliation process. ACAS issued an Early Conciliation Certificate to the claimant on 27 September 2024.
- 10 7. On 10 October 2024, the claimant accessed the Employment Tribunal online portal to submit his ET1 claim form. At the end of the process, he checked his email account to see if he had received an email confirming that his claim had been received. There was no such email in his inbox.
8. On 22 October 2024, the claimant checked his email account again to see if
15 a confirmation email had been received. At this point, the claimant discovered that he could not access his emails and that his account had been hacked. He contacted Microsoft for assistance in re-gaining access to his account and his emails.
9. The claimant received access to emails in batches rather than all at once. At
20 no point did he received a confirmation email from the Tribunal. On 10 November 2024, the claimant decided to access the online portal for a second time and lodge a further ET1 claim form. The Tribunal received this form via the online portal on that date.

Relevant Law

- 25 10. Section 111(2)(a) of the Employment Rights Act 1996 (ERA) states that the Tribunal shall not consider a complaint of unfair dismissal unless it is presented within 3 months of the date of termination.

11. The Tribunal has discretion under 111(2)(b) to hear a claim outwith the time limit set in s111(2)(a) where they consider that it was not reasonably practicable for the claim to be presented within the 3 month time limit and it was presented within a further period that the Tribunal considers to be reasonable.
12. Under s207B ERA, the effect of a claim entering ACAS Early Conciliation is to pause the time limit until the date on which the Early Conciliation Certificate is issued. The time limit is then extended by the period the claim was in Early Conciliation or to one month after the Certificate is issued if the Early Conciliation ends after the normal time limit.
13. The burden of proving that it was not reasonably practicable for the claim to be lodged within the normal time limit is on the claimant (*Porter v Bandridge Ltd* [1978] IRLR 271).
14. In assessing the “reasonably practicable” element of the test, the question which the Tribunal has to answer is “what was the substantial cause of the employee's failure to comply” and then assess whether, given that cause, it was not reasonably practicable for the claimant to lodge the claim in time (*London International College v Sen* [1992] IRLR 292, EAT and [1993] IRLR 333, Court of Appeal and *Palmer and Saunders v Southend-on-Sea Borough Council* [1984] IRLR 119).
15. Where the Tribunal concludes that it was not reasonably practicable for the claimant to have lodged his claim in time then it must go on to consider whether it was lodged in some further period that the Tribunal considers reasonable.
16. This is a question for the Tribunal to determine in exercising its discretion (*Wall's Meat Co Ltd v Khan* [1978] IRLR 49) but it must do so reasonably and the Tribunal is not free to allow a claim to be heard no matter how late it is lodged (*Westward Circuits Ltd v Read* [1973] ICR 301).
17. In assessing the further delay, the Tribunal should take account of all relevant factors including the length of the further delay and the reason for it. It will

also be relevant for the Tribunal to assess the actual knowledge which the claimant had regarding their rights (particularly the application of the time limit) and what knowledge they could reasonably be expected to have or investigations they could reasonably be expected to make about their rights (*Northumberland County Council v Thompson* UKEAT/209/07, [2007] All ER (D) 95 (Sep)).

Decision

18. There is no question in this case that the ET1 was presented to the Tribunal out of time. The claimant's effective date of termination was 10 June 2024 and so the normal three month time limit expired on 9 September 2024. The claimant entered ACAS Early Conciliation on 22 August 2024 before the expiry of the normal time limit and so benefits from the pause in the time limit. The Early Conciliation Certificate was issued on 27 September 2024 after the expiry of the normal time limit and so the extended time limit expired on 27 October 2024. The ET1 was presented on the 10 November 2024.

19. The issue for the Tribunal is whether it is willing to exercise its discretion to hear the claim out of time and the first question in deciding this is whether it had been reasonably practicable for the claim to have been lodged in time.

20. The claimant does not suggest that there was any impediment to him presenting his ET1 in time; he does not suggest any ignorance or error in relation to the time limit or that some health issue prevented him for taking the necessary action. Indeed, it was the claimant's evidence that he completed the online application on 10 October 2024 over two weeks before the time limit expired. However, this application was not received by the Tribunal at this time.

21. The claimant's explanation for the delay was that his emails were "hacked" and that he only re-gained access to these at a later date. However, the Tribunal agrees with the submissions on behalf of the respondent that having access to emails has no bearing on presenting the ET1. The online submission of the ET1 claim form does not require access to emails, it simply requires internet access in order to use the online portal to provide the

necessary information. There was no suggestion by the claimant that he did not have access to the internet.

22. In these circumstances, the Tribunal does not consider that the claimant's email account having been "hacked" is the explanation why the ET1 was not presented on 10 October when the claimant says he completed the online form. The reason why the Tribunal did not receive the online application on that date is simply unknown; it is possible that the claimant made an error in the online process that resulted in a failed submission of his claim or it could be a technical problem with the online application process. There is no evidence either way.
23. The reason why the ET1 was not presented thereafter was that the claimant, despite being aware that he had not received any confirmation from the Tribunal that the ET1 form had been received by them, did not take steps to ensure the claim was lodged in time.
24. The claimant's evidence was that, by 22 October 2024, he had not received any confirmation email from the Tribunal that his claim had been received and it was at this time that the issue with his email account came to light. The Tribunal is aware that such an email is generated automatically (without the need for a member of the Tribunal administration to send it) and would, in the normal course of events, be received within a very short period of time after the online form was submitted (indeed, almost instantaneously).
25. The Tribunal takes account of the fact that the claimant is a party litigant who is unfamiliar with the Tribunal process. However, even taking his case at its highest, he was aware on 22 October that there was an issue with his emails and that he had not received any confirmation that his claim had been received by the Tribunal. This was five days before the expiry of the time limit and so it was still possible for the claimant to take steps to lodge his claim in time. He could have done what he eventually did and make a second online application on 22 October or at any point prior to 27 October. He advances no explanation why he did not do so.

26. The Tribunal considers, therefore, that it was reasonably practicable for the claim to have been presented in time. The claimant was clearly capable of doing so because he had taken the necessary steps to lodge his claim in time. He was aware, several days before the time limit expired, that there was an issue with his email account and that he had no confirmation that his claim had been received by the Tribunal. He could have, therefore, taken steps to make a second online application which would have been in time.
27. The test under s111(2)(b) ERA is not met and so there is no basis on which the Tribunal can exercise its power to hear the claim out of time.
28. Even if the Tribunal was prepared to find that it had not been reasonably practicable for the claim to be lodged in time, it considers that the claim was not lodged in some further period that the Tribunal considers reasonable. The Tribunal considers that the claimant was on notice on 22 October 2024 that he had no confirmation that his claim had been lodged but did not take any step to remedy this until 18 days later. The Tribunal considers that a reasonably prudent party litigant would act sooner than this to remedy the situation, especially where they could do so within the time limit. The claimant delayed taking action and the Tribunal considers that that further period was not reasonable.

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Date sent to parties**19 February 2025**