



EMPLOYMENT TRIBUNALS

Claimant: Mrs J Lee

Respondent: Dr C N Deaney t/a Marsh Medical Practice

Heard at: Lincoln **On:** Monday 6 November 2017

Before: Employment Judge Blackwell (sitting alone)

Representatives

Claimant: Mr Fender, Solicitor

Respondent: D Bansal, Representative

JUDGMENT

1. The claims of unlawful deductions from wages in respect of arrears of pay, holiday pay and other payments are dismissed on withdrawal by the Claimant.
2. All of the Claimant's remaining claims were presented one day later than the last day for presentation, that date being 30 July 2017. However it was not reasonably practicable to present the claims on time and they were presented within a further reasonable period. Thus the Tribunal has jurisdiction to hear the remaining claims.

REASONS

Background

1. Mr Fender represented Mrs Lee and he called her to give evidence.
2. Mr Bansal ably represented the Respondent's and provided me with accurate and helpful submissions.
3. The principal issue for me can be summarised as follows. Mrs Lee's remaining claims arise from Section 47B and Section 103A of the Employment Rights Act 1996 and from Article 3 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Regulations 1994. It is common ground that all 3 of these claims ought to have been presented to the Tribunal by not later than 30 July 2017. It is also common ground that they were not received by the Tribunal until 31 July, thus being one day out of time.

Findings of fact which are common ground

4. The effective date of termination was 22 March 2017. The notification to ACAS was made on 15 July 2017, that being date A for the purposes of Section 207A of the 1996 Act and the certificate was issued on 30 June, that being date B for the same purposes.

5. Again it is common ground that by virtue of the application of Section 207A the last date was 30 July.

6. To those agreed facts Mrs Lee added the following. She instructed her lawyers Caines Law on or about 13 June because she had been hoping for the support of the British Medical Association but by the end of May it was clear that that would not be forthcoming. She therefore began to seek funding from her home insurers ARC Legal. Her lawyers and ARC were in correspondence which led on 27 July 2017 to a letter from ARC confirming cover, see pages 4 and 5 of the agreed bundle. It is also clear that both Mrs Lee and her solicitors were aware of the requirement to present her claims by 30 July.

7. On 28 July, a Friday, Caines Law attempted to file the ET1 online and were met with the online document which we see at page 29. It is dated 26 July 2017 and states that the site is currently suspended following the ruling of the Supreme Court handed down in the case of Unison against the Lord Chancellor on 26 July at 9:45 am.

8. In capitals it states the following:

“PLEASE NOTE THAT WITH IMMEDIATE EFFECT THERE ARE NO FEES PAYABLE FOR EMPLOYMENT TRIBUNAL PROCEEDINGS. PLEASE IGNORE ANY REFERENCE TO FEES ON THE CLAIM FORM. UNFORTUNATELY IF YOU HAVE PREVIOUSLY SAVED A CLAIM YOU WILL NOT BE ABLE TO RETURN TO IT. AT PRESENT TO SUBMIT AN EMPLOYMENT TRIBUNAL CLAIM YOU CAN ONLY DO SO BY COMPLETING A HARD COPY CLAIM FORM AND POSTING IT TO THE RELEVANT EMPLOYMENT TRIBUNAL CENTRAL OFFICE DETAILED BELOW.”

It then gave for England and Wales an address in Leicester.

9. At page 32 Caines Law duly wrote on that same date 28 July to the specified address enclosing the claim form and particulars of claim. The letter at page 32 refers to a discussion with the Customer Services Team indicating that there was a suspension of the online submission of claim forms.

10. Mr Bansal in his very helpful submissions submits as follows. The Claimant's claim should be struck out unless the Claimant can satisfy the Tribunal that it was not reasonably practicable for her to present the ET1 within the required time limit. The Claimant has not provided compelling reasons to assist the Tribunal to exercise its unfettered discretion to extend the time limit. Firstly the Claimant delayed in seeking assistance. Was it reasonable for the Claimant to have waited for the decision from her insurers? Secondly the Claimant was aware of the limitation date and therefore took the risk in waiting for the insurer's decision.

Thirdly the Claimant's solicitors knew of the limitation date and waited until effectively the last working day. Fourthly the Claimant could have issued the claim without first seeking insurer's approval because she is not of limited means and finally the Claimant took the decision not to submit until the last working day.

11. I agree with the thrust of those submissions although in my view Mrs Lee was entitled to rely upon her legal advisers to comply with the time limit. But again as Mr Bansal correctly submits that brings into play the well known case of **Dedman**. He refers me generally to the case and specifically to the final paragraph of the judgment which reads as follows:

"When one turns from the general to the particular Mr Dedman's case is hopeless. He knew he had rights and he was being advised by solicitors well before the expiry of the time limit. There was no reason why he could not present his complaint in time. It was practicable to do so. The fact, if it be so, that his solicitors overlooked the time limit does not make it impracticable though it may give him a right to damages against them."

12. As I understand the decision in **Dedman** and subsequent cases the proposition is that where a Claimant has retained a solicitor to act for her and the solicitors fail to meet the time limit through their own negligence then that fact will defeat any attempt to argue that it was not reasonably practicable to make a timely reference.

13. Mr Bansal goes on to submit that the solicitors when confronted with the fact that they could not issue online, they should have couriered or personally delivered the ET1 to the Tribunal address. It is for Mrs Lee to show that it was not practicable or feasible so to do and there is no evidence in either way. Thus I conclude that it would have been practicable.

14. However it seems to me there is the further test of reasonableness and that comes back to the issue of whether or not the solicitors were negligent in not so doing. Mr Fender submits that they could not have foreseen the inability to file online and I accept that submission. I also note that document 29 states that the only means of submitting an Employment Tribunal claim is by completing a hardcopy claim form and posting it to the relevant central office. That is exactly what Caines Law did.

15. In my view therefore it was not reasonably practicable to serve the claim form within time and I further find and it was not in dispute that it was so served within a further period that was reasonable.

ORDERS

Made pursuant to the Employment Tribunal Rules 2013

1. The case will remain listed for 25, 27 and 28 June 2018 at the Lincoln Magistrates Court, 358 High Street, Lincoln LN5 7QA and no further notice of hearing will be given.

2. The date for compliance with service of a list of documents is extended to 4 December 2017.

3. The preparation of the trial bundle compliance date is extended to 8 January 2018.
4. The compliance date for the exchange of written statements of evidence is extended to 30 March 2018.
5. The parties are to agree both a chronology and a list of issues which should be submitted to the Tribunal not later than 18 June 2018.
6. The parties shall each produce skeleton arguments which should be provided to the Tribunal not later than 9:30 am on 25 June 2018.
7. The morning of 25 June will be taken up by the Tribunal reading in and therefore all statements and the bundle of documents and any other supporting material should be with the Tribunal not later than 4:00 pm on 21 June 2018. For the avoidance of doubt that material should be supplied to the Nottingham Justice Centre, Carrington Street, Nottingham NG2 1EE. The parties are to attend by 1:30 pm on 25 June 2017.

Employment Judge Blackwell

Date: 16 November 2017

JUDGMENT SENT TO THE PARTIES ON

05 December 2017

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FOR THE TRIBUNAL OFFICE

NOTES

- (i) The above Order has been fully explained to the parties and all compliance dates stand even if this written record of the Order is not received until after compliance dates have passed.
- (ii) Failure to comply with an order for disclosure may result on summary conviction in a fine of up to £1,000 being imposed upon a person in default under s.7(4) of the Employment Tribunals Act 1996.
- (iii) The Tribunal may also make a further order (an “unless order”) providing that unless it is complied with, the claim or, as the case may be, the response shall be struck out on the date of non-compliance without further consideration of the proceedings or the need to give notice or hold a preliminary hearing or a hearing.

- (iv) An order may be varied or revoked upon application by a person affected by the order or by a judge on his/her own initiative. Any further applications should be made on receipt of this Order or as soon as possible. The attention of the parties is drawn to the Presidential Guidance on 'General Case Management':

<https://www.judiciary.gov.uk/wp-content/uploads/2013/08/presidential-guidance-general-case-management-20170406-3.2.pdf>

- (v) The parties are reminded of rule 92: "*Where a party sends a communication to the Tribunal (except an application under rule 32) it shall send a copy to all other parties, and state that it has done so (by use of "cc" or otherwise). The Tribunal may order a departure from this rule where it considers it in the interests of justice to do so.*" If, when writing to the tribunal, the parties do not comply with this rule, the tribunal may decide not to consider what they have written.