



EMPLOYMENT TRIBUNALS

Claimant: Mr. V. Perry

Respondent: Mrs. L. Howlett

Heard at: Bury St Edmunds **On:** 17 June 2022
By Cloud Video Platform

Before: Employment Judge S.L.L Boyes (Sitting Alone)

Representation

Claimant: Mr. Julian, friend/representative

Respondent: Ms. Duffy, representative

RESERVED JUDGMENT ON A PRELIMINARY ISSUE

The Claimant's complaint of unfair dismissal is out of time. It was reasonably practicable for the claim to be presented in time and it would not be reasonable to extend time. The Tribunal therefore does not have jurisdiction to deal with the claim.

REASONS

1. The Claimant asserts that he was unfairly dismissed by the Respondent. The Respondent denies that the Claimant was unfairly dismissed.
2. The preliminary issue for the Tribunal to decide, and the reason for the Open Preliminary Hearing before me, was whether the claim lodged with the Tribunal on the 7 September 2021 was made in time, and, if not, whether it was not reasonably practicable for the claim to be lodged in time.

The Hearing

3. At the hearing I heard evidence from the Claimant. He adopted his witness statement dated 9 June 2022. He was cross examined by the Respondent. I also asked him some questions. He was re-examined by his representative.
4. The Respondent did not call any witnesses to give evidence.

5. I heard closing submissions from both parties.
6. The time taken to hear evidence and submissions meant that it was too late in the day for Judgment and summary reasons to be given orally. I therefore reserved Judgment.

Documents

7. As well as the documents held on the Tribunal file, the Tribunal had before it a hearing bundle prepared by the Respondent and hearing bundle prepared by the Claimant. It had before it the Claimant's witness statement dated 9 June 2022. At the hearing it was agreed between the parties that the Respondent's bundle would be used as the hearing bundle as well as pages 65 and 66 of the bundle prepared by the Claimant.
8. The Claimant relied upon a skeleton argument dated 10 June 2022 and the Respondent a submissions dated 15 June 2022.

Issues to be determined

9. The issues to be determined are:
 - i. Was the claim submitted in time (that is three months from the last date that the Claimant worked).
 - ii. If the claim was not submitted in time, was it not reasonably practicable for the complaint to be presented in time and, if not, was it presented within a further reasonable period.

Findings of Fact

10. Where there is no dispute between the parties as to a particular fact, my findings of fact are recorded below without any further explanation. Where the facts are not agreed by both parties, I have explained why I prefer one party's account over the other. Where the facts are not clear, I have explained why I have made the finding of fact concerned.
11. I found the Claimant to be a straightforward and honest witness. However, there were some aspects of his account that were vague and I did not find him to be an entirely reliable historian as some aspects of his evidence was confused and/or contradictory, although some issues were clarified in re-examination. As a considerable time has passed since he ceased the work in question and submitted his first claim, it is unsurprising that he cannot recall all of the details, dates and timelines and so I accept that he telling the truth to the best of his ability and recollection, but I did consider that it meant that some aspects of his evidence was not entirely reliable.
12. My findings of fact are as follows:

Chronology of Events

13. The Claimant was employed as a hairstylist at a hair salon owned by the Respondent from on or around the 22 September 2001. He later undertook managerial duties.
14. The Respondent is a sole trader. The business traded under the name of Partners.
15. In around September of October 2020, the Claimant sought advice from two local law firms as he felt unable to continue his employment with the

Respondent. He did not continue with their services as he felt that they were not giving him any practical advice.

16. The Claimant stated that he also telephoned ACAS. He states that ACAS told him that if he wanted to bring a Tribunal claim that he would have to fill out a form online. He states that he was not told that he needed an ACAS certificate number.
17. The Claimant subsequently talked to Mr. Julian, who he was introduced to via a friend, about his employment situation. Mr. Julian offered to call him and see if he could help. They first spoke by telephone in October 2020 and this was followed by a further four or five telephone calls over the period from late October to early November 2020.
18. Mr. Julian has a law degree and is studying for the Legal Practice Course. He is a County Court advocate usually undertaking small claims or applications in chambers. He confirmed that he has substantial experience of litigation but no past experience of employment law. He is not yet qualified.
19. The Claimant wrote to the Respondent on the 3 November 2020 stating that he considered that he had been constructively dismissed and that his last day of work would be 11 November 2020. Mr. Julian assisted him in writing the letter. Mr. Julian also offered to help him bring his Tribunal claim and to help him fill out the forms and represent him.
20. The Claimant states that on the 18 November 2020, he contacted ACAS for a second time. He claims that the ACAS representative told him that, as he was making the claim, he had to fill out the form. He formed the impression that he had to fill out the form personally. The ACAS representative helped him to find the form online. The ACAS representative did not mention the need for an ACAS certificate number. Had she done so he would have obtained one.
21. The Claimant completed and lodged the claim form himself electronically with the Employment Tribunal on the 18 November 2020 under case reference 3313780/2020. ["the first claim"]. At section 2.3 of the claim form, he ticked the box stating that he did not have an ACAS Early Conciliation certificate number. In the same section, he ticked the box indicating that he did not have an Early Conciliation certificate because his "*claim consists only of a complaint of unfair dismissal which contains an application for interim relief*".
22. The Claimant's evidence is that he did not speak to Mr. Julian before completing the claim form because he understood that he had to personally fill out the form. He also understood that ACAS would attend court with him to help him: he became somewhat confused as to the role of ACAS and Mr. Julian. In live evidence, the Claimant he sent the completed claim form to ACAS.
23. Given the Claimant's confusion as to the role of ACAS, I am not satisfied on the basis of the Claimant's evidence, that it was ACAS that he spoke to on two occasions about the completion of the claim form, rather than the Employment Tribunal offices. This is because the Claimant told Mr. Julian via WhatsApp that he had submitted his claim to ACAS (see below), and repeated that in evidence before the Tribunal. Consequently, as there is no other corroborative evidence, such as telephone records, to demonstrate that the Claimant spoke to ACAS as claimed, I do not consider that his evidence in this respect is reliable.
24. On the 23 November 2020, the Tribunal wrote to the Claimant. The letter included the following:

“ACCEPTANCE OF PART OF CLAIM

Employment Tribunals Rules of Procedure 2013

Your claim form has been referred to Employment Judge Quill who has decided that only the following complaints can be accepted namely interim relief and unfair dismissal. The Judge has decided to reject your other complaints because the Tribunal has no jurisdiction to consider them.”

25. The Tribunal also wrote to the Respondent on the 23 November 2020, and, in that letter, stated that part of the claim, namely the redundancy pay and holiday pay claims, had been rejected.
26. On the 23 November 2020, the interim relief application was listed to be heard on the 10 December 2020.
27. The Respondent lodged the response form on the 26 November 2020.
28. On the 28 November 2020, the Claimant provided Mr. Julian with a copy of the Tribunal claim form via WhatsApp. In that exchange he stated “*This is my application form I sent acas*”.
29. It states in the Claimant’s witness statement [HB 79] that he has only a very vague recollection of discussing the ACAS certificate number with Mr. Julian. Further, he states that he only has that recollection after Mr. Julian discussed what happened with him. He states that Mr. Julian explained that he could not understand why the claim had been admitted without the ACAS certificate number. Mr. Julian told him that since the claim appeared to have been admitted, it was probable that the matter would not be raised again. However, if it was brought up, that it might lead to the claim being thrown out. Mr. Julian tells him that he advised him that they could re-file the claim form or leave matters as they were. Mr. Julian also tells him that he explained that they could only re-file the form for another two months or so. His independent, albeit vague, recollection is of being given both options and deciding to continue with the claim as it was. Mr. Julian tells him that he cannot recall how the decision was reached. Mr. Julian tells him that he believes this conversation (via telephone) took place sometime in early December 2020 and he has no reason to disagree with that date.
30. The Claimant confirmed in live evidence, that he recalled the above discussion with Mr. Julian. However, he stated that, at the time that he was under the hospital and was ill so there was a lot that he did not take in. He was asked in live evidence why he did not obtain an ACAS Early Conciliation certificate and then submit a further claim within the three month time limit after his discussion with Mr. Julian about the lack of an ACAS certificate. He replied that he could not recall/remember. He later said that Mr. Julian advised him that, without the ACAS certificate, the case would not go ahead because it was an important part of the paperwork and was needed. He could not remember anything else about the conversation that they had when they discussed this. He thought Mr. Julian had moved jobs around that time. He later clarified that Mr. Julian’s move was in 2021, around the time of the hearing on the 19 August 2021, not in 2020.
31. On 7 December 2020, the Claimant wrote to the Tribunal stating that he had not applied for interim relief and was not sure why a hearing had been listed. He requested that the hearing listed for 10 December 2012 be vacated and that the application for interim relief be discontinued. He also indicated that he was content for the application to be disposed of without a hearing.

32. On the 9 December 2020, the Respondent wrote to the Tribunal to confirm that they agreed to the proposal that the hearing be vacated.
33. On the 9 December 2020, Regional Employment Judge Foxwell ordered that the hearing fixed for the 10 December 2020 be vacated.
34. On the 5 April 2021, the Tribunal listed a final hearing for the 20 August 2021.
35. Having initially visited his GP before his employment ended, the Claimant was diagnosed with ulcerative colitis and proctitis in around June 2021. He lost over 2 stone 4 pounds in 2021. He is being treated by the hospital as an outpatient: he has not required inpatient treatment.
36. On the 7 July 2021, the Respondent made an application to amend her response and applied to the Tribunal for an order that the claim be rejected/struck out under Rule 12(1)(d), Rule 12(2) and also Rule 10(1)(c) of the Employment Tribunals Rules of Procedure ("ET Rules of Procedure"). This was on the basis that:
 - (i) The Claimant has failed to enter a correct and valid Early Conciliation reference number in the prescribed section at 2.3 of his ET1 Claim form.
 - (ii) The Claimant has cited an exemption to the requirement to provide an Early Conciliation reference number which does not apply.
 - (iii) The claim should have been rejected by the Tribunal under 12(1)(d), Rule 12(2) and Rule 10(1)(c).
 - (iv) Under Rule 12(2), the Tribunal has no discretion to amend the claim and no validly instituted claim existed.
 - (v) The Claim is not of the kind described in 12(2A) or 12(2ZA). As such the Tribunal do not have the discretion these sections could afford to allow acceptance of the claim or amendment to correct the error, and no validly instituted claim existed.
37. On the 19 August 2021, the Claimant contacted ACAS. An Early Conciliation certificate was issued on the same date. The Claimant was asked in live evidence why he did not obtain the ACAS certificate between the 7 July 2021 and the 18 August 2021. He replied that Mr. Julian was moving to Liverpool and changing jobs and he was back and forward to hospital.
38. Both the Claimant and Mr. Julian attended the hearing on the 20 August 2021. I am told by Mr Julian, and have no reason to doubt that, at the final hearing on the 20 August 2021, Judge Moore found that:
 - (i) The orders made by Employment Judge Quill that is the "Acceptance of Part of Claim"; and the "Notice of Claim" dated 23 November 2020 constituted a judgment under rule 1(3)(b)(ii);
 - (ii) Those Judgments amounted to a finding that the Court had jurisdiction to hear the unfair dismissal claim;
 - (iii) The strike out application must fail;
 - (iv) She could and should treat the strike out application as an application to reconsider Employment Judge Quill's decision; and
 - (v) Employment Judge Quill's decision was incorrect and that the Tribunal lacked jurisdiction.
39. As a consequence, Employment Judge Moore revoked Employment Judge

Quill's decision and struck the claim out for want of jurisdiction. The Claimant did not seek a reconsideration or appeal against that decision.

40. In his witness statement at paragraph 17 [HB 80], the Claimant states that directly after the hearing he and Mr. Julian went to the nearby pub. Mr. Julian explained to him that, if he was to try to bring a new claim, a new ET1 form would need to be completed and presented to the Tribunal as soon as possible. Mr. Julian told him that it would be better if he completed the form because the Claimant might make another mistake. However, he explained that there would be some delay in completing it because he had recently moved to Liverpool and was extremely busy. He told him that, overall, he thought a small delay would be less risky than another error. He was happy to follow that advice.
41. Employment Judge Moore's written Judgment was sent to the parties on the 14 September 2021. It was in the following terms:

"Reasons having been given at the hearing, the decision of Judge Quill accepting the claim for unfair dismissal and interim relief is revoked. The entirety of the claim is struck out on the grounds there is no application for interim relief and the Claimant has failed to undertake Early Conciliation."
42. The Claimant lodged a further claim form ["the second claim"] with the Tribunal on the 7 September 2021. Mr. Julian filled out that form. The form included an ACAS Early Conciliation certificate reference number.

The Relevant Law -Time Limit for bringing the claim

43. In claims for unfair dismissal, the time limiting for bringing a claim is laid out at section 111 of the Employment Rights Act 1996 ("the ERA") as follows:

"111 Complaints to employment tribunal.

(1) A complaint may be presented to an employment tribunal against an employer by any person that he was unfairly dismissed by the employer.

(2) 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 practicable for the complaint to be presented before the end of that period of three months."
44. Further guidance is given in caselaw as to how section 111(2)(b) should be applied in individual cases.
45. The term, "*not reasonably practicable*" should be given a "*liberal construction in favour of the employee*" [*Dedman v British Building and Engineering Appliances Ltd* 1974 ICR 53, CA]. What is reasonably practicable is a question of fact and thus a matter for the Tribunal to decide. The onus of proving it was not reasonably practicable to lodge a claim in time rests on the Claimant. There is "*a duty upon him to show precisely why it was that he did not present his complaint*" [*Porter v Bandridge Ltd* 1978 ICR 943, CA].
46. If a Claimant fails to show that it was not reasonably practicable to present the claim in time, the Tribunal should find that it was reasonably practicable to do so [*Sterling v United Learning Trust* EAT 0439/14]. '*Reasonably practicable*'

does not mean reasonable, and does not mean physically possible, but means something like 'reasonably feasible' [*Palmer and anor v Southend-on-Sea Borough Council* 1984 ICR 372, CA]. In *Asda Stores Ltd v Kauser EAT 0165/07* Lady Smith stated that "*the relevant test is not simply a matter of looking at what was possible but to ask whether, on the facts of the case as found, it was reasonable to expect that which was possible to have been done*".

47. Where the Claimant is generally aware of the right to make a claim, ignorance of the time limit on its own will not usually be sufficient reason for the delay. If a Claimant is aware of their right to complain, they are under an obligation to seek information and advice about how to enforce that right. Failure to do so will usually lead the Tribunal to reject the claim. As per *Dedman v British Building and Engineering Appliances Ltd* 1974 ICR 53, CA, in reaching its decision, the Tribunal is required to establish what opportunities the Claimant had to find out about his rights and whether he took those opportunities? If not, why not? Was he misled or deceived?
48. The correct test is not whether the Claimant knew of their rights but whether they ought to have known of them [*Porter v Bandridge Ltd* 1978 ICR 943, CA]. In the case of *Avon County Council v Haywood-Hicks* 1978 ICR 646, EAT, the Employment Appeal Tribunal found that the Claimant in that case, who did not find out about the possibility of bringing a claim until he read an article in a newspaper, ought to have investigated his rights within the time limit and claimed in time.
49. In *The Royal Bank of Scotland plc v Theobald*, UKEAT/0444/06, the Employment Appeal Tribunal held at paragraph 42:

"Where a Claimant seeks to invoke the power that the tribunal has to allow a late claim to proceed on the basis that it has been presented within a reasonable time after the expiry of the three month period, it seems to me that it is incumbent on him to give a full and frank explanation of how and why the delay occurred, particularly the delay once what was erroneously thought to have been an obstacle, in this case the appeal process, had been removed."
50. In *Software Box Ltd v Gannon* 2016 ICR 148, the Employment Appeal Tribunal considered the application of the 'not reasonably practicable' extension in circumstances where the Claimant was mistaken in her belief that proceedings were pending. Referring to *Wall's Meat Co Ltd v Khan* 1979 ICR 52, CA, the Employment Appeal Tribunal stated that the focus should be on what was reasonably understood by the Claimant and whether, on the basis of that understanding, it was not reasonably practicable to bring the second claim earlier.

Submissions of the Parties

Claimant

51. The Claimant submits that a series of mis-steps by both parties and the Tribunal, as well as ACAS, led the Claimant to reasonably conclude that:
 - a. An ACAS Early Conciliation certificate number was not required;
 - b. Jurisdiction had (albeit inexplicably) been determined in his favour;
 - c. That it was not worth the risk to 'kick the hornets' nest' by withdrawing the claim and recommencing it;
 - d. That the Respondent did not raise the issue until 7 July 2021.

52. Consequently, the Claimant submits that, during the primary limitation period, it was not reasonably practicable to present the claim because there was already a prima facie valid claim before the Tribunal, and, after the primary limitation period had expired, it was unreasonable to bring it more quickly because this would involve withdrawing a prima facie valid claim in favour of making a new claim, with the risk of the Claimant falling foul of the relevant time limits under section 111(2) of the ERA.
53. It was reasonable for the Claimant to rely upon the decision of Judge Quill that the claim was a valid extant unfair dismissal claim until the 20 August 2021. Further, the 17 days following the strike out application was a reasonable delay as the Claimant personally ought not to have attempted to file another ET1 and the Claimant's only available advisor acted, in the circumstances, with reasonable haste.
54. The Claimant submits that it was not reasonably practicable for the Claimant to bring the claim within three months because:
- (i) The previous claim had been admitted by the Tribunal and neither the Respondent nor the Tribunal had indicated that there was any serious procedural irregularity.
 - (ii) The Respondent was represented, at the very latest, by the 9 December 2021. Had it made its application to strike out the claim at any point in the next two months, the Claimant would have been able to bring a new valid claim. Instead, it failed to make the application to strike out until just over a month before the final hearing. It may be that this delay was a deliberate tactical decision to take advantage of the Claimant's mistake.
 - (iii) As can be seen from paragraphs 9 to 11 of the Claimant's witness statement, the Claimant was given very poor and evidently confusing advice by ACAS in a number of respects. Nevertheless, the first claim was submitted within a week of the effective date of termination. The Claimant's confusion and misunderstanding following a telephone call with the ACAS is not unreasonable for a litigant in person. Nor, on the evidence, is it open to doubt the Claimant's evidence as to what happened during the call. The best, indeed the only evidence, is that of the Claimant.
 - (iv) If, contrary to that submission, the Tribunal think it more likely that the Claimant simply misunderstood what he was told by ACAS, then it cannot find that the Claimant's subsequent actions unreasonable. Confusion is not something for which someone is 'responsible' and it is nigh on impossible to reasonably guard against confusion. Further, the Employment Appeal Tribunal has treated the advice of ACAS as different to that of professional advisors. Given the lack of an agency relationship, complying with unreasonable advice of ACAS was held to be reasonable.
 - (v) This was the first in a series of events which was causative of the late submission. The Claimant did, however, believe that a claim had been submitted in time and he was, at that point, well within the primary period. Ticking the box for interim relief did factually contribute to the cause of the late submission. Whatever the wisdom of ticking the box, it could not, without the benefit of hindsight, reasonably have been foreseen to have caused the problems that it did. If a problem could not be reasonably foreseen it could not reasonably be avoided.
 - (vi) The acceptance of part of the claim on 23 November 2020, and the Notice

of Claim, which the Claimant and his advisor did not see until July 2021, fell below the standard of clarity required by rule 10(2) of the ET Rules of Procedure. Employment Quill's orders were Judgments within the meaning of re.1(2)(b) E Rules of Procedure. On the face of it, particularly when read in combination with the notice of interim relief hearing, the only proper construction of the order was that the unfair dismissal claim had not been struck out and indeed appeared to have been found to be within the jurisdiction (the other claims, which were not specified having been found to be in excess of jurisdiction). That construction is supported by the wording of the Acceptance of Part of Claim and an absence of reasons or explanation for the decision. It is submitted that the first claim form, on any proper reading, neither disclosed an intent to apply for interim relief nor any proper basis for that application. Further, it was open to the Judge to list a preliminary hearing or require further particulars to get to the bottom of the matter. This submission was upheld at the final hearing of the first claim.

- (vii) There were two options before the Claimant at the time: withdraw the claim and bring it a second time; or, maintain the current proceedings, keep a watchful eye during the currency of the primary period and if not withdrawn by its expiry, seek to rely on a judgment that the claim was within jurisdiction. The latter option involved higher levels of risk but neither option was free of risk (for example, applications to strike out for abuse, some unforeseen new problem and so on). Any advice also had to bear in mind the additional delay (particularly during the height of Covid), inconvenience and delay of a remedy, and that the Respondent had a representative on record by, or shortly after, the time the advice was given and that it would require a reconsideration of the decision, which is not particularly easy to come by. Either option was a viable option within the reasonable ambit of proper advice. The Claimant's decision to continue with the first claim was, in that context, reasonable. Prima facie the claim had been brought in time. It was only a relatively remote risk that a hypothetical new claim would retrospectively be held to be out of time.
- (viii) The interim application was withdrawn pursuant to rule 51 of the ET Rules of Procedure well within the primary period. Had the advisor misunderstood the effect of acceptance of part of a claim, this should have resulted in the whole claim coming to an end, with sufficient time to bring a new claim. No such event occurred. Nearly two months after the expiry of the primary limitation period, the Tribunal listed a final hearing with directions for its preparation. The Respondent, with its experienced representative, had not raised the issue.
- (ix) Therefore, during the entire primary limitation period, the Claimant, on reasonable advice, worked on the assumption that his claim was valid. As a matter of fact, it was practicable but it was not reasonable to submit a further claim. To do so, would have been to throw away a prima facie valid claim.
- (x) In the alternative, after the findings of Employment Judge Moore at the final hearing judgment (that as a matter of law, until the reconsideration on the 20 August 2021, the old claim was within jurisdiction), would be an abuse of process and/or an impermissible attempt to relitigate.

55. In terms of the period after the 10 February 2021, the Claimant submits that:

- (i) Once the primary limitation period had expired until the strike out application was made, it would have gone against all the interests of the Claimant to withdraw the claim and start again: it would have been entirely unreasonable to expect him to do so. Once the 10 February 2021 passed, the Claimant was 'locked in' to that course of action unless there was some substantial change of circumstances.
 - (ii) Once the strike out application was made, the Claimant could withdraw and start again. However, the Claimant still had an argument with reasonable prospects. Indeed, at the time Claimant's advisor was not aware of the decision in *Kudjodji v LIDL Ltd* UKEAT/0054/11. Whilst that case centred on a review at a substantive hearing of a review, of a judgment at a preliminary hearing that the claim was in jurisdiction, it does to a reasonable extent, support the position the Claimant took at the final hearing, albeit it may have been distinguishable. The Claimant took a course which was reasonable, when presenting the claim only after the final hearing, even if to withdraw and present a new claim earlier would also have been reasonably open to him.
56. In relation to the remaining two weeks and 4 days the Claimant submits that 14 days is standard (and therefore a reasonable) period, within litigation of moderate complexity, to prepare pleadings, witness statements and all sorts of other documents, where parties are professionally represented. The Claimant was being assisted in a non-professional capacity by a busy professional. Two of the additional four days were non-working days. Taking a further 17 days in total cannot be described as unreasonable.

Respondent

57. The Respondent submits that the onus is upon the Claimant to submit an error free claim. The onus is then with the Tribunal to either accept or reject it. It is neither the Respondent nor the Respondent's representative's responsibility to indicate or highlight any errors in claims, nor is it their responsibility to indicate such issues to the Tribunal.
58. The Tribunal had cause and an opportunity to reject the first claim at first instance if it was not accompanied with an interim relief application. The second opportunity to reject the claim then came about when the Claimant alleged and declared that he was not seeking interim relief. Furthermore, at that juncture the Claimant still had time to contact ACAS in the period December 2020 to February 2021 to obtain an Early Conciliation certificate and he did not. The onus was upon and with him to do so.
59. The Respondent submits that ignorance of the law and claim process is not a reasonable excuse or explanation. In particular, the Claimant has declared that he did seek legal advice and contacted ACAS prior to making his first claim. Section 2.3 of the ET1 claim form appears to be explicit in the requirement for an Early Conciliation certificate reference.
60. The Claimant did not seek a reconsideration of the Judgment made on 20 August 2021 and there was a delay from the obtaining of a certificate on 19 August 2021 to proceeding to have his second claim made and presented sometime afterwards on 7 September 2021.
61. In its skeleton argument, the Respondent also relied upon principles of Res Judicata and abuse of process. These arguments were not pursued at the hearing.

My Conclusions - Time Limit for Bringing the Claim

62. The effective date of termination was the 11 November 2020. This means that the last day for lodging a claim within the three month time limit was the 10 February 2021.
63. It is not suggested that the Claimant was physically unable to submit a valid claim prior to the 10 February 2021. Rather, it is submitted that it was not reasonably practicable for him to do so, taking into account the circumstances that arose and because of the way in which proceedings evolved after the submission of the first claim.
64. I have found as a fact that the Claimant has not shown, on the evidence before me, that he spoke to ACAS about his first claim before it was lodged. I therefore do not accept that there was a failure on ACAS's part which led to the submission of the first claim without an Early Conciliation certificate reference number. However, even if I am wrong about that, the Claimant was well aware of the defect by early December 2020.
65. It is perfectly clear from the evidence before me that the Claimant and Mr Julian discussed the possibility of the first claim being rejected due to failure to meet the Early Conciliation requirements in around early December 2020. It is also clear from the evidence before me that the Claimant was told by Mr Julian that there was a risk that the first claim would be rejected and that he could only re-file the claim form for around another two months. The Claimant was made aware at that point that his claim was defective.
66. Whilst I accept that Mr Julian does not have any employment law experience, it was open to the Claimant to seek specialist employment advice at that point to establish how to proceed. Alternatively, he had the option, whilst still well within the three month time limit, to make enquiries of and/or an application to the Employment Tribunal to seek to clarify the position. In effect, the Claimant was on notice that his claim may, at some juncture, be rejected and he knew that there was a time limit for submitting that claim. Instead, having received support and guidance from Mr Julian, he chose to take the risk of pursuing the first claim that he made.
67. Whilst Judge Quill's Order of the 23 November 2020 amounted to a Judgment that the Court had jurisdiction, the finding in that undoubtedly followed from the statement in the first claim form that the Claimant was making a claim for interim relief. Whilst no action to seek to clarify or correct the position was made by either the Tribunal or the Respondent until much later, the Claimant was aware as early as December 2020 that he had failed to include an ACAS Early Conciliation reference number with his claim form, that that meant that it fell to be rejected and that he had, in error, asked for interim relief on his claim form. This is not therefore a case in which the Claimant was ignorant of the legal position. Whilst I accept that the rules relating to Early Conciliation are technically complex, the Claimant and Mr Julian were aware of the existence of such rules and it was reasonably practicable and reasonable for steps to be taken at that stage in light of that knowledge.
68. The Claimant had adequate time to obtain an Early Conciliation certificate reference number, withdraw his claim (and, at the same time, inform the Tribunal that he relied upon rule 52(a) of the ET Rules of Procedure) and to complete a further claim form, between early December 2020 and the 10 February 2021. He had submitted a claim form previously. There was no

practical reason why he could not have submitted a further claim within that timescale.

69. The Claimant was on notice, from early December 2020, that there was a problem with his claim. As I have explained above, there were a number of options open to him at that stage including seeking specialist employment advice or seeking to clarify the position with the Tribunal. He could simply have obtained an Early Conciliation certificate and submitted another claim form. There was adequate time to do any or all of these before the 10 February 2021. There were no barriers to submitting a second claim within the three month time limit. I find that it was reasonably practicable for the Claimant to submit a claim within that timescale.
70. I have found that it was reasonably practicable for the Claimant to submit a further claim within the three month time limit. In any event, notwithstanding the above, even if I had found that it was not reasonably practicable for the Claimant to submit his claim within the three month time limit, the Claimant would still have had to show that he submitted his claim within such further period as the Tribunal considers reasonable.
71. The first time that the Respondent raised the issue of the first claim being defective was the 7 July 2021. However, it is not the Respondent's responsibility to point out deficiencies in the Claimant's claim form or to point out that he may wish to submit another claim with an ACAS Early Conciliation reference number within the three month time limit. Once the Respondent raised the issue, this provided the Claimant with a further prompt that there was a problem with the first claim and an opportunity to review his position, obtain an early Conciliation Certificate and lodge a second claim.
72. Mr Julian submitted that the Claimant decided not to 'kick the hornets' nest' at various stages in the proceedings relating to the first claim on the basis that there was a possibility that the jurisdictional issue would not be picked up by the Tribunal. However, it was very much a live issue from the 7 July onwards. Even though the first claim was still, at that point, extant by virtue of Employment Judge Quill's Order, I consider that it was open to and reasonably practicable for the Claimant to, once again, review his position at that stage. He did not do so but rather continued to pursue a claim which he now knew was extremely likely to be rejected at the hearing on the 20 August 2021.
73. Further, and in any event, I do not consider that taking a further two weeks and 4 days after Employment Judge Moore's Judgment of the 20 August 2021 to lodge the further claim was to do so within a reasonable period. It was beyond doubt by the 20 August 2021 that a further claim form needed to be submitted with an ACAS Early Conciliation reference number if the Claimant wished to pursue an unfair dismissal claim. The Claimant already had his Early Conciliation certificate. Despite this, it took a further two weeks and 4 days for a claim to be lodged. Whilst Mr Julian had recently moved to Liverpool, there was nothing preventing the Claimant from submitting a second claim online himself immediately after the hearing of the 20 August 2021. He now knew that he must include the Early Conciliation Certificate reference in the form. He had managed to complete the remainder of the form himself previously. If he did not feel confident in doing so himself, he could have sought the assistance of someone else to complete the form.
74. The Claimant was diagnosed with ulcerative colitis and proctitis in July 2021 and began seeing his GP about these conditions before his employment ended. I

have no medical evidence before me in this respect so I do not know anything further about the nature and extent of these conditions or the impact that they have upon the Claimant's day to day life. However, it is not submitted on his behalf that health problems preventing him from submitting the second claim sooner. To do so he had only to make a telephone call to ACAS to start the early Conciliation process and then once a certificate number had been provided submit an online claim form. He was able to speak to Mr Julian by telephone. He did not receive in patient treatment at any point. Therefore, for the avoidance of doubt, I find that the Claimant's health problems did not mean that it was not reasonably practicable for him to submit a second claim within the three month period.

75. Taking in to account all of the above factors, I find that it was reasonably practicable for the Claimant to lodge his claim within the three month time limit. Further, even if I had found that it was not reasonably practicable for him to do so, he did not submit it within a further reasonable period. Consequently, this Tribunal has no jurisdiction to determine his claim.

Employment Judge S.L.L. Boyes

Date: 13 September 2022

Reserved Judgment and Reasons Sent to The Parties On

23 September 2022

FOR EMPLOYMENT TRIBUNALS

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