



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr P Singh  
**Respondent:** DPD Group UK Limited

## JUDGMENT ON A PRELIMINARY HEARING

**Heard at:** Birmingham Employment Tribunal by CVP  
**On:** 7 December 2020  
(17 December 2020 in Chambers)  
**Before:** Employment Judge Connolly (sitting alone)

### Appearances

For the claimant: In person  
Interpreter for the claimant: Mr S Duhre  
For the respondent: Ms R Magdani (Solicitor)

## RESERVED JUDGMENT

This has been a remote hearing which has not been objected to by the parties. It took place by means of the Cloud Video Platform ('CVP'). A face-to-face hearing was not held because it was not practicable and all issues could be fairly determined in a remote hearing.

1. The claim of unfair dismissal was not presented within the statutory time limit despite it being reasonably practicable to do so and is dismissed.

# REASONS

## INTRODUCTION

1. The claimant in this matter, Mr Singh, was summarily dismissed by his employer, DPD, on 4 November 2019. On 5 February 2020, he presented a claim to the Tribunal for unfair dismissal. The claim was rejected because the Claim Form did not include an Acas early conciliation number. On 22 May 2020, Mr Singh presented another claim for unfair dismissal after a period of early conciliation from 28 January 2020 to 28 February 2020. On the face of it, this claim was presented outside the relevant statutory time limit. In circumstances, it was listed today to determine:
  - 1.1 whether it was reasonably practicable to bring the claim within the statutory limit and
  - 1.2 if not, whether it was presented within a reasonable period thereafter.

## EVIDENCE

2. I heard oral evidence from Mr Singh who was questioned by the respondent. I read the agreed bundle of some 56 pages. The case was listed for 3 hours but proceeded slowly by reason of a combination of technical difficulties (for the interpreter) and to allow time for the interpreter to translate while based remotely from Mr Singh. My decision was therefore reserved to be delivered to both parties in writing.

## RELEVANT LAW

3. The time period in which claims of unfair dismissal must be presented is contained in **section 111(2) of the Employment Rights Act 1996 ('ERA 1996')**. It provides that a claim must be presented:
  - (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.*
4. By virtue of **s.207B ERA 1996** this 3 month period is extended, broadly speaking, by the period in which the claimant is in early conciliation.
5. In **Abertawe Bro Morgannwg University Local Health Board v Morgan UKEAT//0305/13 §52** the EAT held that a litigant (in this case, Mr Singh,) can hardly hope to satisfy that burden unless he provides an answer to two questions:

*"The first question in deciding whether to extend time is why it is that the primary time limit has not been met; and insofar as it is distinct the second is [the] reason why after the expiry of the primary time limit the claim was not brought sooner than it was."*

6. Ms Magdani, for DPD, relies on the well-known statement of the law in **Wall's Meat Company Limited v Khan 1979 ICR 52, CA:**  
*"The performance of an act, in this case the presentation of a complaint, is not reasonably practicable if there is some impediment which reasonably prevents, or interferes with, or inhibits, such performance. The impediment may be physical, for instance the illness of the complainant or a postal strike; or the impediment may be mental, namely, the state of mind of the complainant in the form of ignorance of, or mistaken belief with regard to, essential matters. Such states of mind can, however, only be regarded as impediments making it not reasonably practicable to present a complaint within the period of three months, if the ignorance on the one hand, or the mistaken belief on the other, is itself reasonable. Either state of mind will, further, not be reasonable if it arises from the fault of the complainant in not making such inquiries as he should reasonably in all the circumstances have made, or from the fault of his solicitors or other professional advisers in not giving him such information as they should reasonably in all the circumstances have given him'.*
7. It is not always useful to seek a synonym for a statutory test: it risks glossing and distorting the statutory language but, as 'practicable' is not an everyday word, on this occasion, I find it useful to think of it in terms of what is 'reasonably feasible'.
8. The task for me, therefore, is to identify what impeded Mr Singh from bringing his claim within the statutory time limit and, after that, up to 22 May 2020 and to consider whether he has satisfied me that this impediment meant it was not reasonably practicable to present the claim within 3 months and that it was presented within a reasonable period thereafter.

## RELEVANT FACTS

9. Mr Singh contacted Acas within the period of 3 months from the date of termination of his employment. He therefore benefitted from an extension of the 3 month time limit by reason of conciliation (**section 207B ERA 1996**). The following chronology was not in dispute:

4 November 2019	Effective date of termination
28 January 2020	Acas Date A
2 February 2020	1 <sup>st</sup> Claim presented
5 February 2020	Claim rejected

28 February 2020

Acas Date B

28 March 2020

Extended time limit expired

22 May 2020

2<sup>nd</sup> and current Claim Form presented

10. Mr Singh did not dispute that his claim was 7 weeks and 6 days out of time.
11. The reason for this situation is somewhat convoluted. It only emerged in Mr Singh's oral evidence. This was despite 2 Tribunal orders directing him to explain why he failed to issue his claim in time. Although Mr Singh wrote to the Tribunal in response to its orders, he did not properly engage with the question asked. In his second piece of correspondence he stated *'the Corona crisis has had an impact on my life and actions as both my wife and my son fell ill with coronavirus. Which forced me to self isolated for nearly 1 month.... I started self isolating on the first week of November.*
12. The salient facts are as follows.
13. Mr Singh was employed by DPD as a deckhand. He was subject to disciplinary proceedings in September 2019. He was a long-standing member of Unite the Union. They provided him with assistance and representation during the internal DPD proceedings including the appeals process. This process concluded on 15 January 2020. During the process, Mr Singh completed forms to seek legal support through the Union which, in the end, it was unable to provide.
14. Mr Singh's evidence as to whether he was aware that there was a time limit in which to bring a tribunal claim was inconsistent. Early in his evidence he said that he was fully aware of the time limit but, in cross examination, he stated that he was not so aware and the Union had not made him aware. I find it likely that his early evidence was an accurate statement of the situation. It was evidence he gave apparently straightforwardly, very clearly and without being led in any way. In any event, I find he ought reasonably to have been aware of his right to bring a claim and that there were time limits for so doing shortly after he was dismissed as a result of the assistance provided by the Union. This was precisely the sort of information I would expect a reasonable Union representative and adviser to have given him.
15. Thus, by 15 January 2020, Mr Singh was, in effect, 'on his own' in terms of bringing Tribunal proceedings. Mr Singh's first language is Punjabi. He often seeks assistance with written English from his ex-wife (who is German but fluent in English) or two of his adult stepsons who are more fluent in English than him, although it is still not their first language.
16. Mr Singh contacted Acas on 28 January 2020. He planned to go to India on 9 February 2020 to attend a wedding. On 2 February 2020 he went to

visit his ex-wife at her home in order that she could assist him to complete the Tribunal claim form and submit it online. They completed the part of the form relating to the Acas certificate to the effect that Mr Singh did not have an Acas certificate and that his claim was exempt because it contained an application for interim relief (which was plainly incorrect). Oddly, Mr Singh said in evidence he was not aware it had been completed in this way nor was he aware and they did not discuss the note on this part of the form which advises that nearly everyone should have an EC number and to call Acas for help and advice or visit the Acas website if necessary. The form was duly submitted that day.

17. Mr Singh left for India on 9 February 2020. He said he intended to return on 1 March 2020 but, when he arrived, he found out that a wrestling competition in which he also intended to compete had been arranged for 8 March 2020. He therefore extended his return ticket to 1 April 2020. He did not explain why the extension was such a substantial period after the date of the wrestling. India then 'locked down' because of Covid-19 and he was unable to return until 27 April 2020. He did not provide any documentary evidence of this trip or the relevant dates and changes.
18. In the meantime and on 5 February 2020, the tribunal wrote to Mr Singh, informed him his claim had been rejected because it did not include an early conciliation number which was required and enclosed explanatory notes. This letter did not arrive at Mr Singh's address before he left on 9 February. Although Mr Singh initially said in evidence that there was no one who could open his post while he was in India because everyone was afraid of catching Covid, it transpired later in his evidence that the letter was received by his wife and /or adult children who lived with him at the address to which the letter was sent and had not travelled to India with him. They put the letter to one side unopened for his return. It seems (although it was not entirely clear from the evidence) that the same happened with the Acas certificate dated 28 February 2020.
19. Mr Singh returned from India on 27 April 2020. He saw the letter from the Tribunal and the Acas certificate on that date. When asked why he did not immediately present a further claim, he initially said in evidence that he was told at the airport that he could not leave the house for 4/5 weeks. This is not a standard quarantine period of which I am aware. When the issue was explored with Mr Singh further in cross-examination, he said that he needed to revisit his ex-wife to submit the form again and she was reluctant to have him visit her house until 3+ weeks had passed from his return. He said he also contacted the union and a solicitor during this period but neither were able to help him.
20. On 22 May 2020 Mr Singh again attended at his ex-wife's house, they completed and submitted a claim form in largely the same terms as the previous form save for a very modest expansion of the details of claim in box 8.2 and the inclusion of the certificate number.

21. It has to be said that the above detailed explanation is not foreshadowed in Mr Singh's response to the Tribunal in paragraph 11 above and, indeed, could be said to be inconsistent with it, to an extent.

## **CONCLUSIONS**

22. I start by observing that a time limit in which to bring a claim is not just a technical hurdle. It seeks to create a manageable system of justice for both sides whereby claims are promptly brought and fairly determined. The burden is on Mr Singh to persuade me why it was not reasonably practicable for him to comply with this time limit and that he brought his claim within a reasonable period after the time limit had expired.
23. As set out above, I find that Mr Singh was aware of all the facts which could give rise to a claim as at date of his dismissal (4 November 2019) and, likely, aware of the right to bring a claim and that time limits applied by that date or the end of the appeal process at the very latest (15 January 2020). Indeed, he sought to progress towards the presentation of a claim by contacting Acas on 28 January 2020.
24. I had some doubts about the reliability of Mr Singh's evidence on the remainder of the factual issues given the inconsistencies, the changes in his evidence and the lack of corroborative documents as set out above. I do, however, acknowledge and accept that the language barrier he faced made presentation of his claim form more difficult. Nonetheless and even accepting what Mr Singh said about his travel, quarantine and visits to his ex-wife, I find there were number of occasions when it was reasonably practicable for him to have done more and thereby presented a claim within the relevant time limit:
- 24.1 he could and reasonably should have discussed the necessity for an EC number with his ex-wife and/or sought advice from Acas before presenting his claim on 2 February 2020; he could and reasonably should have resolved this before he left for India in circumstances where he knew (or reasonably ought to have known) time was running out
- 24.2 he could and reasonably should have arranged for his post to be opened by his adult children in circumstances where he had recently presented a claim, particularly once he extended his trip to 1 April and was unexpectedly delayed in India. They could have read the tribunal letter or sought assistance translating it, if necessary. Mr Singh could then have made arrangements by telephone from India for his earlier claim form to be resubmitted online with the EC number entered.
25. In light of the above, I find it was reasonably practicable for Mr Singh to have presented his claim before the relevant time limit expired.

26. Even if I had been satisfied that it was not reasonably practicable for Mr Singh to have presented his claim in time, I would not have found that it was presented within a reasonable period thereafter. Again, I acknowledge that Covid-19 and the associated travel and quarantine restrictions made everything more complex for Mr Singh, including progressing his claim. I find, however, that, if he had prioritised resolution of this issue, he could have spoken to his ex-wife on the telephone within a week of his return and arranged her to resubmit the same form this time with certificate number or provided her with limited details to present the form again (i.e. by 4 May 2020). Alternatively, he could reasonably have sought assistance from his sons. If a visit in person to his ex-wife was necessary (and I do not accept it was), it could have taken place outside and the form submitted immediately thereafter between 2 and 3 weeks after his return i.e. by 18 May 2020, at latest.
27. In the circumstances, I find it was reasonably practicable for Mr Singh to present this claim within the relevant time limit and I am not persuaded it was presented within a reasonable period thereafter.
28. Having heard Mr Singh's plea that his claim be allowed to proceed on humanitarian grounds and that he is struggling to come to terms with being out of work having been working for many years, I know this outcome will be disappointing to him. I hope, however, understands the reasons I have taken the decision I have and that he may be able to appreciate that, even if his claim had proceeded, it would have taken some considerable time before it was heard and there would have been no guarantee it would have been successful – all of which brings its own stresses.

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**Employment Judge Connolly**

Signed on 17/12/2020