



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mrs D Sosnowska

v

Buckingham Hotels Group Limited

Heard at: Watford

On: 5 July 2021

Before: Employment Judge Hyams, sitting alone

Appearances:

For the claimant: Ms K Krupinska, representative

For the respondents: Mrs F Dad, company secretary

RESERVED JUDGMENT

It was not reasonably practicable to make the claim within the primary limitation period of three months, and it was made within a reasonable period of time after the expiry of that period. However, the claim for statutory sick pay is not within the jurisdiction of the tribunal. Therefore, only the claims for unpaid holiday pay and notice pay are within the jurisdiction of the tribunal.

REASONS

The hearing of 5 July 2021

- 1 The hearing of 5 July 2021 before me occurred after the intended hearing of 26 May 2021 (which was held only via CVP) to determine the same issue had to be postponed because the claimant did not attend the hearing of 26 May 2021. That occurred because she had been advised by Ms Krupinska that she did not need to do so and then, when the judge conducting that hearing, Employment Judge (“EJ”) Reid, pointed out that oral evidence from the claimant would be likely to be required, the claimant was unable to attend using CVP. Those things were recorded in the document written by EJ Reid recording the circumstances in which the hearing of 26

May 2021 had been postponed. The preliminary issue which was intended to be determined on 26 May 2021 and which I had to determine on 5 July 2021 was whether “the tribunal has power to hear the claim as it has, on the face of the claims, been brought out of time”.

Application to amend

- 2 After that hearing, via a letter dated 16 June 2021, the claimant applied to amend her claim by adding claims of (1) disability discrimination and (2) automatically unfair dismissal within the meaning of section 103A of the Employment Rights Act 1996 (“ERA 1996”) for the making of a protected disclosure within the meaning of section 43A of that Act. The application to amend was in these terms (only):

“Dear Tribunal Office,

We are writing regarding recent preliminary hearing, as we would like to amend the claim above.

ET1 form included unfair dismissal, as claimant made protected disclosure regarding safety matters prior to her surgery which we believe is automatically unfair dismissal.

Claimant also believes that claim should include disability discrimination as she was not performing all of her duties as usual and regularly needed help due to her health condition.

Claimant believes she was a nuisance to her employer because of those matters which led to her termination.

I kindly ask for those amendments to be allowed as this is complex claim and claimant can not afford legal assistance, as her representative I can only help as much as of experience with similar disputes.”

- 3 The claimant was employed by the respondent as a housekeeper. The respondent runs an independent hotel.
- 4 I was during the hearing of 5 July 2021 given a copy of a letter that the claimant was relying on as the claimed protected disclosure, and I was told that it was sent under cover of an email to the respondent (it was addressed to “Ronni”, who, Mrs Dad told me, was the respondent’s employee who managed the hotel’s Reception desk) on 19 August 2019. The claimant is Polish. She speaks little English, or at least spoke little English in 2019. She told me that she wrote the letter, using Google translate. It was not well-translated. The letter was in the main an explanation of circumstances in which the claimant had left work early on the previous Saturday because of (it appeared, it was not clear) accidentally slipping on a wet metal grate. It included this sentence:

“Please look at the camera how the entrance to the kitchen looked, how rain is dangerous.”

5 The letter concluded:

“I apologize for my imperfect English. I came here to learn the language from September I go to evening school.

I am writing this explanation using a translator. There may be mistakes. because I didn't underestimate the work but I had a health problem while I was doing it and I felt bad.”

6 The application to amend the claim was made only because EJ Reid had, in the document recording the circumstances in which the hearing of 26 May 2021 had been postponed, pointed out that the claim of unfair dismissal was outside the jurisdiction of the tribunal because the dates given in the claim form for the claimant's employment with the respondent were 1 June 2019 to 31 January 2020, so that she had less than the required two years' continuous employment for a claim of unfair dismissal made under section 98 of the ERA 1996. The claim form contained this and this only as the details of the claim:

“Since December Claimant was off sick due to surgery and supplied sick notes accordingly. Employer was approached personally in March to agree possible return to work and ask for Sick Pay. Claimant was told that she is no longer employed, she was given P45 to hand backdated to January. Claimant never received, any Sick Pay, holiday pay or notice pay when she was employed and was not communicated regarding dismissal.”

7 There was no indication there that the claim was of disability discrimination. The box for such was not ticked. Only the boxes for unfair dismissal, notice pay, holiday pay and “other payments” were ticked. The claim as it stood on 26 May 2021 was therefore only for unpaid accrued holiday pay, notice pay, and statutory sick pay. I said on 5 July 2021 that I did not believe that a claim for statutory sick pay was within the jurisdiction of the employment tribunal. After the hearing, I ascertained that that is correct, unless the parties have agreed that statutory sick pay is payable and its amount. That is the result of the decision of the Employment Appeal Tribunal in *Taylor Gordon & Co Ltd v Timmons* [2004] IRLR 180. Otherwise, as can be seen from paragraph BI[154] of *Harvey on Industrial Relations and Employment Law* (“*Harvey*”), the matter is within the jurisdiction of the Secretary of State, who acts in this regard via Her Majesty's Revenue and Customs. That paragraph is in these terms:

“An employer who decides that an employee is not entitled to SSP should provide the employee with an explanation on form SSP1 not more than seven days after being notified of the employee's incapacity for work: SSP(G)R, SI

1982/894 reg 15(2)(a). Where there is a dispute, it is for an officer of HM Revenue and Customs to decide any issue arising as to, or in connection with, entitlement to SSP (see the *Social Security Contributions (Transfer of Functions, etc) Act 1999* s 8(1)(f), (g) and the *Statutory Sick Pay and Statutory Maternity Pay (Decisions) Regulations 1999* SI 1999/776).”

8 As Harvey continues in the next paragraph, namely [154.01]:

“Where such an issue arises, an application for its determination may be submitted to HMRC either by the employee concerned or by the Secretary of State but not by the employer: SI 1999/776 reg 2(1), (2). The service is therefore not a proactive one, it depends on an employee being aware of their rights and making a complaint. The application must be in writing, in the approved form or otherwise as directed. Where made by an employee the application must be made within six months of the earliest day in respect of which entitlement to SSP is in issue and must state the period in respect of which entitlement is in issue together with the grounds (if any) on which the applicant’s employer has denied liability for SSP.”

9 A document entitled “Claim Particulars” was apparently put before EJ Reid, but certainly was put before me, stating the reasons for the claim in this way (precisely; the following words form the entire content of the body of that document):

“Automatically Unfair Dismissal

- Claimant believes that she was unfairly dismissed as Respondent stopped claimants contract once she had surgery performed and was receiving sick notes from GP and hospital admittance since 19.12.2019
- Claimant was unaware of termination until visited employer premises in mid March 2020 to discuss return to work. (Employment Rights Act 1996 Part IX S.92(1)(b) and S.86(1)(a))
- CLaimant received P45 in mid March 2020 which was backdated to 30.01.2020
- CLaimant last employment date on P45 was her actual working day before admission
- As claimant was unable to deliver sick notes herself, she asked fellow employee and a friend to deliver those on her behalf (witness statements of Jan Anisko and Adriana Starzyk attached) - Claimant appeared on the work rotas between 21.12.19 and 05.01.20 (photos attached)
- Claimant informed her supervisor of being admitted to hospital (screenshot of message attached)
- Claimant was dismissed when staying in hospital which is discriminatory and unlawful as she also is disabled and had mobility restrictions while at work and frequently required help of others as she suffered an accident in a workplace previously. (Equality Act S.4 and S.6(1))

Unlawful deduction from wages:

- Claimant believes she was allowed to receive SSP after surgery in Dec 2019 as she was employed and did not know her contract was terminated without any communication from employer who was informed she fell ill - Claimant believes she should be entitled holiday pay for employment period and sick leave period as she never received any (payslips attached). (Statutory right)
- Claimant wishes to be paid notice period if employer does not agree for her to return to work

Time limitations:

Claimant was unaware of dismissal until attended the workplace in March 2020.

Claimant believes that her employer/ Respondent deliberately concealed information regarding dismissal so She would lose the right to start official dispute.(Equality Act S.129 (3))

Claimant did not understand her rights as she is native polish speaker and could not obtain any help due to Coronavirus pandemic and restrictions placed until meeting her representative in a friends house on the 3rd July 2020.

Claimant believes that her dismissal was solely caused by informing her supervisor Melani that she is in hospital. Claimant used name of Barbara as preferred name at work and it is how she appears on rotas.”

- 10 The reference there to a disability was to the knee condition which led to the claimant being in hospital in December 2019. It appeared to me from what I was told during the hearing of 5 July 2021 and the claimed protected disclosure letter of 19 August 2019 that the knee condition was either caused or exacerbated by the claimant falling on the wet metal grate near the entrance to the hotel’s kitchen in August 2019. The reference to the claimant “informing her supervisor Melani that she is in hospital” was to a text sent by a colleague of the claimant on 19 December 2019 to “Melani” in the following very brief terms:

“Sorry Barbara no work wendovwr, hospital”.

- 11 Ms Krupinska is the person who was stated in the Claim Particulars to have met the claimant on 3 July 2020. Ms Krupinska is not a lawyer.
- 12 Mrs Dad told me on 5 July 2021 that the Reception manager (whose first name is, I was told, Ronnie) who, it appears, managed the claimant’s supervisor, no longer works for the respondent.
- 13 The claimant’s dismissal occurred, Mrs Dad told me, because the claimant was on a zero hours contract and stopped working for the respondent after December 2019. The claimant told me that she had since then been unable to work because the knee condition for which she had received hospital treatment in December 2019 prevented

her from doing so. She certainly had difficulty in walking and had to use a walking stick when doing so. However, at the time of the operation, she told me, she did not realise that she would not be able to work again, which suggested that she did not herself see the knee problem as a long-term one in December 2019.

14 Those were the circumstances against which I had to decide whether to permit the claimant to amend her claim in the terms stated in the letter of 16 June 2021 set out in paragraph 2 above.

15 The most helpful authority concerning the approach which must be taken when considering an application to amend a claim is the decision of the Court of Appeal in *Abercrombie v Aga Rangemaster Limited* [2013] EWCA Civ 1148, [2014] ICR 209, as explained by His Honour Judge Taylor in the Employment Appeal Tribunal in *Vaughan v Modality Partnership* [2021] IRLR 97, the helpful headnote of which starts:

“A practical approach should underlie the fundamental exercise of balancing the hardship and injustice of allowing as against refusing the amendment. Representatives would be well advised to start by considering, possibly putting the *Selkent* factors to one side for a moment, what will be the real practical consequences of allowing or refusing the amendment. If the application to amend is refused how severe will the consequences be, in terms of the prospects of success of the claim or defence; if permitted what will be the practical problems in responding. This requires a focus on reality rather than assumptions.”

16 At the hearing, I said that I was refusing the application to amend because it was insufficiently specific. However, (1) I said that having only just seen the letter to “Ronni” sent on 19 August 2019 to which I refer in paragraphs 4 and 5 above, and (2) the hearing, which was listed for two hours, took over three hours to consider the amendment application and to hear (a) the evidence concerning the reasons why the claim was made out of time, and (b) short submissions on whether or not it was reasonably practicable to make the claim in time and, if it was not, whether it was made within a reasonable period of time after the ending of the primary limitation period. I therefore had to reserve my decision on the latter issue, and when considering that issue, I reviewed my decision to refuse permission to amend the claim in the manner stated in the letter of 16 June 2021 set out in paragraph 2 above, in order to see whether I should reconsider it, under rules 73 and 72 of the Employment Tribunals Rules of Procedure 2013. Having done so in the light of my above careful examination of what the claim was about, I was able to see that the application to amend was sufficiently specific to be understood and responded to, if it was read against the background of the Claim Details set out in paragraph 9 above.

17 I therefore considered the application to amend afresh, on the assumption that if I came to the provisional conclusion that I should after all permit the application to amend, then I would hear from the parties in accordance with rule 72 and, having done so, come to a firm conclusion on that issue.

Initial review of decision to refuse permission to amend the claim

- 18 As I said on 5 July 2021, an employment tribunal considering the claim as amended would have to decide whether or not the claimant was disabled at the time that she was dismissed, which would involve assessing the likelihood of her knee condition lasting for at least a year. At the time of her dismissal, it seems (and I accept that this is an assumption made on little evidential material) not to have been likely that the claimant's knee condition would last for a least a year. What is clear is that the claimant herself was stated in the Claim Details to have been intending in March 2020 to discuss returning to work, and that was consistent with what the claimant had told me as recorded at the end of paragraph 13 above. However, by the time of the hearing before me on 5 July 2021, the claimant was still walking with a stick and was clearly still suffering from the effects of her knee condition.
- 19 That suggested that the claimant could not claim that she could have worked as a housekeeper with reasonable adjustments at any time since her operation of December 2019. Accordingly, at best she would be able to claim only compensation for injury to her feelings if she were able to make a successful claim of disability discrimination. However, such an award could be made only if there was a valid claim of a failure to make reasonable adjustments, and I found it hard to see such a claim being made successfully here. That was because of the difficulty that the claimant's knee condition might not, at the time of the claimant's dismissal, have been likely to last at least a year, and because even if it had, at no time could the claimant have returned to work to do the job from which she was dismissed. For essentially the same reasons, a claim of a breach of section 15 of the Equality Act 2010 was also unlikely to be successful. Thus, the loss of the opportunity to make a claim of disability discrimination was in my view not going to be seriously prejudicial to the claimant, because of the weakness of such a claim in the circumstances.
- 20 As for the claim of a dismissal contrary to section 103A of the ERA 1996, the claimed protected disclosure was made in August 2019, and the dismissal occurred in January 2020, after the claimant had not attended work for some weeks. Accordingly, that proposed claim was also weak and in my view the claimant would not suffer serious prejudice by reason of not being able to advance that claim.
- 21 As for the prejudice to the respondent, the proposed amendment application was made more than 18 months after the last day when the claimant worked for the respondent, and her supervisor's line manager, Ronnie, was no longer employed by the respondent. Those factors individually meant that the respondent would suffer prejudice if the application to amend were permitted to be made. That is because memories fade with time, and because the likely principal witness whose evidence would be required to defend the proposed claims might not be as willing to assist with defending the claim as he might have been if he had still been employed by the respondent. However, former employees often do give evidence on behalf of their former employers, and I was not prepared to conclude that this former employee

would be unwilling to give evidence for the respondent. Therefore, if I were to retake the decision on the amendment application, then I would need to know about the stance of this former employee and the importance of his evidence before taking into account the fact that he was no longer an employee of the respondent. Nevertheless, the events in question occurred more than 18 months before the application to amend was made, and in the circumstance that I regarded both proposed new claims as being weak, I concluded that the balance of prejudice fell firmly in favour of the respondent (as far as the application to amend was concerned, i.e. the prejudice to the respondent of granting the application to amend outweighed significantly the prejudice to the claimant from refusing that application) and that it was as a result not in the interests of justice to permit the claimant to amend her claim in the manner sought.

- 22 In those circumstances, I concluded that it was not appropriate to reconsider my decision to refuse the application to amend the claim, and I did not do so.

The issue of whether it was reasonably practicable to make the claim within the primary time limit period and, if it was not, whether it was made within a reasonable period of time after the expiry of that period

(1) The relevant statutory provisions concerning the time limits for making the claims

- 23 The respondent did not accept that the claimant was entitled to statutory sick pay, and its amount, so that claim was outside the jurisdiction of the tribunal. The claims for unpaid wages and accrued holiday pay were made under section 23 of the ERA 1996 and regulation 30 of the Working Time Regulations 1998, SI 1998/1833, as amended. Both of those claims needed to be made within the period of three months from the ending of the claimant's employment, extended, if applicable, by any early conciliation period, and, if the claims were not made within that primary limitation period, then they had to have been made within a reasonable period of time after the expiry of that period.

(2) The date when the ET1 claim form was presented and the circumstances preceding that presentation

- 24 The claim form was presented on 18 August 2020. The early conciliation period commenced on 3 July 2020, and it ended on 18 July 2020, when the early conciliation certificate was issued. As stated in paragraph 6 above, the claimant's employment was stated on the claim form to have ended on 31 January 2020.

(2) The claimant's evidence, and that of Ms Krupinksa, concerning the reasons why the claim was made on 18 August 2020

- 25 The claimant's primary reason for not making the claim before it was in fact made was, she told me, that she believed that there was a limitation period for making a claim to an employment tribunal of three years. That belief arose, she told me, from

the fact that there is a three-year time limit for making a claim in relation to employment in Poland. The claimant's understanding of written and spoken English was not good during 2019, and she needed an interpreter at the hearing before me of 5 July 2021.

- 26 The claimant's evidence was that during January and February 2020, she gave the respondent certificates of her sickness (i.e. fit notes stating that she was unable to work) by giving them to friends, who, she said, took them to the respondent's hotel in person. She said that she had asked the respondent for sick pay but was told that she had not worked there long enough to receive it. Mrs Dad said that the respondent had no record of the claimant having approached it in that way, and it had no copies of sickness certificates for the claimant
- 27 The claimant said that she had gone to the JobCentre to claim state benefits and that when she had done so she had gone with a friend who spoke English and was able to act as a translator for her. The claimant said that the JobCentre staff had wanted to know whether or not she had been paid for annual leave. The claimant said that she had received pay statements from the respondent, which she had shown to the JobCentre. She said (as translated) that the staff there had then said that they thought that she had been paid for her annual leave, or, at least, they had not said that she had not been paid for her annual leave.
- 28 The claimant said that she had in the period after her operation on her knee had complications from the surgery and that as a result she was not able to think about anything else. She said (as translated) that she at that time had a grudge but she did not think that she had a claim against the respondent. She knew by the middle of March 2020 that she had been dismissed, though. Nevertheless, she said, it was only at the beginning of June that she became aware that she might be able to make a claim to an employment tribunal in relation to her employment with the respondent. She said that that awareness came about when a female friend told her that she would ask a Polish-speaking adviser who also spoke English well and had helped other Polish-speaking people with claims to employment tribunals, to get in touch with her to advise her. The claimant said that her friend had said that she would arrange that to happen because she (the claimant) had told her friend that she had not been paid by the respondent for her annual leave.
- 29 The country was still in the first period of Covid-19 lockdown in June 2020. The claimant said that the Polish-speaking adviser with whom her friend had put her in contact (the adviser was Ms Krupinska), had not advised her over the telephone, but had advised her only in person, at the beginning of July 2020, when the two of them met at a friend's house. When I asked the claimant whether she could not have sought assistance by speaking to someone over the telephone during the period from March to June 2020, she gave me the unconvincing answer that she spoke to her friends on the telephone during March to June 2020 "but only briefly as they had their own responsibilities and could not give much time to me". She also said that during that period she did not know that she could make a claim to an employment tribunal.

That was, however, inconsistent with what she had told me about knowing about a three-year time limit for claims to a comparable court in Poland.

- 30 Ms Krupinska told me that she had contacted ACAS on the day that she first saw the claimant, and that was borne out by the early conciliation certificate (see paragraph 24 above). The fact that the claim form was presented a month after the date of that certificate was also consistent with what Ms Krupinska eventually said to me (albeit not as a witness, but simply in response to a question of mine during the hearing) about her understanding of the impact of going to ACAS and commencing a period of early conciliation, which was that it stopped the clock running for limitation purposes. However, that was incorrect in the circumstances, since the claimant's employment had ended more than three months before 3 July 2020. When I first asked Ms Krupinska about the circumstances in which she had approached ACAS, I pointed out that she at that time knew that (1) a claim was outside the primary limitation period of three months and (2) the claimant knew at the latest by March 2020 that her employment had been terminated, and asked her why she had not just made a claim on behalf of the claimant in the knowledge that approaching ACAS was not going to extend time. She then said that she knew that the claim would be out of time, but that she knew too that she needed an ACAS early conciliation certificate and that the conciliation would cover "the whole process". My further questions then led to Ms Krupinska saying things that indicated that she in fact thought that going to ACAS even outside the primary time limitation period of three months did extend time.
- 31 However, Ms Krupinska said (and the claimant did not contradict her, although the claimant did contradict Ms Krupinska on several occasions, correcting what she said) that she had told the claimant that a claim had to be made within three months and that it was up to the judge to decide whether to allow the claim to continue. When I asked when Ms Krupinska had said that the time limit for making a claim started, she said that it was either the end of the employment or at least when the claimant believed that it had ended. Ms Krupinska said that she had not wanted to advise the claimant in person without seeing her P45 "to see what [the claimant was] allowed to claim".

The relevant case law concerning reasonable practicability

- 32 There are several helpful (and in my view accurate) passages in *Harvey* on the issue of when it is reasonable practicable to make a claim to an employment tribunal within the primary time limit. In paragraph PI[193] of *Harvey*, this is said:

"In the leading case of *Marks and Spencer plc v Williams-Ryan* [2005] EWCA Civ 470, [2005] ICR 1293 (at [20]), it was described as the 'first principle' of analysis of the escape clause that the question of what is reasonably practicable should be given 'a liberal interpretation in favour of the employee'. The court noted that while this had initially been articulated in *Dedman* when the statutory time limit was much shorter (four weeks), the principle continued to have application following the extension of the limitation period to three months

(see also *Lowri Beck Services Ltd v Brophy* [2019] EWCA Civ 2490 in which the Court of Appeal, Underhill and David Richards LLJ, reiterated this principle at [12]).

33 As it is said in paragraphs PI[197]-[198] of *Harvey*:

'[197] One of the most common reasons for failing to meet a primary time limit is ignorance or mistake, on the part of a claimant, for example in relation to the existence of the relevant employment right or the existence of the limitation period. At heart, the approach that should be taken to such an assertion is the same as taken to any other reason given for a missed limitation period which uses the reasonably practicable formula: the question is simply whether, in light of the evidence about that ignorance or mistake, it was reasonably feasible for the litigant to have presented the complaint to the employment tribunal within the relevant primary period.

[198] If a claimant's mistake or ignorance which results in their missing the primary deadline arises because of negligent advice from a professional adviser (such as a lawyer making a mistake in calculating the deadline or failing to communicate the deadline to the litigant) it will be held that it was reasonably practicable for the claimant to submit the claim in time, and the time limit will not be extended. Such cases involving a professional adviser under the *Dedman* principle are considered, separately, at para [208] ff, below. Where the mistake or ignorance on the part of the litigant was not the result of any faulty professional advice then the question for the tribunal is whether the litigant's mistake or ignorance was reasonable. This was articulated in the leading case of *Wall's Meat Co Ltd v Khan* [1978] IRLR 499, [1979] ICR 52, CA in which Brandon LJ stated (at [60]-[61]):

"the impediment [to a timeous claim] may be mental, namely, the state of mind of the complainant in the form of ignorance of, or mistaken belief with regard to, essential matters. Such states of mind can, however, only be regarded as impediments making it not reasonably practicable to present a complaint within the period of three months, if the ignorance on the one hand, or the mistaken belief on the other, is itself reasonable."

34 In paragraph PI[202] of *Harvey*, this is said:

'If a tribunal accepts as a matter of fact that a litigant was ignorant of the existence of the employment right, it may well be held reasonable for the time limit to have been missed (this point was made by Shaw LJ in *Walls' Meat* and Waller LJ took a similar view in *Riley v Tesco Stores* [1980] IRLR 103, [1980] ICR 323 at 335). On the other hand, once a litigant is held to have known of the employment right there will be close scrutiny of whether it was reasonable to be ignorant of the associated time limit on the basis that it will often be incumbent on a claimant to undertake prompt enquiries regarding that time limit and the

procedure for lodging a claim once they become aware of the right itself. This distinction was addressed in *Walls' Meat* by Brandon LJ:

“Thus, where a person is reasonably ignorant of the existence of the right at all, he can hardly be found to have been acting unreasonably in not making inquiries as to how, and within what period, he should exercise it. By contrast, if he does know of the existence of the right, it may in many cases at least, though not necessarily all, be difficult for him to satisfy an [employment] tribunal that he behaved reasonably in not making such inquiries.

To that extent, therefore, it may, in general, be easier for a complainant to avail himself of the “escape clause” on the ground that he was reasonably ignorant of his having a right at all, than on the ground that, knowing of the right, he was reasonably ignorant of the method by which, or the time limit within which, he ought to exercise it.”

- 35 The final passage of *Harvey* to which I referred myself was paragraph PI[222], which is in these terms:

“*The application of the [Dedman] principle to solicitors and other kinds of advisers.* The *Dedman* principle has been expressed in terms of professional or skilled advisers engaged by a litigant, but in *Riley v Tesco Stores Ltd* [1980] IRLR 103, [1980] ICR 323, CA, Stephenson LJ argued with forceful (obiter) comments that there is neither any significance in the ‘skill’ of the adviser nor any magic in the word ‘engagement’ (at 106, 330). Although there is some force to that criticism, with *Dedman* having been authoritatively reaffirmed in *Marks & Spencer plc v Williams-Ryan* [2005] EWCA Civ 470, [2005] IRLR 562 it is necessary to carefully consider which advisers are and which are not covered by the doctrine. Where an adviser falls outside the *Dedman* principle, this does not mean that the claimant will necessarily benefit from the escape clause. The tribunal in such a case will consider whether, in the full circumstances, reliance on the wrong advice was reasonable (see for example *W Press & Son Ltd v Hall* [1973] IRLR 307, [1974] CR 121, NIRC, a case concerning Department of Employment officers giving advice in employment exchanges).”

My conclusion on the issue of whether or not it was reasonably practicable to make the claim within primary limitation period of three months from the claimant’s dismissal

- 36 After much careful consideration, during which I found the question to be finely balanced, I decided, applying the above case law and in particular the approach stated to be appropriate in *Marks and Spencer plc v Williams-Ryan* set out in paragraph 32 above, that it was not reasonably practicable for the claimant, being unable to speak or write English without the use of a faulty internet translator, or

someone to help her, in the circumstances described in paragraphs 25-31 above, to make her claim within the primary limitation period of three months.

Was the claim made within a reasonable period of time after then?

37 In my view, given that the claimant was being assisted by someone who was not a lawyer and was just doing her best to assist a fellow Polish person, namely Ms Krupinska, I concluded that the claim was made within a reasonable period of time after Ms Krupinska had become involved, despite Ms Krupinska being mistaken about the effect of going to ACAS after the expiry of the primary time limit.

Outcome

38 The claims for unpaid holiday pay and notice pay (only) are therefore within the jurisdiction of the tribunal. I have therefore in a separate document listed the case for hearing, and made case management orders in relation to that hearing.

Employment Judge Hyams

9 July 2021

Sent to the parties on:

.....14 July 2021.....

.....GDJ.....

For Secretary of the Tribunals