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# EMPLOYMENT TRIBUNALS

**Claimant:** Mr S Wardack  
**Respondent:** Newrest Limited  
**Heard at:** East London Hearing Centre  
**On:** 15 March 2018  
**Before:** Employment Judge Brown

## Representation

**Claimant:** Ms M McGee (Counsel)  
**Respondent:** Mr R Bhatt (Counsel)

# JUDGMENT AT A PRELIMINARY HEARING (OPEN)

The judgment of the Tribunal is that:-

1. The Claimant failed to present his claim for unfair dismissal to the Employment Tribunal before the end of the time limit in *s111 Employment Rights Act 1996*.
2. It was reasonably practicable for the complaint to be presented in time, so the Employment Tribunal does not grant any extension of time for its presentation. Accordingly, the Tribunal has no jurisdiction to consider the Claimant's claim and it is dismissed.
3. The Tribunal does not make any order for costs.

# REASONS

## Facts

1 The Claimant brought 3 consolidated complaints of unfair dismissal against the Respondent, his former employer. The Claimant was dismissed by the Respondent by a letter dated 18 August 2017, which told him that his termination was effective from that day, 18 August 2017.

2 The Claimant appealed against his dismissal. In his appeal letter, he said that his dismissal was an unfair dismissal. The Claimant told the Tribunal that a lady from his local library helped him print his letter of appeal. English is not the Claimant's first language. The Claimant was told by a letter dated 30 August 2017 that the Respondent had dismissed his appeal.

3 As at the date of his dismissal, the Claimant knew about the existence of Employment Tribunals and that people could bring claims of unfair dismissal to them. He sought advice regarding a potential unfair dismissal claim from a free legal advice organisation called Community Links.

4 On 13 September 2017 the Claimant saw an adviser at Community Links and gave the adviser his letter of dismissal, the letter dismissing his appeal, his contract and other relevant documents.

5 On 13 September, and on a number of other dates, the staff at the Community Links free legal advice service gave the Claimant a sheet of paper which set out the time limits for making applications to the Employment Tribunal. That advice document said that the length of time that an employee must have been employed, in order to bring a claim for unfair dismissal, was two years and that the initial time limit for making a complaint of unfair dismissal to the Tribunal was three months. The document also said that *"A claim must be presented within an initial time limit of three months of the effective date of termination which is usually the last day worked."* The advice sheet gave an example of the dismissal on 20 November, saying that the employee would need to bring a claim by 19 February.

6 The Claimant told the Tribunal that he did not read the advice sheets, but waited for advice from his adviser at the Centre. On 13 September the Community Links adviser had told the Claimant that he would send the Claimant a letter of advice. The adviser drafted the letter on 5 October 2017, but the Claimant did not receive the letter in the post. The Claimant repeatedly visited Community Links. Eventually, the letter from the adviser was printed off on 15 November during a visit by the Claimant to Community Links and the letter was given to the Claimant by hand. The letter erroneously said that the Claimant's effective date of termination was 30 August 2017 and that the Claimant therefore had to bring his claim within three months of that date. The Claimant promptly made an appointment with Toynbee Hall Legal Advice Centre, where he was told on 20 November that the time limit for bringing a complaint of unfair dismissal had already expired. There was no dispute at the Employment Tribunal that the Claimant acted promptly thereafter in pursuing Early Conciliation. The Early Conciliation period was 20 November – 6

December 2017 and the Claimant presented the first of his three claims to the Tribunal on 8 December 2017.

7 The Claimant does not have access to the internet himself, nor does he have a smart phone, but he told the Tribunal that his wife has a smart phone. He did not use his wife's smart phone to look for any information online, for example about Employment Tribunals or unfair dismissal claims.

8 The Claimant contended that he was reasonably ignorant of the time limit for bringing complaints and that he was given incorrect advice by Community Links and that, therefore, it was not reasonably practicable for him to bring a complaint in time.

### **Relevant Law**

9 The time limits for presenting complaints of unfair dismissal to an Employment Tribunal are set out in s111*Employment Rights Act 1996*. By s111(2)*ERA 1996*,  
“.. 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 the period of three months.”

10 Where a Claimant fails to present his claim in time and seeks an extension of time, the employee must show that it was not reasonably practicable to present his claim in time. The burden of proving this rests on the Claimant, *Porter v Bandridge Ltd* [1978] IRLR 271, [1978] ICR 943, CA. If he succeeds in doing so, the Tribunal must be satisfied that the time within which the claim was, in fact, presented was reasonable.

11 The question of whether it was reasonably practicable for the complaint to be presented is one of fact for the Employment Tribunal, taking into account all the relevant factors *Palmer and Saunders v Southend-on-Sea Borough Council* [1984] 1 All ER 945, [1984] IRLR 119, [1984] ICR 372, CA. Relevant factors can include the manner of, and reason for, the dismissal; whether the employer's conciliation machinery had been used; the substantial cause of the claimant's failure to comply with the time limit; whether there was any physical impediment preventing compliance, such as illness, or a postal strike; whether, and if so when, the claimant knew of his rights; whether the employer had misrepresented any relevant matter to the employee; whether the claimant had been advised by anyone, and the nature of any advice given; and whether there was any substantial fault on the part of the claimant or his adviser which led to the failure to present the complaint in time.

12 Where a Claimant is ignorant of his rights to bring a claim to the Employment Tribunal, the ignorance must have been reasonable, in order for it not to have been reasonably practicable for the Claimant to bring a claim in time. In *Dedman v British Building & Engineering Appliances Ltd* [1974] ICR 53 Lord Scarman said that the Tribunal must ask, “..what were his opportunities for finding out that he had rights? Did he take them? If not, why not? Was he misled or deceived? ... But what, if, as here, a complainant knows he has rights, but does not know that there is a time limit? Ordinarily I

would not expect him to be able to rely on such ignorance as making it impracticable to present his complaint in time.”

13 Furthermore if a Claimant engages a skilled adviser to advise, negligent advice on the part of the legal advisers will not normally make it not reasonably practicable to present the claim within the primary limitation period. In the *Dedman* case, Lord Denning said, “ If a man engages skilled advisers to act for him - and they mistake the time limit and present it too late - he is out. His remedy is against them. ...Summing up, I would suggest that in every case the tribunal should inquire into the circumstances and ask themselves whether the man or his advisers were at fault in allowing the four weeks to pass without presenting the complaint... if he was at fault or if his advisers were at fault ... he must take the consequences. By exercising reasonable diligence the complaint could and should have been presented in time.”

14 The *Dedman* principle applies equally to advice provided by Citizens Advice Bureaux: *Riley v Tesco Stores Ltd* [1980] ICR 323 CA. However, the Tribunal should also consider whether the failure of advisers to give correct legal advice was itself reasonable. *Northamptonshire County Council v Entwistle* [2010] IRLR 740.

### **Discussion and Decision**

15 In this case, the Claimant relied particularly on his ignorance of time limits for bringing a complaint and on the negligent advice of the Community Links adviser. However, I decided that the Claimant's ignorance of the time limits in this case was not reasonable. The Claimant sought advice from Community Links at an early stage and was given an advice sheet as early as 13 September 2017. He was given the same advice sheet on a number of other occasions during the three month primary time limit. If he had read that advice sheet, the Claimant would have known, both, that his effective date of termination was the last day on which he worked - that is 18 August - and that there was a three months time limit for bringing claims of unfair dismissal.

16 Furthermore, the Claimant did not make even the most cursory of searches online, into Employment Tribunals or unfair dismissal claims, the existence of which he was aware from the outset. In so far as the Claimant was given incorrect legal advice about the time limits, he did not receive that advice until 15 November 2017 in any event. That incorrect advice could not have misled him until the last two days of the primary limitation period. The Claimant's ignorance until that point arose primarily from the Claimant's failure to read the advice which was given to him on the advice sheet. If incorrect advice did mislead the Claimant in the last two days of the three months limit period, I concluded that the adviser was at fault in providing that advice. The Claimant told me - and I accepted - that he had provided the adviser with his letter of dismissal. The letter of dismissal made clear that the effective date of termination was 18 August. On that basis, the adviser was incorrect in saying that the effective date of termination, and the date from which the time limit ran, was 30 August 2017. Applying the principles in *Dedman*, by exercising reasonable diligence, the claim could and should have been presented in time.

17 Accordingly, I considered that it was reasonably practicable for the Claimant to have presented the claim in time. He was given a written sheet on a number of occasions, which told him the information he required, but he failed to read it or to

undertake any other research into Employment Tribunals or unfair dismissal claims which he knew existed at all relevant times. In so far as his failure to submit the claim in time was affected by incorrect legal advice, the incorrect legal advice was unreasonably given and his advisers were at fault. That did not justify any extension of time.

18 The Respondent made an application for costs, saying that the Claimant's claim was bound to fail and no reasonable prospect of success and that the Claimant acted unreasonably in pursuing his claim after the Respondent had sent letters on 27 February and 3 March 2018, warning the Claimant that his claim would fail and that the Respondent would seek costs against him. The Respondent said that, given the findings of the Employment Tribunal, it was clear that the Claimant's ignorance was unreasonable and that the mistake made by the legal advisers was elementary and also unreasonable, so that the Claimant's case was bound to fail.

19 While I had decided that the Claimant's ignorance was not reasonable and that his legal advisers were at fault, I considered that the Claimant's claim was not one which had "no reasonable prospect of success." The Claimant does not have English as his first language and it was quite clear from the facts that the Claimant did pursue legal advice diligently, both through Community Links and at the Toynbee Hall Advice Centre. While I decided, ultimately, that the Claimant was not reasonably ignorant of his rights, I concluded that it was reasonably arguable that the Claimant, who did not have English as a first language and who did rely very heavily on the advice of others, could have been reasonably ignorant when he did not himself read the letter, but chose to wait for advice from the Community Links Centre, which was not, for one reason or another, provided to him until 15 November. It have not found that the delay was the result of any negligence.

20 In so far as there was any further delay after 15 November 2017, the Claimant acted very promptly in seeking further advice in submitting his claim. The Claimant considered that he needed assistance and immediately sought appropriate help from Toynbee Hall. Community Links were never going to present a claim on the Claimant's behalf and there would always have been some extra delay between 5 November and putting in his claim. I did not believe, in fact, that the negligent legal advice caused any further delay.

21 In sum, it was reasonably arguable that the Claimant was reasonably ignorant, on the one hand given his vulnerability as somebody who did not have English as a first language, and, on the other hand, in his arguably sensible approach in relying on legal advice (rather than his own research) at all stages. I had not decided, ultimately, that I accepted those arguments, but they were reasonable arguments to make. Accordingly the threshold for awarding costs under *ET Rules of Procedure 2013 Rule 76* was not met.

Employment Judge Brown

19 March 2018