



EMPLOYMENT TRIBUNALS

Claimant: Mr A Brown

Respondent: Nodewell Farm Partners

Heard at: Bristol (via video (VHS))

On: 3 January 2023

Before: Employment Judge Cuthbert

Representation:

Claimant: In person

Respondent: Mr P Wareing (Counsel)

JUDGMENT having been sent to the parties on January 2023, following oral judgment and reasons on 3 January 2023, and written reasons having been requested by the claimant and on behalf of the respondent in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the written reasons set out further below are provided:

The judgment had determined that the claimant's claims were out of time and so were dismissed.

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REASONS

Introduction

1. The case came before the Tribunal for a two-day full hearing, listed for 3 and 4 January 2023.
2. The claimant's case, in summary, was that he had worked on a casual basis as a farm labourer for the respondent partnership (a family sheep farm owned by four siblings) for 25 years, during lambing season. He claimed that he was then employed for two days a week, paid £120 a week, from 7 January 2020 until around August 2021 by one member of the partnership, who ran the farm, paid direct from that partner's salary. That partner died in July 2021. Thereafter he claimed that had been employed by the partnership until 21 January 2021, three days a week for £200 a week.

3. Following a restructure, he was told on or around 21 January 2022 that his services would no longer be required and that the following week, ending on 28 January 2022, would be his last week. The claimant did not work after 21 January 2022 as he said he felt too anxious. He was paid up until 21 January 2022, his last day of work, by the respondent.
4. The claimant claimed: unfair dismissal, £8,000 in lost earnings and £250 for loss of statutory rights; £400 for unpaid holiday pay; a basic award/redundancy payment (£600); and unpaid wages/notice pay (£400). He had found new employment in September 2022.
5. The respondent's case was simply that the claimant had never been employed by it and worked on a casual basis only.
6. There was therefore a significant dispute about the claimant's employment status which appeared to lie at the heart of the case. The claimant had to show that he was an employee to be able to bring most of his claims above and in particular to show that he had been continuously employed for at least two years at the time of the alleged dismissal in order to claim unfair dismissal (or a redundancy payment if he had been fairly dismissed for redundancy). The respondent had apparently proceeded to end their arrangement in January 2021 on the basis that it did not regard the claimant as an employee.

Preliminary issues raised

7. At the start of the hearing, several preliminary issues were raised by Mr Wareing, on behalf of the respondent.
8. I explained to the parties that none of these issues had been included in the papers I had seen and read before the hearing, which were contained in an email from the respondent's HR adviser to the Tribunal, dated 23 December 2022: 59-page hearing bundle, list of issues, and two witness statements.
9. There was no documentation at all about the claimant's alleged employment save for a letter dated 24 January 2022 (after the alleged employment came to an end) and a reply from the respondent. There were also some sets of the respondent's accounts, although the relevance of these to employment status was unclear. There were no contemporaneous or other documents about how and when the claimant had worked or had been paid over the relevant period from January 2020 until January 2022. The employment status issue was essentially dependent on the witness evidence.
10. The papers above were relevant only the substantive claims and issues, and I had read-in and prepared accordingly, before the start of the two-day hearing, to decide those issues.
11. The hearing was then paused whilst I was forwarded several documents, about the preliminary issues, mentioned further below. Mr Wareing said that these had been filed with the Tribunal subsequent to the email of 23

December 2022 and he helpfully send on further copies. I read them and then continued with the hearing.

12. Mr Wareing firstly sought to have the claim struck out on the basis that the claimant was not an employee. It was readily apparent that this issue could not be determined without first hearing evidence. The issue of employment status appeared to lie at the heart of the case and was as yet unresolved. There were significant factual determinations needed and disputes of fact which would determine the issue. There was no reasonable prospect of the claim being struck out on this basis, so I declined to hear that application.
13. The other main preliminary issue raised by Mr Wareing was whether the claimant's claims were brought within the applicable time limits (including any possible extension of those time limits) and he sought to strike the claim out on this basis. This was, on checking the various dates mentioned below, a valid preliminary matter to raise and obviously went to the issue of whether I had jurisdiction to hear the claimant's various claims at all.
14. Regrettably, as I explained to the parties, this time limit issue was not picked up after the claims were submitted to the Tribunal on 23 May 2022. Additionally, neither party had been legally advised or represented during the proceedings, as far as I was aware, and it appeared that Mr Wareing only been instructed in late 2022, so not long before for the final hearing.
15. A written strike out application and application for a deposit order had been made, dated 20 December 2022, by the respondent (which appeared to have been drafted by Mr Wareing). This was made on the basis of the employment status issue although it did not mention the time limit issue at that stage.

The positions on time limit issues at the start of the hearing

Respondent's skeleton argument 26 December 2022

16. In a skeleton argument dated 26 December 2022, in support of the earlier strike out application, Mr Wareing did raise the time limit point, as follows (sic):

Jurisdiction – 1

10. It is the Claimants claim that he was unfairly dismissed by the Respondents on 21 January 2022. [8(5.1)]

11. Given then the relevant statutory provision, he had until 20 April to submit his claim within the time allowed.

12. Alternatively, by entering conciliation through Acas he could have 'stopped the clock' on that limitation, and that clock would then have restarted from the date of issue of the certificate, typically adding a further month to the limitation date

13. *Contrary to that provision though, the Claimant actually entered conciliation on what appears to be 24 April 2022, that being the date on the certificate that Acas state they both received notice of the potential claim through the early conciliation process and issued the certificate. [5]*

14. *By that point in time, that date being beyond 3 months from the Claimants own asserted date of termination; he was already out of time to bring his claim and therefore it is strongly submitted the Tribunal lacks the jurisdiction to hear his claim at all.*

Jurisdiction – 2

15. *The date stamp on the face of the ET1 claim form is indistinct and blurred on the copy in the bundle [6] but appears to show a date of receipt of 25 May 2022.*

16. *Credence and support for that date is to be gleaned from the date on the face on the Notice of Claim [1] which alerted the Respondents to the existence of the claim against them and advised that a response is required within 28 days, that date being specified as 22 June and which, working backwards 28 days from that date; gives a date of 25 May 2022.*

17. *That date is more than 5 months from the EDT state stated in the claim of 21 January; so the Claimant is out of time for bringing his claim and the Tribunal simply do not have the jurisdiction to hear it.*

18. *Additionally, and crucially, even if it is to be accepted that the Claimant did start conciliation within time, the clock would have started running again on 24 April and that would hypothetically lead to a revised limitation date of 24 May so, again, even in those circumstances, the Claimant has submitted the claim and of time and, consequently, the Tribunal therefore lacks the jurisdiction to hear the claim at all.*

17. Mr Wareing had also, in his skeleton argument of 26 December, raised three further points under similar “jurisdiction” headings which related the employment status issue which were irrelevant for the purposes of these reasons, as I did not decide the employment status issue. As such, the time limit issue was raised for the first time on 26 December 2022.

Establishing the actual dates of Acas EC and ET1 presentation

18. Mr Wareing’s submissions above on the time issue suggested that the Acas notification was made on 24 April 2022, which he argued was out of time based on a potential EDT of 21 January 2022, although it would not be out of time if the EDT were 28 January 2022. An argument on that basis would have first required evidence and findings of fact on both

employment status and on dates of employment and would have been inapt for deciding on a preliminary basis.

19. He also argued that the claim appeared to have been submitted on 25 May 2022 and that was more than one month after the date he said appeared on the Acas EC certificate, which he believed to have been issued on 24 April 2022.
20. The copies of (i) the Acas EC certificate and (ii) the ET1 in the bundle which was before me for the substantive hearing were poorly copied. All that I could discern on the copy of the former was that it had been submitted and issued in April 2022 on a two-digit date. Likewise the date stamp on the ET1 (applied by the central office after it had been received in the post) was unfortunately unclear and indicated “2[x] May 2022” with the second digit being indistinct.
21. I therefore paused the hearing and made enquiries via Tribunal staff as to what the actual EC certificate said and what date the claim was received by the ET. I also asked the claimant to provide details of his proof of posting as to when the letter enclosing the claim was shown as delivered.
22. I was sent a clear copy of the EC certificate and a copy of the ET1 (the date was still indistinct but recorded as received on 23 May 2022, and the claimant’s record of posting/receipt was displayed on the hearing screen by the clerk. This all indicated that:
 - a. Acas EC started on 20 April and ended on 22 April 2022
 - b. The claim was posted on Friday 20 May and received by the ET office on Monday 23 May 2022

The claimant’s response on the time limit issue

23. The claimant was evidently able to consider his position in response to Mr Wareing’s submissions before the start of the hearing on 3 January 2023 and he had prepared a four-page written response, dated 2 January 2023. In respect of the time limit issue, he said as follows:
 - 1) *The ACAS form states they received notification on 20 April 2022.*
 - 2) *I was confused by the ACAS information as to what the certificate entitled me to in relation to time periods, which is why I thought it meant I had another month to apply to the Employment Tribunal. I do suffer with a mental health disability (page 51, third paragraph from bottom), and losing my job had had a substantial impact upon this, which did affect my ability to process information when stressed.. I would also point out I do not have regular access to the internet, and when I do I am limited by time, so I am often in a position where I have to hurry what information I digest.*

3) *I have a mental health disability as a result of an anankastic personality disorder, and obsessive compulsive disorder, both of which are anxiety based disorders, and which I take Citalopram medication at maximum dose for (pages 53/54).*

...

27) *I was next in on Friday 21/1/2022, and I was informed by Terry that next week was going to be my last week working.*

28) *I did not go back to work on Monday 24/1/2022, because I was suffering with chronic anxiety, which is a facet of my mental health disability. In my letter (page 28), I state that, 'Terry Morgan informed me on Friday (21/1/2022) that my employment at Nodewell Farm will cease...' In Daniel's reply (page 29), he does not deny that I was employed. Instead in paragraph 3 Daniel states that, '...there is consequently no contract work available due to the farm closing'.*

Was the claim submitted within the expiry of the primary time limit (including any extension relating to Acas Early Conciliation)?

24. Section 111 of the Employment Rights Act 1996 sets out the relevant time limit for presenting an unfair dismissal claim:

Complaints to employment tribunal.

(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 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.

....

25. Equivalent time limit provisions applied to the claimant's other claims.

26. Section 207B of ERA 1996 deals with extensions of time which apply when a claimant, as here, must go through the Acas Early Conciliation process before submitting their claim. Subsection 207B(4) ERA 1996 states: *"If a time limit would (if not extended by this subsection) expire during the period beginning with Day A and ending one month after Day B,*

the time limit expires instead at the end of that period." In short, what this meant in the present case, submitted close as it was (see below) to the original three-month deadline, time is extended by an extra month starting with the date of issue of the Acas EC certificate.

27. The claimant last worked for the respondent on Friday 21 January 2022 and was paid until that date. He was told that his services would no longer be required from the end of Friday 28 January 2022 but he did not work for the following week as he was unwell and was not paid. It was possible that, if he were found to be an employee, the “**effective date of termination**” for the purposes of calculating the time limit, was **either 21 or 28 January 2023**.
28. The position was that:
 - a. The claimant submitted his details to Acas for the purposes of Early Conciliation on **20 April 2022 (Day A)**.
 - b. That date was within three months of both the 21 and 28 January 2022 dates, and Early Conciliation was commenced within the time.
 - c. He was issued with an Early Conciliation certificate on **22 April (Day B)**.
29. So, whether the original three-month deadline was treated as 20 April 2022 or 27 April 2022 (i.e within three months of either 21 or 28 January 2022), in **either** case, pursuant to subsection 207B(4), the extended time limit for presenting the claim expired on **Sunday 22 May 2022**, one month after the date of issue of the Acas EC certificate.
30. The ET1 was received by the Tribunal, by post, on **Monday 23 May 2023**, one day out of time, subject to any extension of time.
31. It was therefore appropriate to decide the time limit issue on a preliminary basis to determine whether or not there was any jurisdiction to hear the claim.

Procedure at the hearing

32. I carefully explained to the claimant the time limit issue to be decided and why this needed to be decided at this initial stage, before I could hear his substantive complaints.
33. I went on to explain that if his claims were submitted out of time (as appeared to be the case) and no extension of time was granted, I would be bound to then dismiss them as I would have no jurisdiction to hear them.
34. I explained to him about the two-stage test which I would need to consider (set out in more detail below).
35. I explained that I intended to hear oral evidence from him about why he submitted his claim when he did and not any sooner, including the reason

why it was late (as appeared to be the case). I would then receive oral submissions from both sides and then decide the issue.

36. The claimant confirmed that he understood the position and the way forwards which was proposed and did not object to this course.

Medical evidence

37. I explained that, as part of my reading-in before the start of the hearing, I had considered a medical report in the bundle from a previous employer dated 30 January 2017 about the claimant's mental health issues and how they affected him. This was referenced in the claimant's witness statement for the substantive hearing. This stated as follows (insofar as relevant):

...Mr Brown has been referred due to being absent from work in relation to his depression.

Adrian has been 'absent from work since September 2016 secondary to symptoms consistent with a depressive disorder. He has a long history of recurrent depressive symptoms dating back many years although, In the main, has remained relatively well and able to function normally despite underlying psychological symptoms, There does not appear to have been a specific trigger for his more recent relapse, He had been aware of deteriorating symptoms of depression over the past 12 months, relating in him feeling overwhelmed and "breaking down" In September last year.

Since the onset of his relapse, he has been under the care of his SP who has prescribed antidepressant medication, increasing this In December.

Adrian's symptoms have improved but as of yet have not fully resolved. He is, however, In a position where by a return to work would likely be appropriate and indeed, to a degree, therapeutic. Away from work he is relatively isolated and the purpose and community of work would likely be a positive factor in his recovery.

As a facet of his recurrent depressive disorder, and/or linked to his personality, Adrian has suffered long-term problems with low confidence and self-esteem.

The primary Impact of Adrian's condition on his capacity for work is via reduced stamina and resilience and is via impaired confidence and low self-esteem. There are no specific aspects of his normal role which he would not be capable of performing as long as he has appropriate support and encouragement and a clear understanding of the expectations upon him. Adrian is fit to return to full-time work.

...

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and encouragement and a clear understanding of the expectations upon him, Adrian is fit to return to full-time work.

Adrian's condition is relatively long standing. He suffers from chronic issues of low confidence and self-esteem and remains vulnerable to further relapses of depression in the future. Working in a fulfilling and supporting working environment will help reduce the likelihood of him suffering further recurrences. Remaining at work with the structure, purpose and social contact associated with work should be positive factor in maintaining his well-being.

It is very likely that his condition would be considered a disability in the context of UK disability legislation.

...

[Q] Could you also advise what, if any, affect this condition has on his day-to-day life outside work? [A] Discussed above, essentially his condition is associated with loss of energy, loss of enjoyment, social withdrawal and reduced motivation.

38. There was also evidence that the claimant had been prescribed a 28-day course of Citalopram (anti-depressant) tablets by his GP on 6 January 2022 and again on 21 July 2022.
39. I heard oral evidence from the claimant, he was cross-examined by Mr Wareing and I also considered a proof of postage submission in respect of the claimant's ET1.

Findings of fact

40. My findings on the relevant issues to the time limit issue were as follows.
41. The claimant's evidence was that he had been stressed by his dismissal. He suffers with anxiety (for which he takes prescribed medication) and he indicated that he has a diagnosis of an Anankastic personality disorder/OCD. He was asked in cross examination if his health conditions made him "*incapable*" of doing things. He said this was not the case but rather they had made it "*difficult*" for him to do things for a long time.
42. He said he had submitted his claim out of desperation. He had been to the Tribunal ET before, a case against his previous employer, and he had found it stressful.
43. He did not obtain any specific medical treatment between the period of 22 April 2022 and 22 May 2022, (when he had received the Acas certificate and so needed to have presented his claim within that one-month period). He said that he had sought support from his GP but had been unable to make an appointment as he did not have a mobile phone.
44. I asked him what his understanding of the time limit was (after he received the Acas certificate back on 22 April. He said he was "*not 100% certain*". He said that Acas had told him that he had "*four weeks*" but he was "*not*

sure". He went on to say he believed that he had until 28 May 2022 to submit his claim, and he explained that this belief was on the basis that his last date of work was due to have been 28 January 2022 and he thought he had one month from that date.

45. His ET1 form, which he had completed, gave his last date of employment as being 21 January 2022, although other documents referred him being told he would no longer be required by the respondent after 28 January 2022. As indicated above, in either case the correct deadline was still 22 May 2022.
46. I asked him what attempts he had made to check the relevant time limit. He said he had looked online and that it seemed "quite ambiguous".
47. The claimant also explained that he had pursued and succeeded in his previous Tribunal claim and this had included a reconsideration application.
48. He said that he did not have access to the internet to be able to submit the ET claim online and so submitted it post, on Friday 20 May, with Royal Mail "next day delivery" although it transpired that this service evidently provided for next **working day** delivery. The ET1 was therefore delivered to the Tribunal on the next working day, Monday 23 May 2022, one day out of time. The claimant said that he had asked at the Post Office when he posted the ET1 on Friday 20 May if it would be delivered the next day and he said he was told that it would be.
49. Finally, he said that if he had known that the correct deadline was 22 May 2022 and had not thought that it was 28 May, he would have posted the form sooner than he in fact did. He restated in cross-examination that he thought that he had posted the form within the relevant time frame.

The relevant law (extensions of time)

50. Section 111 Employment Rights Act 1996 sets out the relevant time limit for presenting an unfair dismissal claim (the claimant's main claim and the same time limit applied to the claimant's various other claims):

Complaints to employment tribunal.

(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 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.

....

51. The question of whether or not it was reasonably practicable for the claimant to have presented his claim in time is to be considered having regard to the following authorities.
52. In *Wall's Meat Co v Khan* [1978] IRLR 499, Lord Denning, (quoting himself in *Dedman v British Building and Engineering Appliances* [1974] 1 All ER 520) stated '*it is simply to ask this question: has the man just cause or excuse for not presenting his complaint within the prescribed time?*'
53. The burden or onus of proving that presentation in time was not reasonably practicable rests on the claimant. '*That imposes a duty upon him to show precisely why it was that he did not present his complaint*' — *Porter v Bandridge Ltd* [1978] ICR 943, CA. In addition, the tribunal must have regard to the entire period of the time limit (*Wolverhampton University v Elbeltagi* [2007] All E R (D) 303 EAT).
54. In *Palmer and anor v Southend-on-Sea Borough Council* [1984] ICR 372, CA, the Court of Appeal held that '*reasonably practicable*' did not mean reasonable, which would be too favourable to employees, and did not mean physically possible, which would be too favourable to employers, but meant something like '*reasonably feasible*'.
55. The following factors were identified in *Palmer* as being relevant: (1) the substantial cause of the claimant's failure to comply with the time limit; (2) whether there was any physical impediment preventing compliance, such as illness, or a postal strike; (3) whether, and if so when, the claimant knew of his rights; (4) whether the employer had misrepresented any relevant matter to the employee; and (5) 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.
56. Lady Smith in *Asda Stores Ltd v Kauser* EAT 0165/07 held that '*the relevant test is not simply a matter of looking at what was possible but to ask whether, on the facts of the case as found, it was reasonable to expect that which was possible to have been done*'.
57. In terms of ignorance as to rights, in *Dedman*, Lord Scarman said '*What were his opportunities for finding out that he had rights? Did he take them? If not, why not? Was he misled or deceived?*' In *Porter v Bandridge Ltd* 1978 ICR 943, CA, the Court of Appeal, having referred to Lord Scarman's comments in *Dedman*, ruled that the correct test is not whether the claimant knew of his or her rights but whether he or she ought to have known of them.
58. A Tribunal will therefore need to be satisfied that the claimant's ignorance of the relevant time limit was reasonable, if that is the reason why the claim is late. If this is found to be the case, it follows that it will not have been reasonably practicable for the claimant to have complied with it and the contrary also applies. So, in *Reed In Partnership Ltd v Fraine* UKEAT/0520/10, the claimant presented his unfair dismissal claim one

day late (as in the present claim), wrongly believing in that case that the three-month time period ran from the day after his dismissal rather than the day of his dismissal. The Tribunal allowed the claim to proceed. However, the EAT overturned the decision, finding that the claimant's ignorance was not reasonable: he knew about his right to bring a claim and of the existence of a three-month time limit, he had not been misled and had made no enquiries to solicitors, CABs or the Tribunal. He had "*simply proceeded on a false assumption for which he had no basis*".

59. Debilitating health issues may make it not reasonably practicable for a claimant to submit a claim within time. Medical evidence would normally be expected in such cases although it is also not absolutely essential. It is a question of fact which will depend upon all of the circumstances of the case.
60. In *Kauser* (above) the EAT overturned an employment tribunal decision that it was not reasonably practicable for a claimant to have presented her claim in time. Whilst the tribunal had found that the claimant was '*very stressed*' and '*in some turmoil*', something more than mere stress was needed to elide the statutory time limit.
61. Only if a claimant satisfies a tribunal that presentation in time was not reasonably practicable, must the tribunal then go on to decide whether the claim was presented '*within such further period as the tribunal considers reasonable*'.

The issues

62. The issues to be decided, on the preliminary issue, were as follows.
 - a. Was it reasonably practicable for the claimant to have submitted his claim by 22 May 2022? If it was, his claim is out of time.
 - b. If it was not the next question arises. Was the claim, lodged on 23 May 2022, submitted within a reasonable period afterwards?
63. I explained these to the claimant and that the burden of proving these matters was his to discharge.

Discussion and decision

64. After hearing the evidence, I heard oral closing submissions from the respondent's representative and from the claimant which summarised the evidence heard and sought to argue that it was/was not reasonably practicable for the claim to have been presented on or before 22 May 2022.
65. The key issue for me to decide was whether the claimant had established that it was not reasonably practicable for him to have presented his claim on or before 22 May 2022. Only if I found that it was not reasonably practicable for him to have done so, would I then need to consider the reasonableness of the subsequent delay, however short that was.

66. The claimant was aware of the original three-month time limit and made his notification to Acas on time, albeit very close to expiry of the time limit. The delay and the claimant's error in this case was in respect of the extension of time granted by the Acas EC process, i.e. the one-month period after 22 April 2022.

67. I considered the factors set out in *Palmer*, above, as follows:

a. the substantial cause of the claimant's failure to comply with the time limit

I found the substantial cause to be that the claimant was mistaken as to the length of time which he had in which to submit his claim after receipt of the Acas certificate. He said that he looked online to try and find out what that period was but that he found the information ambiguous. He made reference to a period of four weeks having been mentioned to him by Acas, but whilst this in itself was not correct (it was shorter than the actual period of one month) he did not meet that four-week period in any event.

The claimant decided, mistakenly, that he had until 28 May 2022 to submit his claim but he did not indicate that he carried out any further checks or research or sought any advice. He had been through the Tribunal process before, including submitting a claim previously and applying for a reconsideration (which in itself would have involved a time limit).

He did submit the ET1 form using "next day" delivery but it appears that, as this was done on a Friday, the form was not delivered until the Monday. The claimant said that he was told that the form would be delivered on the next day but in any event in his own mind he believed incorrectly at that time that the deadline was Friday 28 May. So, whether the ET1 was delivered on Saturday or the Monday would not have been a significant concern, as even a delivery on the Monday would have been in time, under his mistaken view.

b. whether there was any physical impediment preventing compliance, such as illness, or a postal strike

I have no doubt that the claimant was stressed over the period in question and that he was negatively affected by the ending of his work for the respondent but this in any event was not the reason why he missed the deadline. The reason was, however, his mistaken belief above, and there was no indication or suggestion that his underlying health issues had caused or contributed to that mistaken belief. There was nothing in the medical evidence to suggest that this may have been the case.

He said that if he had known that the time limit was 22 May, he would have submitted the claim sooner and that was telling and significant. The underlying reason was ignorance and not any impediment.

The seemingly incorrect information given to him at the Post Office about "next day" delivery including delivery on Saturdays was not

directly causative of the lateness, because the claimant believed at the time that he had to submit his claim by Saturday 28 May. As such, even if he had been told that it would be received on Monday 23 May, this would, on his mistaken view of the deadline at the time, still have been fine.

In short, if the claimant had taken reasonable steps to find out the actual deadline and become aware that it was 22 May, there was no evidence to indicate that he could not have complied with it due to either health or postal issues or any other impediment.

c. whether, and if so when, the claimant knew of his rights

The claimant was only made aware at the hearing on 3 January 2023 (regrettably as it ought to have been picked up sooner) that his claim had been submitted late.

d. whether the employer had misrepresented any relevant matter to the employee

This was not the case here.

e. 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.

The claimant did not seek any advice as such on his position, other than via Acas whom he said told him that he had “four weeks” (which would have been in time even though it was wrong) and there was no-one else at fault here who was responsible for the lateness other than the claimant himself.

68. Ultimately, I found that the reason why the claim was submitted late, albeit only by one day, was the claimant’s mistaken belief that he had an additional week in which to submit the claim, until 28 May 2022. In the circumstances, I did **not** find that belief to be a reasonable one, in view of the limited attempts made to clarify the position and the claimant’s previous experience of the tribunal process, in which he had submitted both a time-limited claim and application for reconsideration. There was no evidence that the claimant’s underlying health issues had any material impact on his position.
69. The burden here was on the claimant and whilst the lateness was only one day, I found that the claimant had **failed** to establish that it was not reasonably practicable for him to have submitted his claims on or before 22 May 2022. It **was** reasonably practicable for him to have done so
70. Consequently, the claimant’s claims were out of time and so were dismissed.

Employment Judge Cuthbert
Date: 12 February 2023

Judgment sent to the Parties: 24 February 2023

FOR THE TRIBUNAL OFFICE