



# EMPLOYMENT TRIBUNALS

**Claimant:** K Bartholomew

**Respondent:** Southcoast Scaffolding Limited

**Heard remotely:** on CVP

**On:** 24 August 2021

**Before:** Employment Judge Henderson (sitting alone)

## Representation

**Claimant:** In Person

**Respondent:** Mr R Myers (Counsel)

# JUDGMENT

**The Tribunal does not have jurisdiction to hear the claimant's claim for unfair dismissal as the claim was not presented within the three-month time limit set out in section 111 (2) of the Employment Rights Act 1996 (ERA) and the claimant has failed to satisfy the Tribunal that it was not reasonable practicable for the complaint to be presented within that period or within such further period as the Tribunal considers reasonable.**

**The claim for unfair dismissal cannot proceed.**

*Reasons for the Decision were given orally at the end of the Hearing. The claimant requested full written reasons, which are set out below.*

# REASONS

1. The claimant brought a claim for unfair dismissal. He had left his employment with the respondent on 5 August 2019. The claimant said he was dismissed; the respondent said he had resigned/walked out. The claimant confirmed that he was not pursuing any claim for age discrimination.

2. The first question for consideration as a preliminary issue, was one of jurisdiction namely: (i) whether the claim had been lodged within the 3-month time limit (taking into account the extension of time limits to facilitate early conciliation via ACAS –section 207B ERA) and if not (ii) whether the Tribunal should exercise its discretion to extend the time limit on the basis that the claimant could show that it was not reasonably practicable for him to present the claim within the time limit.
3. I explained to the claimant that if the claim was not presented in time and he could not satisfy the Tribunal that time should be extended, then the unfair dismissal claim could not continue. He said that he understood that.
4. The Tribunal had been presented with an Agreed Final Hearing Bundle for the substantive hearing (and page references are to that Bundle). (The claimant was using a Bundle that contained identical documents but which had slightly different page numbers (by 2 pages)). The claimant's witness statement dealt with the substantive matters of the unfair dismissal claim and did not make any reference to the issue of timing on lodging the claim.
5. The key dates on the issue of time limits were not disputed. The relevant incident had taken place on 5 August 2019 – three months from that date would be 4 November 2019. ACAS had been notified of the claim on 30 October 2019, which was within the 3 month period. The ACAS certificate was issued on 18 November 2019 (page 15). Therefore, the claim should have been lodged with the Tribunal by 17 December 2019. The ET1 claim form was stamped as received by the Tribunal on 3 February 2020 (page 3).
6. Therefore, the claim had been lodged outside the time limits. The claimant was required to show that it would not have been reasonably practicable for him to present the claim within the time limits or before 3 February 2020.
7. The claimant initially said that he had left all matters to his representative, Ms Martine Satterthwaite (shown as such in the ET1 at page 11); who was his accountant and who he said had dealt with all the paperwork. The claimant said he did not know the details of any of the relevant dates and, in any event, could not remember them as this was now nearly two years ago. He said everything had been done by Ms Satterthwaite. The claimant did not say that he was unaware of the relevant time limits. The claimant said that the handwriting on the ET1 (which had been filled in by hand) was Ms Satterthwaite's as he had very bad handwriting himself.
8. Mr Myers referred the claimant to pages 39 and 40 which were documents produced by Ms Satterthwaite in July 2020 in response to questions from the Tribunal about when the ET1 was sent. Ms Satterthwaite had produced a copy of an extract from her firm's post book. This showed an entry of "2/12/19 – 1<sup>ST</sup> - HMCTS TRIBUNAL- DOCS".
9. There was no further detail provided and the Tribunal was not presented with a witness statement from Ms Satterthwaite nor did she attend to give oral evidence. The claimant said that he had not been told that he needed to produce any such information.

10. The claimant said that he had only learnt of the date of the posting of the ET1 after the matter had been raised by the Tribunal and by the respondent. The issue was raised in the Grounds of Resistance on 12 March 2020. He said he had relied on Ms Satterthwaite to put the claim in on time.
11. The claimant said that he could not afford legal representation. He accepted that his text on 7 August (at page 61) referred to seeing a solicitor. This was a firm in Eastbourne, called Barwell or Bladwell – he could not remember exactly. He had only seen them once.
12. In response to questions from Mr Myers, the claimant said that he had communicated with Ms Satterthwaite by telephone, but also by texts. None of the texts were produced to the Tribunal as he did not know this was needed. However, the claimant also said that he had never seen the ET1 prior to it being submitted by Ms Satterthwaite. The claimant later said he could not remember whether or not he had seen the ET1 prior to its submission to the Tribunal. These are inconsistent statements which do not assist the claimant when assessing the accuracy of this account.
13. The claimant later said that Ms Satterthwaite was not his “representative” but only a “secretary” who was simply doing the “typing” - though he then accepted that there had been no typing as the form was handwritten. He was unclear as to whether he had been aware/agreed to Ms Satterthwaite describing herself as his representative on the ET1. This was not plausible, given that the claimant also accepted (as the documentation showed) that Ms Satterthwaite had corresponded with the Tribunal and the respondent’s solicitor in respect of his claim. Further this was inconsistent with the claimant’s statement that he had left everything to Ms Satterthwaite and relied on her to put the claim in on time. Again, these inconsistencies do not assist the claimant.
14. The claimant said he had asked Ms Satterthwaite to stand down about 2 years ago (which would have been before the claim was lodged) – but the documentation showed (page 42) Ms Satterthwaite acting on the claimant’s behalf up to August 2020. The claimant accepted that Ms Satterthwaite still provided accountancy services to him as and when he may need them, so he was in contact with her.
15. The claimant was asked by Mr Myers if he had any specific reason for not submitting the claim in time. The claimant said that he was still coming to terms with the death of his son (who committed suicide), which was four years ago. The claimant gave no other reason as to why the ET1 was not submitted in time.

## **Conclusions**

16. The claimant’s account of events was inconsistent and often unclear. It is understandable that he may not remember events in detail after nearly two years, but his statements were often contradictory.

17. The only evidence produced was the extract from Ms Satterthwaite's post-book. I find that this, on its own, is not sufficient evidence to show that the ET1 was posted on 2 December 2019. What is clear is that the ET1 was received by the Tribunal on 3 February 2020 which was some seven weeks late.
18. The claimant did not give any coherent or clear explanation as to why it was not reasonably practicable for him to submit the claim earlier. He initially said he relied totally on Ms Satterthwaite as his representative to complete the paperwork and to submit it on time; he later said she was merely a "secretary" – but if this were the case, he did not explain why he had not taken steps to check that the claim was put in on time. I do not accept the claimant's account of events.
19. The only reason which the claimant gave for not submitting the ET1 on time was his coming to terms with his son's death. The Tribunal accepts that the loss of a close relative is one which is extremely difficult to deal with. However, the claimant himself said that this had been four years ago (in 2017) and he gave no specific reason why his understandable grief at the loss of his son meant that he was unable to deal with the Tribunal claim in or around November/December 2019.
20. Mr Myers referred the Tribunal to the case of **Porter v Bandridge [1978] ICR 943 CA**, which said that, "*The onus of proving that it was not reasonably practicable to present the complaint within a period of three months is upon the applicant. That imposes a duty on the applicant to show precisely why he did not present his complaint. He has to satisfy the Tribunal that he did not know of his rights during the whole of the period in question and that there was no reason why he should have made enquiries or should have known of his rights during that period.*"
21. The claimant has not satisfied the test set out above. He has not presented any cogent explanation of why the claim was not submitted to the Tribunal until 3 February 2020. One version of his argument is that he relied totally on Ms Satterthwaite to put the claim in on time and he was unaware that this had not been done until much later. However, he then contradicted that argument by saying that Ms Satterthwaite was only a secretary – but he did not explain why if this was the case, he had not taken on the responsibility for putting the claim in on time. At no time did the claimant say he had been unaware of the time limits. As mentioned before, the claimant's inconsistency means that little reliance can be placed on his account of events.
22. Even if I were to accept the claimant's account that he totally relied on Ms Satterthwaite as his professional adviser. I must then take account of the Court of Appeal decision in **Marks & Spencer plc v Williams-Ryan [2005] IRLR 562, [2005] ICR 1293**. In that case, following a careful review of the criticisms of the **Dedman** principle, the Court of Appeal held that in any situation where the reason for a missed limitation period is the fault of a skilled adviser (whether a legal adviser or not) that fault is to be visited on the claimant and it must be held that it was reasonably practicable to submit the claim within time.

23. I find that the claimant has not satisfactorily shown that it was not reasonably practicable for him to submit the claim within the three month time-limit or within some other reasonable period. The Tribunal has no jurisdiction to hear the unfair dismissal claim.

**Employment Judge Henderson**

**Date: 24 August 2021**