



EMPLOYMENT TRIBUNALS

Claimant
Mr W Hussain

-v-

Respondent
Domestic and General
Group Limited

PRELIMINARY HEARING

Heard at: Nottingham **On:** 8 May 2018

Before: Employment Judge Evans (sitting alone)

Representation

For the Claimant: in person
For the Respondent: Mr Jones (Counsel)

JUDGMENT

The Tribunal has no jurisdiction to hear the Claimant's claim because it was presented out of time. The claim is dismissed.

REASONS

Background

1. The Respondent dismissed the Claimant and the effective date of termination ("EDT") was 6 July 2017. Following his dismissal, the Claimant brought a claim of unfair dismissal which he presented to the Tribunal on 11 December 2017 ("the Claim").
2. The Respondent argued in its Response that the Claim was out of time. Employment Judge Britton ordered that the issue of whether the Tribunal had jurisdiction to consider the Claim should be considered at a Preliminary Hearing. That Preliminary Hearing took place before me on 8 May 2018.
3. The Claimant represented himself at the Preliminary Hearing. The Respondent was represented by Mr Jones of Counsel. Neither party produced a bundle of documents for the Preliminary Hearing. Consequently the only documents I had before me were those on the Tribunal's file, including the Claim and the Response.
4. The Claimant did not produce a witness statement ahead of the Preliminary Hearing but he gave oral evidence on the day. A full record of the evidence he gave is on the Tribunal's file.

5. The Hearing had been listed for 3 hours. By the time the Claimant had given evidence and submissions had been made it was 12.25pm. I considered that I would not be able to give judgment extempore by 1pm. The Claimant had to attend a hospital appointment at 2pm and could not remain beyond 1pm. I therefore reserved judgment.

The issues

6. The following chronology was agreed between the Claimant and Respondent at the beginning of the Preliminary Hearing:

EDT	6 July 2017
Early Conciliation ("EC") notification to ACAS	22 September 2017
Claimant went on holiday to Pakistan	4 October 2017
EC certificate issued	22 October 2017
Limitation expired	22 November 2017
Claimant returned to UK from Pakistan	4 December 2017
Claim presented to Tribunal	11 December 2017

7. In light of these agreed dates, it was also agreed that the issues for me to determine were:
- 7.1. Whether it was not reasonably practicable for the Claim to be presented on or before 22 November 2017;
- 7.2. If it was not reasonably practicable for the Claim to be presented on or before 22 November 2017, whether it was presented within such further period as the Tribunal considered reasonable.

The Law

8. Section 111(2) of the Employment Rights Act 1996 provides that :

Subject to the following provisions of this section 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.

9. The Tribunal must therefore consider two things if a claim is presented outside the three month time limit. First, whether it was not reasonably practicable for the claim to be presented within that time limit (the burden of proof is on the Claimant). Secondly, if it was not, the Tribunal must consider whether the further period within which the claim was presented was reasonable.
10. The leading case in relation to reasonable practicability remains Palmer and Saunders v. Southend-on-Sea Borough Council [1984] 1 All ER 945, [1984] IRLR 119. In this case, May LJ stated that the test was one of reasonable feasibility: "We think that one can say that to construe the words "reasonably practicable" as the

equivalent of "reasonable" is to take a view that is too favourable to the employee. On the other hand, "reasonably practicable" means more than merely what is reasonably capable physically of being done - different, for instance, from its construction in the context of the legislation relating to factories: compare Marshall v Gotham Co Ltd [1954] AC 360, HL. In the context in which the words are used in the 1978 Consolidation Act, however ineptly as we think, they mean something between these two. Perhaps to read the word "practicable" as the equivalent of "feasible" as Sir John Brightman did in [Singh v Post Office [1973] ICR 437, NIRC] and to ask colloquially and untrammelled by too much legal logic--"was it reasonably feasible to present the complaint to the [employment] tribunal within the relevant three months?"--is the best approach to the correct application of the relevant subsection."

The Hearing and submissions

11. The Claimant had not produced a witness statement and was not represented. I therefore explained in some detail the procedure which would be followed. I also explained to him that the Tribunal would take as a starting point his email to the Tribunal of 7 March 2018, which was sent in response to the Tribunal's order of 14 February 2018 that he send an explanation of why his claim was not presented until it was:

I Wajid Hussain was out of the country on the 4th of October till 4 December 2017. That is the reason I could not get my claim in time and I was told to wait by ACAS as they where [sic] trying to get in contact with [the Respondent] and they did this on number of occasions. I also sent my appeal letter in to [the Respondent] and didn't get meeting till September. As you are aware the first contact is to laise [sic] with [the Respondent] after my Appel [sic] to see if we can handle this before it goes to the tibuneral [sic].

12. I then gave the Claimant an opportunity to provide more detailed evidence of his reasons for not presenting the Claim before 11 December 2017. He did this and was then cross-examined by Mr Jones. I also asked him some further questions.

Findings of fact

13. In making these findings of fact I have taken account of all of the evidence before me but I do not refer to it all in these reasons.
14. The Claimant appealed against his dismissal. There was some delay in dealing with this. The appeal meeting was held at some point in September 2017. A friend told the Claimant that he needed to contact ACAS in order to begin the process of bringing a Tribunal claim before a certain date. The advice was not more specific but the Appellant did then contact ACAS. Following the appeal meeting the Respondent rejected the Claimant's appeal.
15. After the Claimant contacted ACAS on 22 September 2017 ACAS made contact with the Respondent. The Respondent did not reply to ACAS. This may well be because the person with whom ACAS was trying to make contact had left the Respondent's employment. ACAS issued an EC Certificate on 22 October 2017.
16. Shortly before the Claimant went on holiday on 4 October 2017 he telephoned ACAS. I find that as a result of this telephone call he understood that he would have 30 days in which to submit a Tribunal claim from when the EC certificate was issued. I therefore find that, although the Claimant did not understand the underlying principles which governed how limitation was calculated or how limitation might be extended by the EC notification process, he did understand that there was a deadline for submitting his claim to the Tribunal and he believed that that deadline was 30

days after the EC certificate might be issued. I so find because although the Claimant was unwilling to squarely accept that he had understood that there was a 30 day deadline of this nature, he nevertheless said on at least three occasions in his evidence that ACAS had told him that he would have 30 days in which to present his claim after the EC certificate had been issued.

17. I find in accordance with his evidence that when the Claimant went to Pakistan he asked his wife (who was remaining in the UK) to check the post that arrived at their address. I find in accordance with his evidence that he did not ask her to check his emails because he does not grant her access to them. I find in accordance with his evidence that he could not check his emails in the village – Paljoora – where he was staying in Pakistan. However the Claimant accepted that Paljoora was just 45 minutes by bus from Mirpur, a significantly sized town. The Claimant accepted that in principle he could access his emails anywhere that there was internet access. The Claimant said he did not know whether there were any internet cafes in Mirpur and that he had made no enquiries in this regard. However I find that the Claimant could have obtained access to his emails whilst in Pakistan either in Mirpur or in some other city within a reasonable travelling distance of Paljoora.
18. I find the Claimant assumed that ACAS would send him the EC certificate by post and not by email. However, in accordance with the Claimant's evidence, I find that that was simply an *assumption* and did not arise from anything ACAS had said. The Claimant did not check how the EC certificate would be issued before he travelled to Pakistan. I find that the reason that ACAS had his email address was because he had provided it to them.
19. I find that by the time the Claimant went on holiday he knew that the EC certificate might be issued shortly after his departure from the UK and that therefore limitation might expire whilst he was abroad.
20. I accept the Claimant's evidence that once he had checked his emails following his return from the UK and saw that the EC certificate had been issued on 22 October 2017 he immediately telephoned ACAS. His speed in telephoning ACAS reflected the fact that on his understanding of the advice previously given his claim was out of time.
21. The Appellant explained that he is dyslexic. However the Appellant explained that he had submitted his Tribunal claim on 11 December 2017 without the immediate assistance of anyone else (ACAS had directed him to a website where he had found information). Given that the Appellant does not give his wife access to his emails, I find that he can access them without assistance. I also find that if the Appellant had found out that the EC certificate had been issued on 22 October 2017 whilst in Pakistan before 22 November 2017 he could have arranged for a Claim to have been presented in time. Again, the Claimant accepted that this was the case.
22. I therefore find – and again the Claimant accepted this – that the factual reason that the Claim was not issued on or before 22 November 2017 was that the Claimant was in Pakistan and did not know that the EC certificate had been issued. I find that the reason that he did not know the certificate had been issued was that he mistakenly assumed that the certificate would be issued by post.
23. I accept the Claimant's evidence that he had originally intended to stay in Pakistan for 6 weeks but that whilst there he extended his stay to two months.

Conclusions

24. In light of my findings of fact above I conclude that the Claimant has failed to prove that it was "not reasonably practicable" for him to present a claim within the three

month time limit (extended by the EC process to 22 November 2017). I so conclude for the following reasons:

- 24.1. Any delay by the Respondent in holding the appeal did not result in (or materially contribute to) the Claim being presented after 22 November 2017;
 - 24.2. By the time he went on holiday he understood that the EC certificate might be issued shortly after his departure from the UK and he believed that, once it had been, he would have 30 days to present a claim (in fact it was one month, but nothing turns on that distinction);
 - 24.3. By the time the Claimant left the UK he therefore knew that it might be necessary for him to present the Claim whilst in Pakistan and, in principle, in light of my findings of fact, there was no reason why he could not do that: he could have both accessed his emails and presented a claim online whilst in Pakistan;
 - 24.4. The reason that the Claim was not issued whilst the Claimant was in Pakistan was that the EC certificate was sent to him by email and he had *assumed* it would be sent to him by post. However, this assumption was not a reasonable one: the Claimant had given ACAS his email address and he had not been told by ACAS that the EC certificate would be sent by post. I conclude that the Claimant ought to have known that the EC certificate would be emailed to him because it was obviously reasonable for him to ask ACAS how it would be sent to him in the conversation he had with ACAS before he went on holiday. It was obviously reasonable because by this point he understood the need to present a claim within a given period of the EC certificate being issued.
25. Overall, therefore, I conclude that it was reasonably feasible for the Claimant to present his claim on or before 22 November 2017. I note that the Claimant's admission in his evidence that he was "slightly to blame" for the claim being out of time reflects this.
26. Because I have concluded that the Claimant has failed to prove that it was not reasonably practicable to present his claim on or before 22 November 2017, it is not necessary for me to consider the second issue identified above.

Employment Judge Evans

Date: 8 May 2018

JUDGMENT & REASONS SENT TO THE PARTIES ON

02 June 2018

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FOR EMPLOYMENT TRIBUNALS