



# EMPLOYMENT TRIBUNALS

**Claimant:** S A Wiafe

**Respondent:** Acorn Care Home

**Heard at:** London South Employment Tribunal by video

On: 18 September 2023

**Before:** Employment Judge Burge

## Appearances

For the Claimant: Mr Solomon Tampuri (non-practising barrister)

For the Respondent: Mr D Bheemah (Counsel)

## OPEN PRELIMINARY HEARING RESERVED JUDGMENT

It is the Judgment of the Tribunal that:

1. The Tribunal does not have jurisdiction to hear the Claimant's claims of unfair dismissal, wrongful dismissal and unauthorised deductions from wages as they were brought outside of the applicable time limits and it was reasonably practicable for the Claimant to have brought them in time.

## REASONS

### Introduction

1. This was a Preliminary Hearing to determine whether the Claimant's complaints of unfair dismissal, wrongful dismissal and unauthorised deductions from wages were brought outside of the time limits, whether it was reasonably practicable for her to have brought them in time and if not whether she brought them within a reasonable time after that.

## **Evidence**

2. The Claimant provided a written witness statement and also gave oral evidence to the Tribunal. The Claimant was undergoing chemotherapy but did not want to make an application to postpone this hearing. She understood that she could request a break at any time and to say if she was feeling unwell. At the start of the hearing, the Claimant's representative raised that the Claimant may need an interpreter, although he had not requested one. He stated that he may need to make an application for an adjournment if the Claimant was struggling to understand, but he did not do so. I re-phrased any questions that Mr Tampuri thought may need further explanation, and he took the opportunity to re-examine the Claimant to clarify some of the answers she had given. I was satisfied that the Claimant had understood and been able to fully participate.
3. The hearing lasted 2 ½ hours, there was a 20 minute break and a 10 minute break. I reserved my decision.
4. I was provided with a bundle of documents running to 40 pages, the Claimant's witness statement and supporting documents, three additional medical records.
5. Mr Bheemah provided me with written submissions and authorities. Both Mr Bheemah and Mr Tampuri provided oral closing submissions.

## **Findings of fact**

6. The Claimant was employed as a support worker from 15 April 2019 to 13 October 2022 when she was dismissed for gross misconduct. The Respondent paid the Claimant all monies they thought they owed to the Claimant upon termination.
7. I accept the Claimant's evidence that she only became aware of the employment tribunal and the process of bringing a claim in November 2022 when she obtained advice from Mr Tampuri of Tamsons Legal Services about an immigration matter and at that point he also started to advise her about her employment situation. The Claimant was paying Mr Tampuri of Tamsons Legal service for professional legal advice.
8. On 24 November 2022 Tamsons Legal Services lodged an internal appeal on behalf of the Claimant. The appeal hearing took place on 14 December 2022. On 15 December 2022 the Respondent wrote to the Claimant and upheld their decision to dismiss her.
9. I accept the evidence the Claimant gave in her witness statement that she was unwell from 9 October 2022 until November 2022. In oral evidence the Claimant also said that she was unwell between November 2022 and February 2023 as she had high blood pressure caused by being dismissed and that she had twice weekly monitoring which necessitated her traveling an hour or so by bus or train to have her blood pressure checked. Given that she was able to travel on public transport to appointments, I do not accept that having high blood pressure meant that she was unable to perform tasks such as contacting her own legal advisor or undertaking her own research. The Claimant gave evidence, that is accepted, that she was advised

to “conclude the internal appeal process, before escalating the matter to the Tribunal”. The Claimant further gave evidence, that is accepted, that she was not told about time limits, did not ask about them and that if she had asked about them or obtained advice from ACAS, the CAB or any other bodies she would have put her claim in on time. The Claimant had access to the internet.

10. The Claimant contacted ACAS on 31 January 2023 and a certificate was issued on 2 February 2023.
11. In early February 2023 Mr Tampuri lodged a claim at the Employment Tribunal on the Claimant’s behalf. However, it was rejected as he had not used the prescribed methods of lodging the claim. This was notified to the Claimant on 10 February 2023.
12. The Claimant, via her representative Mr Tampuri, brought the current claim on 13 February 2023 and this was accepted. She complained of unfair dismissal, wrongful dismissal and unauthorised deduction for failure to pay accrued but untaken annual leave.

## **Relevant law**

### *Time limits for unfair dismissal*

13. The relevant parts of S.111 Employment Rights Act 1996 (“ERA”) provide:

*“(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.”*

14. Claims for wrongful dismissal may be determined by an employment tribunal by virtue of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 (SI 1994/1623). Article 7(a) provides that a claim must be presented “within the period of three months beginning with the effective date of termination of the contract giving rise to the claim”.
15. The right not to suffer an unauthorised deduction from wages is contained in S.13 ERA. By S.23(1)(a), a worker may complain to a Tribunal that her employer has made a deduction contravening S.13. By S.23(2), such a complaint must be presented “before the end of the period of three months beginning with – (a) in the case of a complaint relating to a deduction by the employer, the date of payment of the wages from which the deduction was made”.

16. The primary limitation period has been amended by the ERA, section 207A. The effect of section 207A ensures that the period between the date when the prospective claimant contacts ACAS and the date when the prospective claimant receives or is treated as receiving the ACAS Early Conciliation Certificate and does not count towards the three-month primary limitation period.
17. Mr Bheemah referred me to the case of *Dedman v British Building & Engineering Appliances*, [1974] I.C.R. 53 (1973):

*It is difficult to find a set of words in which to express the liberal interpretation which the English court has given to the escape clause. The principal thing is to emphasise, as the statute does, "the circumstances." What is practicable "in the circumstances"? If in the circumstances the man knew or was put on inquiry as to his rights, and as to the time limit, then it was "practicable" for him to have presented his complaint within the four weeks, and he ought to have done so. But if he did not know, and there was nothing to put him on inquiry, then it was "not practicable" and he should be excused.*

*But what is the position if he goes to skilled advisers and they make a mistake? The English court has taken the view that the man must abide by their mistake. There was a case where a man was dismissed and went to his trade association for advice. They acted on his behalf. They calculated the four weeks wrongly and posted the complaint two or three days late. It was held that it was "practicable" for it to have been posted in time. He was not entitled to the benefit of the escape clause: see *Hammond v. Haigh Castle & Co. Ltd.* [1973] I.C.R. 148. I think that was right. 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 by without presenting the complaint. If he was not at fault, nor his advisers — so that he had just cause or excuse for not presenting his complaint within the four weeks — then it was "not practicable" for him to present it within that time. The court has then a discretion to allow it to be presented out of time, if it thinks it right to do so. But, if he was at fault, or if his advisers were at fault, in allowing the four weeks to slip by, he must take the consequences. By exercising reasonable diligence, the complaint could and should have been presented in time.*

...

*As it turns out, however, Mr. Dedman did go to lawyers. They interpreted the letter quite rightly, as terminating his employment on May 5, 1972, but they themselves made a mistake about the time limit. They did not advise him about the four weeks, nor did they appreciate it themselves. So the time went by without the complaint being presented. It was "practicable" for it to be presented within the four weeks. It was solely the lawyers' fault that it was not. I think it was out of time. His remedy is against his lawyers".*

18. Mr Bheemah also referred me to the case of *Trevelyan (Birmingham) v Norton*, [1991] I.C.R. 488 (1990):

*“where an applicant has knowledge of his rights to claim unfair dismissal before an industrial tribunal, then there is an obligation upon him to seek information or advice about the enforcement of those rights.”*

19. In *Bodha v Hampshire Area Health Authority* 1982 ICR 200 the existence of an internal appeal alone was likely to be insufficient to justify a finding that it was not reasonably practicable to present a complaint to a tribunal within the time limit.

20. In *Cygnets Behavioural Health Ltd v Britton* [2022] EAT 108 the Employment Appeal Tribunal decided that, against findings that the claimant was able to do a great many other things during the period after his dismissal, it was perverse for the Employment Tribunal to find that the claimant's mental health problems and dyslexia and his focus on the professional body investigation meant that it was not reasonably practicable for him to make himself aware of the time limits:

*“A person is who is considering bringing a claim for unfair dismissal is expected to appraise themselves of the time limits that apply; it is their responsibility to do so”* (paragraph 53).

## Conclusions

21. Time starts to run for all three complaints on the termination date, 13 October 2022. The Claimant then had 3 months until 12 January 2023 (plus ACAS Early certification period if she had done so) to bring her claim. However, the Claimant contacted ACAS after the three month limitation period had expired, on 31 January 2023 and a certificate was issued on 2 February 2023. Mr Tampuri submitted an initial claim during the first week of February 2023 on the Claimant's behalf that got rejected for failure to submit the claim using one of the prescribed methods. Thereafter the claim was successfully submitted on 13 February 2023, just over a month after the deadline of 12 January 2023.

22. The Claimant's medical evidence does not support her assertion that she was unwell between November 2022 and February 2023. She had been unwell prior to November 2022 and then was unwell again from June 2023 but between November 2022 and February 2023 she had to attend twice weekly blood pressure checks by travelling approximately an hour on public transport, which she was able to do. She had access to the internet and access to her lawyer. She had been told about Employment Tribunals. She could have made enquiries. The Claimant also had access to the internet and gave evidence that had she conducted her own research she would have submitted the claim on time.

23. The Claimant paid for legal advice from Mr Tampuri, was told about Employment Tribunals and that she had to exhaust the internal procedures before submitting the claim. She was not told about time limits. Mr Tampuri agreed that the Claimant had been given advice that she had to exhaust her internal appeal before bringing her claim. Mr Tampuri submitted that it was the Claimant's case that she was unwell

during that period and that *“it is also her responsibility to notify her legal representative, there was no contact, she wasn’t aware of time limits, if she was she would have contacted them to make sure her appeal was lodged in time.”* Mr Tampuri further submitted *“As the legal representative, I would concede there is some level of negligence on our part but that should not prejudice the Claimant.”*

24. Mr Bheemah submitted that on his Linked-In profile Mr Tampuri describes himself as a barrister, although to the Tribunal he describes himself as a non-practising barrister. This Judgment will be referred to HMCTS to consider whether to refer Mr Tampuri to the Bar Standards Board.

25. I have sympathy with the Claimant. She was paying for professional legal advice. Mr Tampuri advised her, submitted her internal appeal for her, and submitted her claim for her. Yet he did not enter her claim in time. By his own concession there was *“some level of negligence”*. As in the case of *Dedman*, where the remedy lies against the lawyers, it was therefore *“reasonably practicable”* that the claim was entered in time and so time is not extended.

26. A copy of this Judgment will also be sent directly to the Claimant.

EJ Burge

26 September 2023

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