



EMPLOYMENT TRIBUNALS

Claimant: Mr Khalid Mohamed

Respondent: Everycloud Security Ltd

JUDGMENT

The claims of automatically unfair dismissal and that the employer has made an unlawful deduction from wages were not presented within the applicable time limit. It was reasonably practicable to do so. The claims are therefore dismissed.

REASONS

Facts

1. The date of termination of the Claimant's employment was 19 January 2021. The dates given in his ACAS certificate are 12 April 2023 and 13 April 2023. His ET1 claim form was presented on 14 May 2021. The primary time limit for presenting his claims for automatic unfair dismissal and unauthorised deduction from wages expired on 13 May 2021 and his claim therefore appears to have been presented outside that time limit.
2. In his claim form the claimant stated, as regards the reason for the claim being presented out of time, that: he was collating as much evidence as possible to support the claim; he was awaiting information from HMRC; and that he had encountered technical difficulties in trying to submit the claim.
3. A preliminary hearing was held on 27 June 2023 to determine whether the claim was out of time. The claimant was unable to give evidence as he was overseas.
4. At the preliminary hearing, the claimant was ordered, by no later than 1 September 2023, to send to the respondent and to the Tribunal a written explanation as to why his ET1 claim form was not presented to the Tribunal until 14 May 2021 and, if this is his case, why it was not reasonably practicable to have presented it before then."
5. Nothing was received from the claimant until 24 January 2024, when he wrote: "please refer to section 15 of the ET1 form, where an explanation

for the delay was provided and duly accepted by the tribunal. For further clarification, I kindly request that you consult the court records.”

6. On 5 February 2024, the claimant sent a further email setting out further reasons for filing the claim late, namely:
 - a. technical difficulties: the claimant says he encountered sporadic technical challenges with the online submission system which impeded the timely submission of the ET1 form.
 - b. complexity of self-representation: the claimant says that as he had chosen to represent himself, the task of assembling a comprehensive and legally sound claim proved intricate; and
 - c. awaiting essential documentation: the claimant says that a critical element contributing to the delay was the pending receipt of indispensable information, imperative for the thoroughness and accuracy of his claim.
7. The claimant then wrote again on 28 February 2024 providing further information about the reasons why he submitted his claim a day late. The Tribunal has read that letter and taken it into account. Significant points are noted below.
8. As regards the technical issues, the claimant refers to repeated timeouts and crashes of the online submission portal which he says were entirely beyond his control. He says that the intermittent nature of the issues made it challenging to predict or circumvent. He says that those issues were significant barriers to submission and were exacerbated by the lack of immediate solutions or support available.
9. As regards self-representation and lack of legal expertise the claimant says that navigating the complexities of employment law and Tribunal procedures was daunting and that the Tribunal should consider the genuine procedural challenges faced by self-representing individuals which warrants a degree of leniency. He says that the strict adherence required for timelines proved to be a formidable challenge.
10. He says that the application of “reasonable practicability” suggests a flexible approach to procedural deadlines, especially when unforeseen challenges arise. He says that his delay, due primarily to factors beyond his control, fall within the realm of what a reasonable person without expertise would find challenging.
11. He says that the delay has not prejudiced the respondent.

Law

12. Section 111 of the Employment Rights Act 1996 states that (subsection 2) an Employment Tribunal shall not consider a complaint under this section, which applies both to the claimant’s claim of automatically unfair dismissal and to the claim that the employer has made an unlawful deduction from wages, 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 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”.
13. The test under section 111 imparts a two-part test: was it reasonably practicable to file the claim within the deadline; and if not, did the claimant file within such further period as was reasonable. It is important to separate the two stages.
14. The burden of proof is on the claimant (*Porter v Bandridge Ltd*).
15. The enquiry is to consider the substantial cause failure and ask whether this demonstrates it was not reasonably practicable to present the claim in time. (*Palmer and Saunders v Southend-on-Sea Borough Council*). Practical is the equivalent of feasible.
16. The claimant referred to *Concentrix CVG Intelligent Contact Ltd v Obi* which refers to a just and equitable extension of time when a claim was presented one day late. As the test is different, the Tribunal has not considered this authority.
17. The EAT held in *Fishley v Working Men’s College UK EAT/0485/04* that “it is the common experience of anyone who has tried to operate a computer, a printer, or a fax machine, that they are temperamental creatures, and one cannot rely on success first time within a few minutes”. It also held that the question of prejudice does not arise in causes of action governed by the reasonably practicable test.
18. According to *Wall’s Meat Co Ltd v Khan*, “ignorance” of rights or a time limit is “not just cause or excuse unless it appears that he or his advisors could not reasonably be expected to have been aware of them. If he or his advisors could reasonably have been so expected, it was his or their fault and he must take the consequences.”
19. More recently, *Smith v Pimlico Plumbers UK EAT/0211/19* has confirmed that ignorance of Tribunal procedure does not mean that it is not reasonably practicable to issue within the required time limit.

Conclusions

20. It was reasonably practicable for the claimant to file the claim within the deadline.
21. The claimant left the presentation of the claim to the very last minute. In such circumstances a temporary impediment such as those described by the claimant (he refers to the technical issues being “intermittent”) is a risk of life and is not sufficient to bring the claimant within the escape clause.

22. It is noteworthy that the claimant describes the “glitches” as intermittent as that means that the system was working in between the “glitches”.
23. The claimant has not provided any explanation as to why he waited until the last day to seek to present his claim, and when a claimant waits until the last minute to do so, he must understand that technical problems may arise.
24. The claimant has provided no evidence of the issues he encountered other than in general terms saying that there were “repeated timeouts and crashes of the online submission portal.”
25. It is implicit from the claimant’s arguments that he was aware of the deadline. He does not say that he believed that the deadline was one day later.
26. Awaiting essential documentation does not make it not reasonably practicable to bring the claim within the required time limits. He has not explained why it was not possible to obtain that documentation on 13 May 2021 but that he was able to submit his complaint on 14 May 2021.

Employment Judge Rice-Birchall
Date: 21 March 2024

JUDGMENT & REASONS SENT TO THE PARTIES

ON

2 April 2024

P Wing

FOR THE TRIBUNAL OFFICE

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing, or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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Recording and Transcription

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

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