EMPLOYMENT TRIBUNALS

Claimant: **Mr M Pritchard**

Respondent: **William Hill Organization Limited**

Heard at: **Cardiff** **On: 24 October 2018**

Before: **Employment Judge P Davies**

Representation:
Claimant: In person
Respondent: Mr Randall (Counsel)

JUDGMENT

The Judgment of the Tribunal is that

(a) The claim was presented out of time and the claim is dismissed.

REASONS

This is a Preliminary Hearing to determine principally the issue about whether the claim of unfair dismissal made by the Claimant Mr Pritchard, who represents himself, was filed in time and if it was not filed in time whether the Tribunal considers it has power and jurisdiction to deal with the case if it has been filed within such further period as the Tribunal considers reasonable in the case.

There are also applications which have been dealt with in the Skeleton Arguments filed on behalf of the Claimant and the Respondent dealing with issues of Deposit Orders which are not being dealt with at this stage of the Preliminary Hearing. I have heard submissions from both Mr Pritchard and Mr Randall Counsel on behalf of the Respondents and had the opportunity of reading the Skeleton Arguments.

Certain key matters are agreed between the parties namely that the effective date of termination of employment was the 12 March 2018 when the Claimant at a

disciplinary hearing was dismissed. The second key matter which is agreed between the parties is that the time limit expired, the 3 month time limit, on 11 June 2018. This claim was received by the Tribunal on 17 July 2018 and the Respondents say that it is clear that it was outside the primary time limit. I do not propose to set out in great detail what is said in the skeleton arguments. What the Claimant says is this, that he has provided a frank and clear account of events which led to the claim form being filed and received by the Tribunal on 17 July 2018. He has informed the Tribunal that he was well aware at all times of the investigation/disciplinary proceedings that if he chose to bring a claim to the Employment Tribunal that there was a 3 month time limit and it is not an issue in the case, that is the knowledge of the time limit at all material times by the Claimant.

What the Claimant does say however is that there are three important facts which must be put into the equation in order for this issue to be determined by the Tribunal. The first is that although he was told on 12 March 2018 that he was summarily dismissed he did not receive confirmation of his dismissal until 9 days later on 21 March 2018 and that is an email which is annexed to his Skeleton Argument. That is not a matter in dispute. The second matter which is relied upon by the Claimant is that as a result of being dismissed he appealed on 4 April 2018 and that, according to the policies employed by the Respondents, he should have received the outcome of his appeal by 10 May 2018 and that is also not a matter that is in dispute. The Claimant says that although a letter was put in the post dated either 11 or 12 June, the Claimant believes it was 12 June, the Respondents Counsel had thought that it was 11 June, but it does not matter on the date of the letter per say because what the Claimant says is that he did not receive the letter and open it and realise that his appeal had been dismissed until 16 June 2018. Therefore there is calculated by the Claimant a period of 35 days of delay in the Respondents informing him of the outcome of his internal appeal.

The third matter which is also relied upon heavily by the Claimant is the delay that was occasioned when he put in a subject access request on 10 January 2018 which is of course some two months before his dismissal but after the date of his suspension from employment which was 3 January 2018 and did not receive any response from that for a period of 112 days. There is set out in paragraph 5.1.4 of the Skeleton Argument the fact that on 20 April 2018 the Respondents supplied 193 pages which they said was everything “we hold for yourself” but the Claimant considered that that was inadequate and therefore chased up this matter such that there was received on 16 June 2018 some 310 pages of redacted documents delivered by the solicitor. It is an important factor the Claimant says.

The Claimant felt justified in delaying the issuing of proceedings in this case because of these various delays and his forbearance with those delays on the part of the Respondents. He said he convinced himself that he should have the benefit of some delays himself but more than that what he says was that he was running or attempting to run a legal case and that he wanted as much information as he

could gather in order to come to a view about the merits of the claim, that is the importance of the request under the Data Protection Act because it would allow him to have access to information about the claim itself and whether to bring the claim. The Claimant also says that he was conscious of the fact that all the guidance, whether through ACAS or through overriding objective or generally is that parties should attempt to settle their claims without the issue of Tribunal proceedings by Alternative Dispute Resolution or other means and that is a general principle which he was conscious of and which also played into the thinking on the part of the Claimant in relation to these matters.

As far as the delay is concerned I am grateful, as I have indicated to both parties, for their Skeleton Arguments and submissions. The Respondents in paragraph 26 say the claim is plainly out of time and they say that the Claimant did not contact ACAS until 18 June 2018. The Respondents refer to Authority in the case of ***Palmer*** where it is said that the mere fact of a pending internal appeal will not be sufficient for a finding that it was not reasonably practicable to present a claim in time. The Respondents very much base their primary submission on the fact that it was reasonably practicable for the Claimant to bring his claim within the primary time limit, a fact that he was aware of throughout these proceedings and that the fact that he did not issue or initiate early conciliation proceedings until the 18 June is outside the primary time limit when he could have at any time initiated early conciliation is something which shows that it was reasonably practicable for the claim to be brought within the primary time limit.

I accept that submission on behalf of the Respondents. It clearly was reasonably practicable for the Claimant to have brought his claim before the expiry of the primary time limit on 11 June. Notwithstanding that there were delays on the part of both the subject access request and the internal appeal, which there should not have been, would not mean that it was not reasonably practicable to go to early conciliation and or to issue the claim. But that of course is the end of the matter because as pointed out on behalf of the Respondents and considered by the Claimant is that sub section 111(2)(b) means that the Tribunal shall not consider a complaint unless it is presented to the Tribunal 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 3 months.

However, if I am wrong, and recognising the parties arguments, I will go on to consider the interplay between reasonable practicability under sub section (a) and sub section (b). This has been the subject of some detailed consideration and perhaps the most helpful case is that of ***Callinane -v- Balfour Beatty Engineering Services Limited and another*** decision of the Employment Appeal Tribunal by the then President Mr Justice Underhill, now Lord Justice Underhill who considered generally the relationship between those two limbs. It was accepted by the learned Judge that there is a formal distinction between the two limbs. At the second stage the question is what period between the expiry of the time limit and the presentation

of the claim is reasonable, which is not the same as asking whether the Claimant acted reasonably. However, he did not believe that this formal distinction made any real difference in practice. The test of what is reasonable under the second limb of section 111(2)(b) requires an objective consideration of the factors causing the delay and what period should reasonably be allowed in the circumstances for proceedings to be instituted having regard to the strong public interest in claims being brought promptly and within a primary limitation period of 3 months. If a period is on that basis objectively unreasonable then the fact that the delay is caused by the Claimant's advisers rather than him or herself makes no difference to that conclusion. According to the President, Mr Justice Underhill, this approach was correct in principal and had the added merit of not opening up an uncomfortable gap between the two tests in section 111(2)(b).

On the question of the second limb, (2)(b) what the Respondents say in paragraph 29 and as expanded in oral submissions is that if you look at when there was a request for early conciliation certificate which is some days after the expiry of the limitation period, some 7 days, and then you go and look at how long conciliation itself lasted which was until 12 July 2018 and that is a period of almost a month and then the Claimant waited a further 6 days after receipt of a certificate before filing the claim, therefore it was not reasonable for the Claimant to wait until mid-July to bring his claim.

In relation to that 3 periods of time, they can be perhaps usefully analysed as follows. The first period is from 11 June until early conciliation is initiated on the 18 June. The factors which I have already indicated that played on the Claimant's mind are relevant in this respect as well because it was not until 16 June that the Claimant received the letter which told him his appeal had been dismissed. By looking at the chronology of events regarding the subject access request on 16 June there were 310 pages of redacted documents delivered by the solicitor and that is against the background that on 11 June 2018 an email update from the Respondents solicitors regarding the documents said they would be delivered in the next few days. One of the matters which is relevant to consider which was operating on the Claimant's mind is what information there was that supported and made viable his possible claim. The position is that there was substantial further disclosure that was received by the Claimant and which he had to consider and which he did consider in relation to matters to progress to early conciliation on the 18 June. These were two important matters which happened after 11 June between the 11 and 18 June and it was reasonable for the Claimant objectively to await those matters which should be coming very shortly and then taking promptly the action that he did to go to early conciliation. I consider that period to be a reasonable further period to be considered for the purposes of the second limb.

The next period of time is the 18 June until 12 July for early conciliation. I consider that a reasonable further period as well because it is important that parties have the opportunity of seeing if the cases can be resolved without it proceeding further through conciliation. It would be wrong to conclude that a Claimant waited too long

for a week, two weeks, a month in early conciliation as it would involve the Tribunal possibly enquiring into what was discussed, whether there were realistic talks of settlement or otherwise during that period of time. It was reasonable for the Claimant in the light of all the information which he had received as indicated by way of disclosure and otherwise to have seen if he could resolve the matter.

The period then from 12 July to 17 July needs to be analysed. On 12 July ACAS sent an email saying that early conciliation had ended and the certificate given. The Claimant says he did not become aware of that because he was not at home and did not have access to his computer until 13 July which was the Friday. That he worked on the claim such that on the Monday 16 July he had attempted to send the claim to the Tribunal. But the claim was not accepted for whatever reason, technical or otherwise, and he lost all the information and could not submit it on 16 July. Here sent it on 17 July. I think this is a further reasonable period of time in relation to the explanations given and what occurred during that time because in considering this matter the focus of the Tribunal in determining whether a claim was submitted within a further reasonable time must consider all the circumstances of the case including what the Claimant did, what he or she knew or reasonably ought to have known about time limits and why it was the further delay occurred. Therefore applying the statutory test I am satisfied that this claim is in time in accordance with the application of the test in section 111(2)(b). However, this does not assist the Claimant as it was reasonably practicable to submit the claim within the 3 month period.

Neither party wished the Tribunal to consider the deposit application.

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Employment Judge P Davies
Dated: 1 November 2018

JUDGMENT AND REASONS SENT TO THE PARTIES ON

……19 November 2018……..

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FOR THE SECRETARY TO EMPLOYMENT TRIBUNALS