



EMPLOYMENT TRIBUNALS PUBLIC PRELIMINARY HEARING

Claimant: Ms D Dunne

Respondents: Neom Limited

Heard at: Leeds **On:** 14 January 2020

Before:
Employment Judge JM Wade

Representation

Claimant: Mr A Craven (solicitor)
Respondent: Miss C Widdett (counsel)

JUDGMENT

It was reasonably practicable for the claimant's Employment Rights Act 1996 complaints to be presented in time; they were not presented in time by her solicitors; they are dismissed.

REASONS

1. The issue before me today was whether it was reasonably practicable for the claimant's Employment Rights Act complaints to have been presented in time. If not, they must be dismissed. This is not an Equality Act case where there is discretion to extend time.
2. The notice of hearing for today indicated case management but both advocates came fully prepared to address the limitation issue and consented to the conversion, if required, of this hearing to a public hearing.
3. The primary facts in this case are not in dispute. Save for information about when the claimant first instructed her solicitors, the following matters were evident from the file:
 - 3.1. The claimant was dismissed summarily on 9 July 2019 following alleged detrimental treatment as a result of alleged protected disclosures from February 2019. There are no allegations of detriment after dismissal.
 - 3.2. The claimant had instructed solicitors before her dismissal and ACAS conciliation occurred between 16 September 2019 and 15 October 2019.
 - 3.3. In early November she instructed her solicitors to present her claim.
 - 3.4. Her solicitors sent her claim by email to the Tribunal which does not amount to "presentation" within the relevant practice direction.

- 3.5. The claim was presented on line on 18 November 2019 and that is the date of presentation.
- 3.6. On 26 November 2019 the claimant's solicitors presented an application for an extension of time.
- 3.7. On 10 December the Regional Judge directed that this hearing consider, "whether the claim was presented in time and whether the Tribunal can consider it. If the claim survives, the Tribunal will then make case management orders".
- 3.8. A response was presented on 17 December 2019.
- 3.9. The last date for presentation of these claims was 15 November 2019.
- 3.10. The complaint was not presented within the limitation periods within Sections 48(3) or 111(2)(a).
4. As a matter of fact, self evidently it was reasonably practicable for the claims to have been presented on that date, both because the claimant had been able to give instructions to do so, and because the papers were ready on that day, as evidenced by their sending by email by her solicitors. It is not that the online service was not available, or anything of that kind, but that a mistake was made about permissible means of presentation and it was made right at the end of the limitation period.
5. The Tribunal cannot consider these claims. The claimant's remedy now lies against her solicitors, applying Dedman. Riley is authority for the proposition that whether it was reasonably practicable to present in time is an issue of fact for the Tribunal, and I have applied that principle in this case.
6. My sympathies to Mr Craven; the claimant's position has been put as well as it could be by him; from the file he was not involved in the mistaken presentation.

Employment Judge JM Wade

Date 14 January 2020