



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

MR L F ILBOUDO

AND

Respondent

AGINCARE LTD

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT: BRISTOL ON: 8TH JULY 2025

EMPLOYMENT JUDGE MR P CADNEY
(SITTING ALONE)

MEMBERS:

APPEARANCES:-

FOR THE CLAIMANT:- IN PERSON

FOR THE RESPONDENT:- MS A CRABB

PRELIMINARY HEARING JUDGMENT

The judgment of the tribunal is that:-

- i) The claimant's claim of unfair dismissal is dismissed having been presented out of time.

Reasons

1. By this claim the claimant brings a claim of unfair dismissal. The case was listed by EJ Self to determine the following issues :-
 - a) Whether the claim was presented within 3 months of dismissal (taking into account the stopping of time during ACAS early conciliation).

b) If not:

- i. Whether it was reasonably practicable to have presented the claim in time and,
- ii. If not, whether the claim was presented within a reasonable period after the time limit expired.

Facts

2. By a claim form presented on 31st October 2024 the claimant presented a sole claim for unfair dismissal. The primary time limit for such a claim (subject to any extension provided by the ACAS EC provisions) is 3 months less one day. The claimant set out the effective date of termination as 31st May 2024 which would mean that the primary time limit expired on 30th August 2024; but in the ET3 the respondent asserts that the correct date is 13th June 2024. The claimant now accepts that 13th June 2024 is the correct date; and it follows that the primary time limit (subject to ACAS EC extension) would have expired on 12th September 2024.
3. The dates of ACAS Early Conciliation are 19th July 2024 (date A) to 30th August 2024 (date B). The ACAS EC extension creates two different forms of extension of time:
 - i) S207B(3) – (the clock stopping provision) - the days from the day after Day A up to and including day B are not counted for the purposes of calculating the time limit;
 - ii) S207B(4) – If the time limit is due to expire within one month after date B, the time period is extended by one month from date B.
4. The effect of the two provisions is to extend time to 30th September 2024 (s207B(4), or 24th October 2024 (s207B(3)). As the claim was presented on 31st October it was presented one week out of time (as had been identified by EJ Self when listing this hearing).
5. As it was presented out of time, there are two questions for the tribunal to consider:
 - i) Was it reasonably practicable to have presented the claim within time; and
 - ii) If not was it presented within a reasonable time thereafter.
6. Reasonable Practicability - In Lowri Beck Services Ltd v Brophy 2019 EWCA Civ 2490, CA, Lord Justice Underhill set out the fundamental points established in the case law:
 - i) The test should be given a liberal interpretation in favour of the employee
 - ii) 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 employee to present his or her claim in time.

- iii) 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 his or her case, the question is whether that ignorance or mistake is reasonable. If it is not, then it will have been reasonably practicable for the employee to bring the claim in time. However, 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 employee or his or her adviser should have made
 - iv) if the employee retains a skilled adviser, any unreasonable ignorance or mistake on the part of the adviser is attributed to the employee;
 - v) The test of reasonable practicability is one of fact and not of law.
7. In this case the claimant was aware of the time limit as set out below; and had not employed a skilled advisor, so points iii) and iv) above are not relevant for my considerations today.
8. The claimant's evidence is that on or around 4th September 2024 he travelled to Burkina Faso as his father was seriously ill. Whilst there he was involved in a serious road traffic accident on 10th October 2024. Due to his injuries he could not travel back to the UK as planned and did not return until 25th October 2024; and immediately began to re-engage with his affairs. He presented the claim six days later on 31st October. The essence of his submission is that he was prevented by a combination of having to travel to see his father, and being injured and unable to travel back as meaning it was not reasonably practicable to have presented the claim within the extended primary limitation period; and that to have presented it within six days of his return is reasonable in all the circumstances.
9. The fact that the claimant was out of the country from 4th September 2024 until the expiry of the limitation period, and was hospitalised and unable to return until after the limitation period had expired does not in and of itself necessarily mean that it was not reasonably practicable to have presented it in time, given that online presentation is permitted; meaning that a claim can be presented from anywhere in the world with an internet connection/access.
10. The claimant's evidence is that he understood that he had one month from the end of ACAS Early Conciliation to submit his claim, which would be 30th September 2024. This would be correct if he only had the s207B(4) extension; but in fact for the reasons set out above he was wrong and had a longer period in which to present his claim, but that was his understanding at the time. He knew he would have to travel to Burkina Faso a week to ten days before he left on 4th September 2024, and that it took that time to arrange finance and make arrangements. His father lives in a remote area with no internet access and the claimant could not afford data roaming charges. He would therefore have no internet access whilst he was there. He anticipated that he would need to stay for a fortnight to a month. Again it follows that before he left he knew that there was at least the possibility that the time limit would expire (as he understood it) before he returned unless he submitted the claim before he left.

11. He was still in Burkina Faso on 10th October when he was involved in a road traffic accident. He has submitted evidence, which I accept, that he was hospitalised for one night; and has produced photographs showing bandaged injuries to his forehead, and chin; cuts/abrasions to his hands and knees, and a bandaged injury to his foot. He was picked up by his brother on his release from hospital on 11th October 2024 and stayed with him. He was able to return on 25th October 2025. He accepts that his brother does have wi-fi at his property and that he could, therefore have had internet access whilst staying there.
12. It follows that in my judgment, there were two windows in which the claim could have been submitted in time; after the 30th August and before 4th September 2024; and after 11th October 2024 and before 25th October 2024 when he flew back.
13. It was therefore necessarily physically possible for the claim to have been submitted on time. However the fact that it was physically possible does not necessarily mean that it was reasonably practicable (reasonably feasible) to do so. However, there was no impediment to submitting the claim before 4th September when the claimant knew that there was at least the possibility that thereafter he would not be able to submit it in time; and, although I accept that the claimant was recovering from a road traffic accident and was taking painkillers, there was a period of nearly a fortnight after his road traffic accident in which he had access to the internet. There is no evidence that his medical condition was at that time sufficiently serious to prevent him from submitting the claim online.
14. It follows that in my judgement, however sympathetic I may be towards the claimant , and however liberally the provisions must be construed in his favour, it was reasonably practicable for the claim to have been submitted in time and it follows that the claim must be dismissed as having been presented out of time.

**EMPLOYMENT JUDGE
CADNEY
Dated: 8th July 2025**

**Judgment entered into Register
And copies sent to the parties on
25 July 2025
for Secretary of the Tribunals**