



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4104726/2022

5

Held in Glasgow on 7 February 2023

Employment Judge L Wiseman

10 **Mr J Szydowski**

**Claimant
In Person**

15 **Emergency One (UK) Limited**

**Respondent
Represented by:
Mr E Mowat -
Solicitor**

20

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The tribunal decided the claim was presented late in circumstances where it had been reasonably practicable for the claim to be presented in time. A tribunal has no jurisdiction (that is, authority) to determine a claim that it presented late. The claim is dismissed.

25

REASONS

1. The claimant presented a claim to the Employment Tribunal on the 25 August 2022 in which he complained of unfair dismissal.
2. The respondent entered a response admitting the claimant had been dismissed but denying the dismissal had been unfair. The respondent
30 asserted the claim had been presented late.
3. The hearing today was to determine whether the claim had been presented in time. An Interpreter, Ms M Moore, was present to assist the claimant and tribunal.

4. The tribunal heard evidence from the claimant and, on the basis of the evidence and productions, made the following material findings of fact.

Findings of fact

5. The respondent manufactures specialist Fire and Rescue Service vehicles and appliances.
6. The claimant commenced employment with the respondent on the 18 April 2016.
7. The claimant was summarily dismissed for gross misconduct on the 14 April 2022. The respondent's Director, Mr Chester Smith, emailed the claimant on the 14 April 2022 (page 26) attaching the minutes of the disciplinary hearing and the dismissal letter.
8. The dismissal letter was also sent recorded delivery to the claimant, and he received this on or about the 25 April 2022.
9. The claimant appealed against the dismissal. The claimant was sent a copy of the minutes of the appeal hearing and the outcome letter by email of the 27 May 2022 (page 37). The documents were also sent to him recorded delivery.
10. The claimant sought legal advice after his dismissal and understood he had to make contact with ACAS to try to resolve matters, but if this was not successful a claim could be made to the Employment Tribunal. The claimant understood the claim had to be presented within three months from the date he knew of the dismissal.
11. The claimant contacted ACAS on the 28 June 2022 and an Early Conciliation certificate was issued on the 21 July 2022.
12. The claimant presented a claim to the Employment Tribunal on the 25 August 2022. He completed an online claim form.
13. The claimant returned to Poland on or about 21 May 2022. He and his family caught Covid during the summer. The claimant was ill with Covid during the second half of July. The claimant experienced the worst symptoms of Covid

during the first week of having it. The claimant did not have to attend hospital or have the doctor visit.

14. The claimant believes he has long-covid and that his recovery took a lengthy period of time.

5 **Respondent's submissions**

15. Mr Mowat referred to section 111 of the Employment Rights Act. The effective date of termination of employment was the 14 April 2022. The primary time limit for presentation of the claim expired on the 13 July 2022.

- 10 16. The provisions of section 207B Employment Rights Act allowed for an extension of time for the purposes of early conciliation. Mr Mowat submitted the early conciliation certificate was dated 21 July 2022 and accordingly (section 207B(4)) the time limit for presentation of the claim was the 21 August 2022.

17. The claim was presented on the 25 August 2022 and was therefore late.

- 15 18. The issue for the tribunal to determine is whether it was not reasonably practicable for the claim to have been presented on time. Mr Mowat referred the tribunal to the case of ***Walls Meat Co Ltd v Khan 1979 ICR 52***.

19. Mr Mowat submitted the claimant had received legal advice following his dismissal and knew of the time limits. He was also in contact with ACAS and
20 there was no reasonable basis to conclude the claimant did not know of the time limits.

20. The claimant returned to Poland towards the end of May and suggested he was inhibited from making the claim because of Covid. The claimant had not provided any medical evidence to support his position. The claimant told the
25 tribunal that the worst effects of Covid were felt in the first week, which would have been mid-end July. The claimant referred to ongoing effects but no medical treatment had been required.

21. Mr Mowat submitted there did not appear to have been a medical condition preventing the claimant from presenting his claim earlier. It had been reasonably practicable for the claim to have been presented on time.

22. Mr Mowat submitted that if the tribunal concluded it had not been reasonably practicable for the claim to have been presented on time, then the tribunal would require to determine if the claim had been presented within a further reasonable period.

Claimant's submissions

23. Mr Szydowski acknowledged rules needed to be applied, but also felt the tribunal required to be practical. He accepted he had not presented the claim in time, but submitted the evidence he had given should be sufficient to show the practical circumstances which had prevented him from acting earlier. Mr Szydowski submitted he was not a young man and the effects of the illness had affected him badly. He had also had to complete the form, which he had not fully understood. He had been in Poland, so communications had not been easy.

24. Mr Szydowski invited the tribunal to accept his late claim because of his personal circumstances.

Discussion and Decision

25. The tribunal had regard to the relevant statutory provisions. Section 111 of the Employment Rights Act provides, at subsection (2), that an employment tribunal shall not consider a complaint unless it is presented to the tribunal before the end of the period of three months beginning with the effective date of termination or 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.

26. The effective date of termination in this case was the 14 April 2022. The time limit for presentation of the claim was, accordingly, the 13 July 2022. However, an extension of the time limits to facilitate conciliation before the

start of proceedings, is allowed by section 207B of the Employment Rights Act. The original time limit fell within the conciliation period and therefore an extension of time, of one month, is permitted by section 207B. The one month period falls to be calculated from the date of the early conciliation certificate, which was the 21 July. The time limit for presentation of the claim was the 21 August 2022.

5

27. The claim presented on the 25 August 2022 was late. The issue for the tribunal to determine is whether it was not reasonably practicable for the claim to be presented on time. This is an issue of fact for the tribunal to determine (*Walls Meat Co Ltd v Khan* above) and the onus of proving that presentation in time was not reasonably practicable rests on the claimant.

10

28. The claimant invited the tribunal to find it had not been reasonably practicable for him to present the claim on time because he had been suffering from the effects of Covid and dealing with a situation where extended family members had also all had Covid and his granddaughter was in hospital.

15

29. The tribunal had regard to the case of *Schultz v Esso Petroleum CO Ltd 1999 ICR 1202* where the Court of Appeal accepted that illness may justify the late submission of a claim and emphasised the test was one of practicability, that means the tribunal must look at what could be done.

20

30. The tribunal, before considering the claimant's position, had regard to the fact the claimant had taken legal advice shortly after his dismissal, and had also been in contact with ACAS regarding a claim. The claimant knew the time limit for making a claim.

25

31. The claimant did not provide any medical evidence to support his position that he had Covid and that it prevented him from presenting his claim in time. The tribunal accepted the claimant, and his family, had Covid. The tribunal also accepted the claimant had been most unwell with Covid during the first week of it, which was on or about the penultimate week in July. The tribunal acknowledged the effects of Covid can be felt for some time afterwards, but there was no evidence from the claimant to indicate how he was feeling in mid-August, that is, several weeks after having had Covid.

30

32. The tribunal acknowledged family members were also infected with Covid, but there was nothing in the claimant's evidence to inform the tribunal why this, or indeed the claimant's own health, would have prevented him from completing an online application. There was nothing, for example, to explain why the claimant was fit enough to present the form on the 25 August, but not fit enough to do it a week earlier on the 18 August, when it would have been in time.

33. The tribunal was satisfied the claimant knew the time limit for presenting the claim form and considered it was reasonably practicable for the claim to have been presented on time. The tribunal decided the claim was presented late and a tribunal does not have jurisdiction (that is, authority) to consider a late claim. The claim is dismissed.

15

Employment Judge: L Wiseman
Date of Judgment: 14 February 2023
Entered in register: 14 February 2023
and copied to parties

20