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EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4111180/2021

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Held by CVP on 8 December 2021

Employment Judge E Mannion

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Mr P Magiera

**Claimant
In Person**

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Scotbeef

**Respondent
Represented by:
Mr Graham Millar, solicitor**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Tribunal is the claimant's case of unfair dismissal was not lodged on time and so is dismissed.

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REASONS

Introduction

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1. This is a claim of unfair dismissal. However, the issue of whether the claimant lodged his claim in time in terms of section 111 of the Employment Rights Act 1996 ("the ERA") was to be determined as a preliminary issue at this hearing.
2. The claimant gave evidence on his own behalf and also called Baboucarr Saho, trade union representative. The respondent did not call any witnesses.

A joint bundle of documents was lodged with the tribunal, and both parties had a copy of this bundle.

Relevant law

3. Section 111 of the ERA states as follows:

- 5 (1) A complaint may be presented to an employment tribunal against an employer by any person that he was unfairly dismissed by the employer.
- (2) Subject to the following provisions of this section, an employment tribunal shall not consider a complaint under this section unless it is
- 10 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
- 15 practicable for the complaint to be presented before the end of that period of three months.

Issues

4. The Tribunal has to determine the following issues:

- 20 4.1 Did the claimant lodge his claim within the three months minus a day of his dismissal taking effect?
- 4.2 If not, was it reasonably practicable for him to lodge his claim within that time?
- 4.3 If not, did he lodge his claim within a further reasonable period?

25 **Findings in fact**

5. The Tribunal makes the following findings in fact:

5.1 The claimant was employed by the respondent as a hygiene supervisor, a role he held for 6 years.

5.2 The claimant was summarily dismissed on 5 March 2021 for gross misconduct. The claimant was represented throughout the disciplinary process by his trade union representative, Baboucarr Saho. On 5 March 2021, Mr Saho spoke to the claimant generally about his employment rights, that he should appeal the decision and that if after the appeal the respondent continues to find the claimant has been dismissed, he can bring a tribunal claim within 3 months. Mr Saho spoke with the claimant a second time in or around a week after the dismissal about the appeal. At this time he discussed the option of bringing a tribunal claim.

5.3 The claimant appealed the decision to dismiss. There was a delay in hearing the appeal and this did not take place until 2 June 2021. At the appeal, the claimant was accompanied by Susan Coutts, trade union official. The appeal was not upheld.

5.4 In June, Ms Coutts spoke to the claimant about raising an unfair dismissal claim and that he was “alright with the dates” for raising this. She advised him that time limits applied to the tribunal process.

5.5 On 1 June 2021, the claimant made an Acas Early Conciliation claim. The Early Conciliation period continued until 13 July 2021. A certificate was issued to the claimant outlining these dates.

5.6 During this period, the claimant was talking to his trade union regularly. The claimant also attempted to speak to a lawyer but was unable to do so. He telephoned his local Citizen’s Advice Bureau seeking advice. His local office in Parkhead was not open due to the Covid-19 pandemic. He attempted to call another Citizen’s Advice Bureau but was unable to speak to anyone about his circumstances.

5.6 The claimant travelled to Poland at the start of August for approximately 3 weeks. He required to do so in order to apply for and collect his Polish passport.

5 5.7 Over the course of the summer in 2021, the claimant was the primary care giver for his infant son.

5.7 The claimant submitted his ET1 for unfair dismissal on 31 August 2021. He completed and submitted this himself.

Observations on the evidence

6. The claimant gave his evidence to the best of his abilities and I considered he gave an honest account of events as he remembered them.

Claimant's submissions

7. The claimant submitted that he didn't know when the time limit came to an end and that he was advised that he had enough time to raise a claim. He submitted that he appealed the decision to dismiss and that the respondent were late in hearing this appeal and no account has been taken of their delay. He knew that the respondent was wrong in dismissing him and because of that, he got help from the union. He submitted that he has lost a lot because of the dismissal.

Respondent's submissions

8. Mr Millar on behalf of the respondent replied that while the claimant has strong feelings on the dismissal, the question is whether the claim was received in time, referring to Section 111 of the ERA. He noted that the chronology is as follows: the claimant was dismissed on 5 March and so the claim must commence within 3 months, taking the claimant to the 4 June. The claimant approached Acas on 1 June and the conciliation period lasted until 13 July. Mr Millar referred to Section 207B(4) of the ERA noting that given the timing, the claim should be lodged within 1 month from the date of the Early Conciliation Certificate. This means the claim should have been lodged on or by the 12 August at the latest. Instead it was lodged on 31 August. He

submitted that Mr Saho made the claimant aware on the day he was dismissed of the time limits and that the claimant was fully aware of the deadlines and time limits at that point. He acknowledged that there was a delay on the part of the respondent in hearing the appeal but the claimant was aware of 5 March that there was a 3 month deadline in order to bring his claim. He submitted that the claimant also received advice from Ms Coutts, who is the area organizer for the trade union and the claimant accepted that he was aware of the time limits and that there was a deadline. He submitted that the claimant cannot claim ignorance of the time limits and that the tribunal should consider the steps the claimant took to understand what Mr Saho and Ms Coutts informed him of the time limits. He attempted to telephone two CABs but neither were able to assist. He did not take advice from Acas and Mr Millar submitted that he did nothing at all. It was noted that he was submitted in the disciplinary and appeal process by his trade union and could have taken further advice from them.

9. Mr Millar referred to the case of ***Marks and Spencer plc v Williams-Ryan 2005 ICR 1293 CA*** and asked what if anything the claimant knew about his rights. He submitted that the claimant knew in March of the time limits and was reminded in June of time limits. He submitted that there are plenty of resources online and he had access to his union also. While sympathetic, Mr Millar submitted that it was reasonably practicable for the claimant to lodge his claim on time.

10. In respect of the question as to whether the claimant submitted his claim in a further reasonable time period, Mr Millar noted that while it was reasonable for the claimant to be out of the country, it was not reasonable to wait a further period before lodging his claim on 31 August.

Decision

Did the claimant lodge his claim within the three months minus a day of his dismissal taking effect?

11. The claim was not lodged within the prescribed time period. The claimant was dismissed on 5 March 2021. The Acas Early Conciliation process began on 5 1 June and this ran until 13 July. The last day for lodging the ET1 was 12 August. The ET1 was lodged on 31 August 2021.

If not, was it reasonably practicable for his to lodge his claim within that time?

12. Turning to the question of whether it was reasonably practicable for the claimant to lodge his claim within the statutory time limit, this is a question of 10 fact. The claimant understood his dismissal to be unfair and wrong. He was supported through the internal disciplinary process by his trade union. The claimant's own evidence was that he was aware he could raise a claim for unfair dismissal. He confirmed in evidence discussions with Ms Coutts in June and Mr Saho in March 2021 around the potential of raising an unfair dismissal 15 claim. There were also discussions about time limits and the dates for raising a claim with Ms Coutts in June 2021. Mr Saho confirmed in evidence that he informed the claimant of a 3 month time limit on the day he was dismissed.

13. In considering whether it was reasonably practicable for the claimant to raise his claim within the time period, I have considered the leading case of 20 ***Trevelyan's (Birmingham) Ltd. V Norton [1991] ICR 488*** where the EAT confirmed that where a claimant is aware of their rights to raise an unfair dismissal claim, they are obliged to seek information or advice about the enforcement of those rights.

14. In this case, the claimant sought advice from his union about his rights and 25 they informed him in June that he was "alright" in respect of the dates to raise a claim and he understood time limits applied. He did not question whether he needed to raise his unfair dismissal claim before a particular date or when the time limits would run out. He attempted to seek advice from two CABs but was unable to do so. He also attempted to seek legal advice. He submitted 30 his Acas Early Conciliation claim and so could have asked Acas for

information around time limits and when they expire. The claimant gave evidence that he was unable to do his own online research on time limits due to his caring responsibilities for his son.

5 15. While I accept the claimant's evidence that it was difficult to obtain advice from a lawyer or a CAB due to the Covid-19 pandemic, the claimant had access to advice and support from his union. He was aware of his right to claim unfair dismissal and should have made further inquiries about when his right to raise an unfair dismissal claim ran out, particularly when there were discussions in June about dates and time limits around bringing an unfair
10 dismissal claim. The claimant's own evidence was that he was in regular discussion with his union and they were well placed to answer these questions for him.

15 16. I am conscious that the claimant's time was taken up with childcare over the period being considered and that for the final few weeks of the statutory period, he was in Poland awaiting the issue of his passport. Be that as it may, the responsibility to lodge the claim on time sits with the claimant. He did not instruct anyone else to lodge this for him. The Acas Early Conciliation Certificate was issued on 13 July, prior to his trip to Poland at the start of August. He had the opportunity to lodge his claim prior to travelling but did
20 not do so.

17. Having considered the evidence of the claimant and the submissions by both parties, and in light of the EAT decision above in Norton, I am satisfied that it was reasonably practicable for the claimant to raise his claim within the statutory time period.

25 18. As it was reasonably practicable for the claimant to lodge his claim within the statutory time period, I do not have to consider whether the claimant lodged his claim within such further period as considered reasonable.

30 19. In conclusion, I consider that the claimant did not raise his claim within the statutory time period, it was reasonably practicable for him to do so. The unfair dismissal claim is dismissed.

Employment Judge: Eleanor Mannion
Date of Judgment: 04 January 2022
Entered in register: 07 January 2022
and copied to parties