



EMPLOYMENT TRIBUNALS (SCOTLAND)

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**Case No: 4105053/2022 Preliminary Hearing by Cloud Video Platform at
Edinburgh on 9 January 2023**

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Employment Judge: M A Macleod

Kenneth Beacom

**Claimant
Represented by
Mr G McCann
Lay Representative**

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Renfrew Golf Club

**Respondent
Represented by
Mr T Muirhead
Consultant**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

**The Judgment of the Employment Tribunal is that the claimant's claim is
dismissed for want of jurisdiction, on the basis that it is time-barred.**

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REASONS

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1. The claimant presented a claim to the Employment Tribunal on 9 September 2022 in which he complained that he had been unfairly dismissed by the respondent.
2. The respondent submitted an ET3 response in which they resisted all claims made by the claimant.

3. One of the issues raised in the ET3 was whether the Tribunal had jurisdiction to hear the claim, on the basis that it had been presented out of time.
4. A Preliminary Hearing was listed to take place by CVP on 9 January 2023. The claimant appeared and was represented by Mr McCann, a lay representative and retired Citizens' Advice Bureau adviser. The respondent was represented by Mr Muirhead, Employment Law Consultant.
5. The claimant gave evidence on his own account.
6. A joint bundle of documents was presented to the Tribunal and relied upon by parties in the course of the Hearing.
7. Based on the evidence led and the information provided, the Tribunal was able to find the following facts admitted or proved.

Findings in Fact

8. The claimant, whose date of birth is 11 June 1977, started working for the respondent on 1 February 2015, initially part-time, and took over as Bar Manager in 2017.
9. The claimant's employment was terminated on 26 April 2022 following a disciplinary hearing which took place on that date, on the grounds of gross misconduct/gross breach of trust. The claimant was advised on that date that that would be the final date upon which he was employed. The respondent provided the claimant with a letter of dismissal dated 26 April (74) in which it was confirmed that he had been summarily dismissed, "ie without notice or notice pay" from that date.
10. The claimant said in evidence that he knew very little about taking a claim to an Employment Tribunal, though he knew that "unfair dismissal was a thing". He was given the right to appeal against dismissal in the letter, and decided that he would do so. He did not take the dismissal "as 100%" until after the appeal had been finished. Once he was advised that the appeal had been refused, he knew that he had been dismissed.

11. The appeal hearing took place on 10 May 2022. Notes of the hearing were produced (76). At the conclusion of the appeal hearing, the claimant's father, also Kenneth Beacom, a past captain of the respondent's club, is recorded as having said "Do not want to bring this club into disrepute but if it means going to a tribunal I will."
12. The claimant's evidence was that he was informed by letter dated 18 May 2022 that his appeal had been rejected, though no copy of that letter was produced to the Tribunal.
13. The claimant contacted ACAS on 17 June 2022, and the Early Conciliation Certificate was issued to the claimant by email on 20 June 2022 (81). The email attaching the Certificate (79) stated, in bold and enlarged lettering: "It is your responsibility to ensure that any tribunal claim is submitted on time."
14. The claimant forwarded a copy of the Certificate to his representative, Mr McCann, on 7 September 2022 (79), in which he said:
- "Hi Gerry this is the certificate I received from ACAS when I first advised I wanted to take club to industrial tribunal, after speaking to Nada from Cab she said as I hadn't asked for reconciliation it wouldn't stop the clock with proceedings going forward so when she took over case she advised ACAS again..."*
15. A second Early Conciliation Certificate was issued by ACAS to the claimant on 24 August 2022, the claimant's CAB representative from the Paisley office having notified them of his intention to make the claim on 28 July 2022 (82). He spoke to an ACAS officer named Brian. He forwarded this to Mr McCann on 7 September 2022 (82), and said that *"This was sent by Brian after advising by voicemail that he believes I was time barred although I wasn't aware this has been sent at the time I didn't come across it till after and also didn't know Brian had left a voicemail as my mum forgot to tell me"*. That second Certificate appears at 84 in the bundle.
16. The claimant said that his father had been trying to encourage him to act upon this issue, and when he received the ACAS certificate he said that

having told ACAS that he did not wish to conciliate with the respondent, he expected that “it would be dealt with”. He said he did not know what would happen after that. He felt better about the matter as he was able to tell his father that he had taken action. He himself was trying to act as if everything was fine.

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17. The claimant presented his claim to the Employment Tribunal on 9 September 2022 (1).

18. In the period between dismissal and the presentation of his claim, the claimant’s mental health suffered. He locked himself away in his room (he lives with his mother), and felt that he was suffering from severe depression. He said that “I dropped into a very bad place” after losing a job which he had enjoyed and appreciated. The claimant has suffered from depression over a number of years, though his condition worsened after his dismissal.

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19. The claimant did not attend his GP at that time about his mental health, nor did he do so prior to presenting his claim to the Tribunal.

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20. He accepted that the CAB in Paisley had made a number of attempts to contact him, but that he would not deal with their calls as he felt he could not face up to the issue. He also said that he was able to deal with them from time to time, when he was able to have “a better day”.

21. The claimant has also raised proceedings in respect of personal injury against his former employers, using the services of Messrs Digby Brown, solicitors, following an incident in which he tripped on a pothole on a path on the golf course and sustained injuries to his right ankle and left elbow. In the course of that litigation, the claimant was seen by a Consultant Clinical Psychologist, Dr Fraser Morrison, on 22 June 2022. Dr Morrison produced a report on 21 July 2022 (85ff).

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22. In his report, Dr Morrison set out his summary of findings, in which he noted that the claimant had a history of depression and anxiety, and that the accident had led to an exacerbation of symptoms of Major Depressive Disorder with Anxious Distress. He reported that the claimant advised him

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that he had engaged in increased alcohol misuse due to being largely inactive following the accident, which occurred in July 2020, and that he had suffered a range of symptoms of depressed mood, including depressed mood most of the day, markedly diminished interest or pleasure in almost all activities, insomnia and sleep disturbance, psychomotor agitation, fatigue, feelings of worthlessness and diminished ability to concentrate. He also noted that on the claimant's medical records it appeared that his mental health had been well managed since 2015.

23. He concluded, on conducting tests on the Hospital Anxiety and Depression Scale, that his depression score was 10/21, in a scale on which 8-10 indicated mild to moderate symptoms. His anxiety score was 11.

24. Dr Morrison considered that "any primary psychological symptoms with reference to an exacerbation of pre-existing symptoms of Major Depressive Disorder with Anxious Distress are unlikely to have persisted beyond a period of twelve to fifteen months post-accident given that these appear to have been largely maintained by the physical injuries that he suffered during the event."

25. The claimant's position on this report was that it was produced on the basis of answers which were put to him in the context of a personal injury claim, rather than these proceedings.

26. The claimant maintained that he could not and did not look online to research his rights, nor to establish what timescales the Tribunal required him to comply with in presenting his claim.

27. The claimant attended his GP in August 2022, and was prescribed anti-depressant medication, which subsequently required to be increased in order to be effective.

Submissions

28. Both parties made brief oral submissions, which I took into account in reaching the decision set out below.

The Relevant Law

29. Section 111(2) of the Employment Rights Act 1996 provides:

5 *“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

10 *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.”*

15 30. What is reasonably practicable is essentially a question of fact and the 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**).

20 31. The best-known authority in this area is that of **Palmer & Saunders v Southend-on-Sea Borough Council 1984 IRLR 119**. The Court of Appeal concluded that “reasonably practicable” did not mean reasonable but “reasonably feasible”. On the question of ignorance of the law, of the right to make a complaint to an Employment Tribunal and of the time limits in
25 place for doing so, the case of **Porter (supra)** ruled, by a majority, 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.” On ignorance of time limits, the case of **Trevelyan (Birmingham) Ltd v Norton EAT 175/90** states that when a claimant is aware of their right to make a claim to an
30 employment tribunal, they should then seek advice as to how they should go about advancing that claim, and should therefore be aware of the time limits having sought that advice.

Discussion and Decision

32. The first issue for the Tribunal to address in this case is whether or not the claim was presented out of time, and if so, by how long.

5 33. The claimant was dismissed with effect from 26 April 2022. Her claim should therefore have been presented by no later than 25 July 2022. However, the ACAS Early Conciliation Scheme permits an extension of that time limit in certain circumstances.

10 34. In this case, very unusually, the Tribunal has been presented with 2 Early Conciliation Certificates. It appears to me that the first Certificate is the applicable one in this case. That was issued on 20 June 2022, early conciliation having been initiated by the claimant within the 3 month time limit on 17 June 2022. That period of 3 days is not taken into account in determining the deadline for presentation of the claim, and accordingly the time limit would be extended to 28 July 2022 (section 207A(2) of the
15 Employment Rights Act 1996).

35. In the event that the time limit would expire between the date of notification and the date of the Certificate (in this case between 17 and 20 June), a further extension is available under section 207A(4). However, in this case, that situation does not arise.

20 36. Accordingly, the claim, being presented on 9 September 2022, was presented some 6 weeks out of time.

37. The next question for the Tribunal to address is whether or not it was not reasonably practicable for the claimant to have presented the claim in time. This is a strict test, and the authorities have indicated that the Tribunal
25 should ask whether or not it was reasonably feasible for the claim to have been presented in time.

38. It is necessary, then, to consider the reasons given for late presentation of the claim.

39. The claimant's evidence on this was somewhat confused. He seemed to suggest that the reason for late presentation was that he was suffering from depression, such that, at times, he was unable to leave his room or engage with people; but also that he was ignorant of his rights to make a claim for unfair dismissal before the Employment Tribunal; and further, that he was awaiting the outcome of his appeal before he could take it that he had been effectively dismissed.

40. Dealing with each of these explanations in turn, I address the claimant's depression first. There is no doubt that there is evidence before me that the claimant has suffered from depression over a period of years, but that that evidence, particularly reinforced by the report of Dr Morrison, is that his condition has fluctuated over the years. It seems that since 2015 his condition was well-managed, and he was plainly able to continue at work to the point where the disciplinary issue for which he was dismissed arose.

41. If one were to take the claimant's protestations at face value, it may be possible to have the impression that he was, throughout the period between his dismissal and 9 September, simply unable to address this matter properly or at all due to his illness.

42. However, the evidence simply does not allow for such a conclusion. The claimant was able to submit an appeal against his dismissal, he was able to attend an appeal hearing (albeit by remote means from his home) and he was able, on at least one occasion, to speak to the CAB and possibly also to ACAS, within the material period. He could readily have done the work necessary to research his rights and submit a claim to the Tribunal since he plainly had access to the internet and to a computer to enable him to attend a remote hearing.

43. Further, he did not attend at his GP in respect of what he claimed was a very significant illness until late August 2022, after the point by which the 3 month period had expired. While he was diagnosed with depression at that stage, and prescribed medication, it is not possible to deduce from that what diagnosis would have been made had he done so earlier. In addition, it is a

measure of his own attitude towards his illness, and the seriousness thereof, that he did not seek medical help before that date. While the claimant might suggest that he was unable to do so owing to his depression, that would be inconsistent with his ability to submit an appeal and attend an appeal hearing following his dismissal.

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44. The evidence of Dr Morrison's report was that his symptoms when examined, for a different purpose, in June 2022 were moderate rather than of the seriousness which the claimant sought to convey to me in his evidence.

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45. It is my judgment that while it is plain that the claimant has suffered from a depressive illness, and deserves sympathy for that, it was not such a serious illness as to make it not reasonably practicable, or feasible, for him to have taken the necessary steps to present a claim within the statutory time limit.

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46. The second explanation given by the claimant was that he was ignorant of his rights to make a claim to the Employment Tribunal. Again, his evidence was rather inconsistent. He said that he did not know his rights, but that he knew that "unfair dismissal was a thing". While that is a very unclear statement, at the very least it indicates that he was familiar with the concept of unfair dismissal. The question of ignorance must be interpreted carefully. It is not surprising nor a matter for criticism that a lay person would not understand the full extent of his rights, but the question is whether or not that ignorance is reasonable in all of the circumstances.

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47. In this case, I am not persuaded that the claimant was wholly ignorant of his rights, but in any event, he had access to the internet, where a simple search on the term he was familiar with – unfair dismissal – would have led him to advice sites in which he would have been able to obtain further information; and he had access to advice from the CAB, which he took up.

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48. What makes this case very unusual, however, is that the claimant obviously had managed to progress his knowledge of employment rights to the point where he notified ACAS of his intention to make a claim on 17 June 2022;

and obtained an Early Conciliation Certificate on 20 June which made very clear that it was his responsibility to make sure that he submitted his claim in time. His evidence was that, in essence, he did it to satisfy his father's demands that he take action, and that he assumed he did not require to do any more. That assumption could not be justified from the terms of ACAS's correspondence to him, nor indeed from a cursory search online had he chosen to do it.

49. His ignorance, such as it was, was no longer a factor, in my judgment, by the time he notified ACAS of his intentions to make a claim.

50. Accordingly, it is my judgment that the claimant's lack of understanding of his employment rights does not render it not reasonably practicable to have presented his claim in time. He had carried out the necessary preparatory work by obtaining an Early Conciliation Certificate by 20 June but did not take any further steps to progress his claim, for reasons which are simply unaccountable.

51. The claimant's third explanation was that he did not consider himself to have been dismissed fully until after the appeal. In my judgment, this is not credible. The claimant was informed, unambiguously, both in writing and verbally, that he had been dismissed, and that his employment ended on 26 April 2022. There is no doubt that he knew at that date that he had been dismissed. He may have harboured the hope that his dismissal would be overturned on appeal, but he was aware that he needed to appeal because the decision to dismiss him had already been taken.

52. The claimant is plainly not an unintelligent man, and has a family which cares for him and takes an interest in his concerns. He had every opportunity to present his claim within the statutory time limit but he failed to do so.

53. In my judgment, the reasons advanced by the claimant fall far short of demonstrating that it was not reasonably practicable for him to have presented his claim in time. Accordingly, his claim must be dismissed for want of jurisdiction.

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Employment Judge: M Macleod
Date of Judgment: 06 February 2023
Entered in register: 07 February 2023
and copied to parties

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I confirm that this is my Judgment in the case of Beacom v Renfrew Golf Club and that I have signed the Judgment.

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