



EMPLOYMENT TRIBUNALS

Claimant: Mr J Penaluna

Respondent: Bron Afon Community Housing Limited

Heard at: Cardiff **On:** 1 August 2017

Before: Employment Judge P Cadney

Representation:

Claimant: In person

Respondent: Mr Owain James (Counsel)

PRELIMINARY HEARING JUDGMENT

The judgment of the tribunal is that:-

The claimant's claim is dismissed as having been presented out of time.

Reasons

1. By a claim form submitted on 9 April 2017 the Claimant brings a claim of unfair dismissal. The case comes before the Tribunal this morning to determine the preliminary issue of whether the claim was presented in time and if not whether time should be extended, applying the test of whether it was reasonably practicable to have presented the claim in time, and if not, whether it was presented within a reasonable time thereafter within the meaning of Section 111 of the Employment Rights Act 1996.
2. The essential facts are not in dispute. After a relatively lengthy period of suspension a disciplinary hearing was held at which the Claimant through illness was unable to participate which resulted in his summary dismissal on 8 November 2016. That was communicated by letter and on 14 November the Claimant lodged an appeal against that dismissal.

Accordingly depending upon precisely when the Claimant received the letter notifying his dismissal the primary time limit expired at some point between the 7 February and 13 February 2017. Making the most generous assumptions for the Claimant I will assume for today's purposes the primary time limit expired on 13 February 2017. The Claimant's appeal was heard on 25 January and he was informed of its outcome on 17 February which is after (on any analysis) the expiry of the primary limitation period. He commenced the ACAS Early Conciliation process on 16 March 2017 which concluded on 22 March 2017 and he submitted his ET1 on 9 April.

3. The first question therefore is whether the claim is in or out of time. As set out above the primary time limit expired at the latest on 13 February 2017 and the claim form submitted on 9 April is clearly approximately 2 months out of time. The only question is whether the provisions relating to the extension of time under the ACAS Early Conciliation process would avail the Claimant in this case. Unfortunately for him as that process was not commenced until after the expiry of the initial limitation period neither the stop clocking provision, nor the extension of time provision applies and accordingly the claim was clearly submitted out of time.
4. The question for me therefore is whether I can admit the claim on the basis it was not reasonably practicable to have presented it within time and subject to the answer to that question whether it was then submitted within a reasonable time thereafter.
5. The facts which are not essentially in dispute are these: the Claimant says that by the early part of December he had formed the view that his dismissal was unfair and had consulted both ACAS and the Citizens' Advice Bureau. In addition he was in contact with the Respondent seeking the return of some of his property and a large number of emails which he hoped to use in his appeal. His evidence is that he was advised by the Citizens' Advice Bureau that to lodge a claim with the Employment Tribunal prior to the appeal might prejudice that appeal and so he did not do so. The outcome of the appeal was received on or about 17 February, thereafter he contacted the Employment Tribunal and was advised to contact ACAS which he did, he entered the Early Conciliation procedure and subsequently submitted the ET1 on 9 April.
6. The Respondent submits from those facts that firstly there was no physical impediment to the Claimant submitting a claim in time. Had he been advised by the CAB to do so there is no evidence that he could not have done so, nor is there any suggestion that his illness which had prevented him participating in the disciplinary process prevented him from participating in the appeal process, or of taking advice, or that it would have been any impediment to submitting an online claim form and

therefore self evidently it was reasonably practicable for the claim to have been submitted in time. Even if I am not with them in respect of that, the Respondent submits that thereafter there is unexplained and unreasonable delay between 17 February and 16 March before commencing the Early Conciliation procedure and then between 22 March and 9 April in submitting the ET1 and therefore even if it was not reasonably practicable to have submitted the claim form within time, there is unreasonable delay thereafter and that therefore the claim form should be dismissed as being out of time.

7. The Respondent has referred to one Authority, that of **Palmer** which is a well known authority for the proposition that awaiting the outcome of an internal appeal does not in and of itself render it is not reasonably practicable to have submitted the claim within time. This case also engages another well known principal which is the question of wrong advice being given by a professional advisor. That question has always been answered in all the authorities against claimants on the basis that the Claimant must be fixed with the advice given by professional advisors, and in **Riley –v- Tesco Stores Limited** that principle was extended to the Citizens' Advice Bureau specifically. In this case therefore the Claimant does not get the benefit of the fact that the advice he was given to await the outcome of the appeal was clearly wrong. It follows that in my judgment it could not be said that it was not reasonably practicable to have submitted the claim within time.
8. Even if it had been, I accept the Respondents submission that the delay thereafter was not reasonable and this case, whilst all cases turn on their own facts, is very similar if not identical with that of **Royal Bank of Scotland –v- Theobald** ; in which the Claimant was summarily dismissed by the Royal Bank of Scotland on 11 November 2005. On 19 November he consulted the Citizens' Advice Bureau and was erroneously advised to await the outcome of the internal appeal. This resulted in the internal appeal not being completed until after the expiry of the initial primary limitation period, but he waited a further 13 days thereafter and the EAT upheld both the Employment Tribunal's conclusions that it was reasonably practicable to have submitted the claim within time despite the CAB advice, and secondly that the delay of 13 days was unreasonable. It appears to me that similar principles apply to this case and that therefore even had I concluded that it was not reasonably practicable due to the advice I would have concluded that the delay thereafter was not reasonable given the very short time limits for bringing claims in the Employment Tribunal and therefore unfortunately I am driven to the conclusion that the claim must be dismissed as having been submitted out of time.

Employment Judge P Cadney
Dated: 9 August 2017

ORDER SENT TO THE PARTIES ON

11 August 2017

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FOR THE SECRETARY TO EMPLOYMENT TRIBUNALS

NOTES

- (1) Any person who without reasonable excuse fails to comply with this Order shall be liable on summary conviction to a fine of £1,000.00.
- (2) Further, if this Order is not complied with, the Tribunal, under Rules 37(1)(c) and 76(2), may (a) make an Order for costs or preparation time against the defaulting party, or (b) strike out the whole or part of the claim, or, as the case may be, the response, and, where appropriate, direct that the respondent be debarred from responding to the claim altogether.
- (3) You may make an application under Rule 29 for this Order to be varied or revoked.