



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4105363/2022

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**Final hearing held on the
Cloud Video Platform
On 14 February 2023**

Employment Judge A Jones

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Mr L McArthur

**Claimant
In person**

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The City of Edinburgh Council

**Respondent
Represented by:
Ms Thomson, solicitor**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

It was reasonably practicable for the claimant to have lodged his claim of unfair dismissal and wrongful dismissal within the statutory period and therefore the Tribunal does not have jurisdiction to determine his claim.

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Introduction

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1. The claimant lodged a claim of unfair dismissal on 30 September 2022. He also claimed he had been wrongfully dismissed. He had been dismissed on 12 May 2022. His claim had been lodged outwith the statutory period set down in section 111 Employment Rights Act 1996 (and Article 7 Employment Tribunals Extension of Jurisdiction (Scotland) Order 1994 which relates to time limits for breach of contract claims).

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2. A preliminary hearing took place on the Cloud Video Platform to determine whether it had been reasonably practicable for the claimant to have lodged his claim within the 3 month time limit and if not whether the claim had been lodged within such further period as was reasonable in the circumstances.

3. The claimant represented himself and the respondent was represented by Ms Thomson who is a solicitor. The Tribunal heard evidence from the claimant who was also cross examined. A joint bundle of documents had been lodged in advance and the respondent provided a bundle of authorities to which reference was made during submissions. Having considered the evidence, the documentation to which reference was made and the submissions of the parties, the Tribunal found the following facts to have been established.

Findings in fact

4. The claimant was employed by the respondent, latterly as a Team Leader in a care home from 12 January 2016 until his dismissal with effect from 12 May 2022.
5. The claimant is a member of Unison trade union and was accompanied by a trade union representative at the hearing which led to his dismissal.
6. The claimant appealed against his dismissal almost immediately. His appeal was to be heard by a sub committee of Councillors. There was a delay to the hearing of his appeal as the respondent was in recess and was training a number of new members for the appeals panel.
7. Around the time the claimant lodged the appeal against his dismissal he contacted an employment solicitor but did not pursue taking advice from the solicitor.
8. The claimant commenced alternative work on 8 June and continues in that role as a production operator in a factory. The claimant was also taking driving lessons around this time.
9. The claimant was in email correspondence with the respondent during June, July and August 2022 regarding a date for his appeal hearing.
10. The claimant was advised on 3 August that the appeal hearing would take place on 12 September. The claimant asked for the hearing to be postponed as he had a driving test on that day. The hearing took place on 13 September. The claimant was again represented by a trade union representative. The appeal was unsuccessful and the claimant was advised of this on 15 September.

11. The claimant contacted ACAS on 15 September for advice. He was advised that he could raise unfair dismissal proceedings and that while the statutory period in which such claims were required to be raised had expired, he could ask the Tribunal to consider the claim on the basis of the delay in dealing with his appeal.

12. A conciliation certificate was provided to the claimant on 30 September and he lodged his claim online on that day.

Discussion and decision

13. Section 111 (1) of the Employment Rights Act 1996 gives employees the right to pursue a claim of unfair dismissal in the Employment Tribunal. Subsection (2) reads:

“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 practical for the complaint to be presented before the end of that period of three months.”

14. Article 7 of the 1994 Order referred to above also makes provision for a Tribunal to consider a breach of contract claim where it is satisfied that it was not reasonably practicable for such a claim to have been lodged within 3 months.

15. In submissions, the respondent’s agent made reference to **Walls Meat Company Ltd v Khan [1979] ICR 52, Bodha v Hampshire Area Health Authority [1982] ICR 200, Palmer & another v Southend-on-sea Borough Council [1984] ICR 372, Dedman v British Building and Engineering Appliances Ltd v [1974] ICR 53 and RBS plc v Theobald [2007] WL 261205.**

16. It was said that it was reasonably practicable for the claimant to have lodged his claim timeously and if the Tribunal did not accept this, then in any event his claim had not been lodged within such further period as was reasonable.

17. The Tribunal accepted the submissions made by the respondent. The Tribunal found the following facts to be of particular relevance:

- i. The claimant applied for and obtained alternative employment within a month of his dismissal. He has continued in that role. There was no suggestion he suffered from any mental or physical incapacity during that time.
- ii. While the Tribunal accepted that the claimant would have found his dismissal and the circumstances surrounding his dismissal stressful, there was no evidence to suggest that this impacted on his ability to carry out investigations into the period in which a claim of unfair dismissal could be made.
- iii. The claimant is a member of a trade union and was represented by his union at the disciplinary and appeal hearings. While the claimant indicated that his representative was 'not very good at communication', it would have been reasonable for him to discuss what options he might have in relation to his dismissal. The extent to which the trade union did not advise the claimant of his rights is not a matter for this Tribunal.
- iv. The claimant has access to and is able to use the internet and communicates by email. There was nothing to prevent him conducting a search on his rights to claim unfair dismissal.
- v. The claimant consulted an employment solicitor. While he may not have taken formal advice from the solicitor, it was clear that the claimant was aware of steps he should take should he wish to pursue matters in relation to his dismissal.

18. While the Tribunal accepts that the claimant was not aware of the time limit in which a claim of unfair dismissal should be lodged until he contacted ACAS, it was not at all clear why he did not contact them until his appeal had

been determined, particularly in circumstances where there was a significant delay in the appeal hearing taking place.

19. The burden of proof is on the claimant to demonstrate that it was not reasonably practicable for him to have lodged his claim timeously.

5 20. It is well established that ignorance of rights is not of itself sufficient to render it not reasonably practicable to lodge a claim timeously. Neither is the fact that an appeal is outstanding of itself sufficient.

21. The question of whether it was reasonably practicable is a question of fact to be considered in the all the circumstances of the case.

10 22. The claimant appears to rely on his ignorance of his rights and that he was awaiting the outcome of his appeal which was delayed.

23. These factors even taken together do not prevent it having been reasonably practicable for the claimant to have lodged his claim timeously.

15 24. Therefore, taking into account all of the circumstances of the claimant, it was reasonably practicable for him to have lodged his claim in time and therefore the Tribunal does not have jurisdiction to consider his claim.

20 Employment Judge: Amanda Jones
Date of Judgment: 20 February 2023
Entered in register: 21 February 2023
and copied to parties