



EMPLOYMENT TRIBUNALS

Claimant: Mr N McDermott

Respondent: Saint-Gobain Building Distribution trading as Jewson Ltd

RECORD OF A PRELIMINARY HEARING

Heard at: Birmingham (by CVP/telephone) **On:** 21 January 2022

Before: Employment Judge Choudry (sitting alone)

Appearances

For the claimant: In person

For the respondent: Ms D Maguire (Employee Relations Consultant)

JUDGMENT FOLLOWING PRELIMINARY HEARING

1. The respondent's correct name is Saint-Gobain Building Distribution trading as Jewson Limited.
2. The Tribunal does not have jurisdiction to hear the claimant's claim for unfair dismissal as it has been presented outside the time limits prescribed by statute and it was reasonably practicable for the claimant to present the claim in time. As such, the Claimant's claim is dismissed.

REASONS

Background

- (1) The matters was listed for a preliminary hearing before me to determine whether the claim had been presented out of time. Depending on the outcome of the preliminary hearing case management orders could be issued at the conclusion of the preliminary hearing.

Name of the respondent

- (2) By consent the name of the respondent is amended to Saint-Gobain Building and Distribution trading as Jewson Ltd.

Evidence

- (3) I was presented with a bundle of some 59 pages which the claimant confirmed he had sight of.
- (4) I also heard evidence from the claimant.

The issues

- (5) Was the claimant's complaint presented within the three month time limit set out in section 111(2)(a) of the Employment Rights Act 1996 ("ERA 1996")? The parties do not dispute that the effective date of termination was 27 February 2020.
- (6) If not, was it presented 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.

The facts

- (7) The claimant commenced employment with the respondent on 1 December 2010.
- (8) He was dismissed on 27 February 2020.
- (9) He commenced Early Conciliation on 23 April 2020 and his Early Conciliation Certificate was issued on 23 May 2020.
- (10) By a claim form received by the Tribunal on 2 July 2020 the claimant brought a claim for unfair dismissal.
- (11) The claimant went to see the Citizens Advice Bureau following his dismissal. They provided him with advice on appealing the decision to dismiss him, told the claimant that he needed to make contact with ACAS and advised the claimant that time limits applied for employment tribunal claims and of the relevant time limit in this case which the claimant wrote down but says he forgot the paperwork.
- (12) The claimant could not remember the date he went to the Citizens Advice Bureau but indicated it was before he commenced Early Conciliation and given that he appealed the decision to dismiss him on 9 March 2020 it must have been sometime in early March 2020.
- (13) The claimant also sought advice from the Job Centre and subsequently went through the Early Conciliation process and spoke to an ACAS conciliator about his claim. The claimant indicated in his evidence that he did not ask the ACAS officer about time limits. He accepted that he should have done but he did not think to ask about it.
- (14) The claimant says that his claim was presented late as he did not have personal access to a computer and was reliant on his step father assisting him.

The Claimant and his step-father tried to work out the time limits but were not able to do so.

- (15) The claimant indicated in evidence that he did not do his own research on employment tribunal time limits as he had too much else on his mind.

The law

- (16) Section 111(1) of Employment Rights Act (“ERA”) 1996 provides:

“A complaint may be presented to an [employment tribunal] against an employer by any person that he was unfairly dismissed by the employer.

- (17) Section 111(2) of ERA1996 provides:

“[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.”*

- (18) Section 207 B of ERA1996 deals with the extension of time limits to facilitate conciliation before the institution of proceedings. Section 207 B provides:

*“(1) This section applies where this Act provides for it to apply for the purposes of a provision of this Act (a “relevant provision”).[...]*²

(2) In this section—

(a) Day A is the day on which the complainant or applicant concerned complies with the requirement in subsection (1) of section 18A of the Employment Tribunals Act 1996 (requirement to contact ACAS before instituting proceedings) in relation to the matter in respect of which the proceedings are brought, and

(b) Day B is the day on which the complainant or applicant concerned receives or, if earlier, is treated as receiving (by virtue of regulations made under subsection (11) of that section) the certificate issued under subsection (4) of that section.

(3) In working out when a time limit set by a relevant provision expires the period beginning with the day after Day A and ending with Day B is not to be counted.

(4) If a time limit set by a relevant provision would (if not extended by this subsection) expire during the period beginning with Day A and ending one month after Day B, the time limit expires instead at the end of that period.

(5) Where an employment tribunal has power under this Act to extend a time limit set by a relevant provision, the power is exercisable in relation to the time limit as extended by this section”.

(19) The Court of Appeal in **Marks & Spencer plc v Williams-Ryan [2005] EWCA Civ 470** sets out a number of legal principles to consider in relation to time limits as follows:

- Section 111(2) of ERA 1996 should be given a liberal interpretation in favour of the employee;
- Regard should be had to what, if anything, the employee knew about the right to complain to a tribunal and of the time limit for doing so.
- Regard should also be had to what knowledge the employee should have had, had they acted reasonably in the circumstances. Knowledge of the right to make a claim does not, as a matter of law, mean that ignorance of the time limits will never be reasonable. It merely makes it more difficult for the employee to prove that their ignorance was reasonable.
- Where a claimant retains a solicitor and fails to meet the time limit because of the solicitor's negligence, the claimant cannot argue that it was not reasonably practicable to submit the claim in time.

(20) The fact that an employee is pursuing an internal appeal does not, of itself, mean that it is not reasonably practicable for the employee to submit a claim within the applicable time limit, even if this means submitting the claim before the appeal has been concluded (**Bodhu v Hampshire Area Health Authority [1982] ICR 200**). This view was expressly approved by the **Court of Appeal in Palmer and another v Southend on Sea Borough Council [1984] IRLR 119**.

Submissions

(21) The claimant made no submissions and the Mrs Maguire simply re-iterated that the claim was out of time and that it was reasonably practicable for the claimant to present his claim on time.

Conclusions

(22) In making my conclusions I have considered all the evidence before me and the oral submissions made.

(23) I am satisfied on the evidence before me that the claimant's effective date of termination was indeed 27 February 2020. As such, the claim should have been presented to the Tribunal by 26 May 2020. The claimant commenced Early Conciliation on 23 April 2020 and his Early Conciliation Certificate was issued on 23 May 2020. This had the effect of extending the time limit for the presentation of the claim until 25 June 2020. As the claim was not issued until 2 July 2020 I am satisfied that the claim has been presented outside the time limits prescribed by statute.

(24) The question for me to consider then is was it reasonably practicable for the claimant to present his claim in time. The claimant had the benefit of advice from the Job Centre and the Citizens Advice Bureau who provided the Claimant with advice on time limits. Whilst I accept that the claimant did not have access

to his own computer he did have support and access to a computer via his step-father. Despite this he did not take proactive steps to research the time limits even though he was aware there was a time limit as a result of the advice provided by the Citizen's Advice Bureau. As such, I am satisfied that it was reasonably practicable for the claimant to present his claim in time and the failure of the claimant to not make additional enquiries in relation to time limits was not reasonable.

- (25) As such, the tribunal does not have jurisdiction to hear the claimant's claim and the claim is dismissed.

Employment Judge Choudry

Date 20th January 2022