



## EMPLOYMENT TRIBUNALS

Claimant

Respondent

**Mr. S. Ngikumania**

v

**DPD Group UK Limited**

**Heard at: Birmingham**

**On: 30 May 2024**

**Before: Employment Judge Wedderspoon**

**Representation:**

**Claimant: In Person**

**Respondents: Mr. Bownes, solicitor**

### JUDGMENT

1. The Tribunal has no jurisdiction to hear the claimant's claim for unfair dismissal and it is dismissed.

### REASONS

1. The judgment was delivered orally in the Tribunal on 30 May 2024. These written reasons are provided pursuant to a request made by the claimant at the time.
2. The purpose of today's hearing was to consider whether it was not reasonably practicable for the claimant to have issued his unfair dismissal claim within time and, if not, whether he had issued his claim within such further period as was reasonable.

#### Background

3. By claim form dated 5 October 2023 the claimant brought a complaint of unfair dismissal. The claimant entered ACAS conciliation on 1 October 2023 and the certificate is dated 3 October 2023.
4. The claimant was employed by the respondent at its Smethwick depot as a deckhand from 9 November 2015 to 23rd March 2022. In his claim form he stated he had suffered an injury at work; he was on sick leave awaiting an operation when he was dismissed. He said he was dismissed whilst on sick leave because he failed to attend a meeting at the respondent's office.
5. The respondent is a parcel delivery business. The respondent's case is that the claimant was absent from work between 15 March 2021 and 16 August 2021 with a hand injury. He then went off sick on 8 November 2021 and the

last fit note expired on 9 February 2022. The respondent's case is that the claimant did not provide any further evidence of incapacity or contact the respondent to update them about his absence. On 7 March 2022 the respondent's case is that it wrote the claimant and asked him to contact the respondent immediately and him warned him if he failed to do so he would be required to attend a disciplinary hearing and could be dismissed the claimant failed to contact the respondent remained absent without leave he was asked to attend a disciplinary hearing on the 14 of March 2022. The claimant failed to attend or contact the respondent to provide a reason for his non attendance. The hearing was rearranged for 21 March 2022. The claimant was notified by letter that because he failed to attend the rescheduled disciplinary hearing on 21 March 2022 and did not provide an explanation about his non attendance or reason for absence he was dismissed for gross misconduct.

#### The claimant's evidence

6. The claimant gave evidence that he had been off work by reason of the fact that he had sustained injuries to his wrist. He spoke to the respondent's occupational health advisor to inform them that he was awaiting an operation some time before the dismissal (he could not recall when). He became aware shortly after the date of dismissal on 23 of March 2022 that he had actually been dismissed by the respondent. At the time he was prioritising his health. He had an operation to his wrist in July 2022 and his cast was removed in November 2022 but he has continued to have a physical problem with his wrist. He said the whole situation was giving him stress; he felt badly let down by DPD. He confirmed in cross examination that he had a physical issue only namely his wrist. The claimant has internet access and accepted that his medical issue did not stop him using the Internet to research his employment rights. He attended Citizens Advice Bureau because he had got behind with his rent just before his operation in July 2022. Due to a misunderstanding about contacting Citizens Advice via the telephone he missed the opportunity to speak to Citizen's advice about his employment rights. He did not seek to arrange any further contact with Citizen's Advice. Someone told him he could make a claim to the Tribunal and he started the ACAS process in October 2023.

#### The Law

7. A claim for unfair dismissal pursuant to section 111 of the Employment Rights Act 1996 must be brought before the end of the period of three months beginning with the effective date of termination subject to the possibility of an extension if it is not reasonably practicable for the claimant to meet this deadline. There is also a requirement prior to commencing the Employment Tribunal process to obtain an Early Conciliation Certificate from ACAS.
8. The test for extending time has two limbs both of which must be satisfied before the tribunal will extend time. First the claimant must satisfy the tribunal that it was not reasonably practicable for the complaint to be presented before the end of the three month primary time limit. Secondly if the claimant clears that first hurdle the claimant must show also that the time

which elapsed after the expiry of the three month time limit before the claim was in fact presented was itself a reasonable period.

9. Even if the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented within the three month time limit, if the period of time which elapsed after the expiry of the time limit was longer than was reasonable in the circumstances of the case, no extension of time will be granted.
10. The onus of proving the presentation in time was not reasonably practicable rests with the claimant.
11. In the case of **Palmer and another the Southend on sea borough council 1984 ICR 372** the Court of Appeal concluded that reasonably practicable does not mean reasonable but means something like "reasonably feasible".
12. In **Asda stores limited v Kauser EAT 0165/07** Lady Smith explained 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"
13. Complete ignorance of a right to bring a claim of unfair dismissal may make it not reasonably practicable to present a claim in time but the claimant's ignorance must itself be reasonable. In **Dedman v British Building and Engineering Appliances Limited 1974 ICR 53** where a claimant pleaded ignorance as to his rights the Tribunal must ask what were his opportunities for finding out that he had rights?; did he take them?; if not, why not, was he misled or deceived?
14. In the case of **Porter v Bandridge Limited 1978 ICR 943** the correct test was identified as whether the claimant ought to have known of his right to bring a claim.

### Conclusions

15. The claimant failed to engage with the ACAS conciliation process in time following the termination of his employment with the respondent. He was aware very shortly after the 22 of March 2022 that his employment had been terminated by the respondent. The claimant entered ACAS conciliation on 1 of October 2023. This was over one year from the date of his termination of employment. He engaged with ACAS at the time because someone made him aware that he had a right to bring an unfair dismissal claim to the Tribunal.
16. The test is whether it was not reasonably practicable for the claimant to meet the deadline namely was it not reasonably feasible. The claimant was aware he was dismissed within a matter of weeks of his termination on 22 March 2022. The claimant had internet access. The claimant had a physical impairment namely a wrist injury which he accepted under cross examination did not prevent him from accessing the Internet to find out his employment rights.

17. Ignorance of employment rights can mean it was not reasonably practicable to issue a claim. The Tribunal, in accordance with Dedman and British Building and Engineering Appliances Limited, must consider what were his opportunities for finding out that he had rights.
18. The claimant had the opportunity to conduct his own research via the internet. He failed to do so and there was no impediment which prevented him from doing so. He was aware of Citizens Advice and missed an appointment and did not seek to re-arrange another. The Tribunal does not find that the ignorance of his employment rights was reasonable because he failed to avail himself of internet research or contacting the Citizens' Advice Bureau.
19. The claimant confirmed that his wrist injury did not prevent him from accessing the internet. He said he was stressed out by the situation and was prioritising his health but this did not satisfy the Tribunal that it was not reasonably feasible to find out his rights and lodge a claim. Although the Tribunal has sympathy with the claimant, he has not satisfied the Tribunal that it was not reasonably practicable for him to lodge his claim in time.
20. The Tribunal therefore has no jurisdiction to hear the claimants claim for unfair dismissal and the claim is dismissed.

**Employment Judge Wedderspoon**

30 May 2024

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