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EMPLOYMENT TRIBUNALS

Claimant: Mr Mohammad Khurshed Alam

Respondent: Royal Mail Limited

Heard at: East London Hearing Centre

On: 17 February 2017

Before: Regional Employment Judge Taylor

Representation

Claimant: In person
Respondent: Ms A Porter, Solicitor

JUDGMENT having been sent to the parties on 20 February 2017 and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013.

REASONS

1 This claim of unfair dismissal was presented by the claimant on 15 September 2016; the effective date of termination of the claimant's employment was 21 February 2016. In the alternative, the effective date of termination was 9 April 2016, when the claimant was told by his manager that he had been dismissed and that a letter of dismissal had been sent to him at his home address. For the claim form to have been presented to the employment tribunal within the primary time limit (three months) it should have been presented on 20 May 2016 or in the alternative the later date of 8 July 2016. The claimant accepts that the claim was presented by him out of time, but contended that he only read the letter on his return to England on 14 July 2017. The claimant claims that he should be permitted to proceed with his claim because having read the dismissal letter in July he had presented the claim as soon as reasonably practicable after that date. The matter came before the tribunal at a preliminary hearing on the question of time limits.

The applicable law

2 Section 111 of the **Employment Rights Act 1996** requires that a claim of unfair dismissal shall be brought before the end of the 3 months beginning with the date of

dismissal, unless it is not reasonably practicable to do so, in which case it must be brought within such further period as, a tribunal determines, is reasonable.

3 Where an employee delays presenting an unfair dismissal claim to the employment tribunal because they have commenced an internal appeal procedure against dismissal, unless there are additional circumstances, the mere fact of commencing an internal appeals procedure is not sufficient to justify a finding that it was not reasonably practicable to present a claim (*Palmer v Southend-on-Sea Borough Council* [1984] IRLR 119). If applicable, the claimant must establish that they have presented a claim within a reasonable time after the primary time limit has expired (*Asda Stores v Kauser* UKEAT 0165/2007).

4 Additionally, a person bringing a claim must first obtain an early conciliation certificate form from ACAS. Section 207B of the **Employment Rights Act 1996** (as amended) ("ERA") provides certain circumstances in which time can be extended to ensure that the requirement to first obtain an early conciliation certificate does not reduce the overall time period of three months by which a person must present their claim. This is not a case in which these provisions are relevant.

5 The claimant had not prepared a witness statement for this hearing and he requested his claim form stand as his evidence. Mr Kirti Srinivaran, gave evidence on behalf of the respondent.

The relevant facts

6 The claimant was employed by the respondent from 31 May 2005, but began working 20 hours a week (at week-ends) as an Operational Post grade/Associate Grade Weekend Duties at Romford Mail Centre from 15 October 2009. His job entailed preparing and processing mail.

7 The Royal Mail has a Conduct Code under which staff are required to notify their employer of reasons for their absence and if absent from work due to ill health, to provide sick certificates.

8 The claimant took unauthorised absence from work commencing 14 November 2015, immediately following a period of authorised absence beginning on 4 November 2015. The claimant failed to keep in touch on a regular basis with his employer during his period of unauthorised absence.

9 The claimant had originally taken urgent holiday leave with his employer's consent in order to visit a close family member, whom he said was sick and lived abroad. During the claimant's absence he did not provide any alternative contact details; neither a telephone number, a mailing address nor an email address to his employer. The respondent were unable to contact the claimant other than at his home postal address.

10 After he failed to contact the respondent, several letters were sent to the claimant at his postal address by the respondent concerning his unauthorised absence from work. Several telephone calls were also made by the respondent to the telephone number held on its records. The claimant did not reply to any of the letters and did not answer any of

the respondent's telephone calls. It followed that in the absence of any information from him, the respondent did not know the claimant's whereabouts, until he telephoned his shift manager, Mr Kirti Srinivasan on 14 November 2015 to inform him that he was then in Bangladesh but was soon travelling to India; he also told his manager that was sick, in that he had a cough, and that he was not going to be available for work. The claimant made no arrangements for the respondent to contact him while he was out of the country. Mr Srinivasan told the claimant during that conversation that medical evidence was required from him if he could not work because he was sick, and he needed to keep in touch with him weekly. The claimant disregarded these directions and he did not subsequently obtain or provide the respondent with a sick certificate, or any alternative medical evidence, during the entire period of his absence. He did not contact Mr Srinivasan weekly, as required.

11 The Tribunal accepted the evidence of Mr Srinivasan that he held regular briefing meetings with members of his team, which included the claimant, and at these he regularly explained to them the importance of keeping in touch with him during sick or other exceptional absences, on a weekly basis. The claimant knew from his past experience with the respondent and from these meetings that medical certificates should be provided to cover periods of sick absence, where applicable, because of events that had occurred with him at work before in the year before this particular period of absence.

12 As a long established employee, and as a consequence of reminders he had received from Mr Srinivasan, the Tribunal finds that the claimant was aware of the respondent's Code of Conduct. As such he was fully aware of his obligation under the Code to keep his employer informed of his sick or other absence weekly, if he was unable to attend work for any reason, and his obligation to provide medical evidence when applicable. The claimant had Mr Srinivasan's telephone number and also had his email address. The claimant therefore he had the means to contact the respondent or his manager at any time.

13 The claimant did not present any evidence explaining why he had not contacted his manager or the respondent weekly. He did not give any evidence to explain what arrangement he had made, if any, for reading of his post in his absence. Evidently, facilities for telephoning were available to him and it is more likely than not that the claimant had access to facilities for email. He did not provide copies of any travel documents that might establish the dates of his absence. The Tribunal concluded that the claimant simply chose not to contact the respondent during his lengthy (and unauthorised) period of absence from work.

14 Eventually, the respondent concluded that the claimant had failed to comply with the Royal Mail's Conduct Code and that he was in breach of the contractual requirement to provide evidence and reasons for his continued absence. The claimant's pay was stopped in accordance with this contractual terms and he received no wages after 19 January 2016.

15 By a letter sent to his home address, the clamant was invited to attend a disciplinary meeting on 12 February 2016, which he failed to attend. A second meeting was convened on 16 February 2016 and the claimant was notified in the same way. Following that second meeting the claimant was sent a letter notifying him that he was dismissed by reason of gross misconduct, given his absence from work without authority

and without providing a good reason for this. The claimant's was informed by letter dated 21 February 2016 that he was dismissed and that his effective date of termination was the same date.

16 The claimant was still abroad in February 2016. The claimant gave evidence that he had not made any arrangements for his post or mail to be opened for him during his prolonged absence. That evidence was not accepted because the claimant telephoned his shift team manager on 9 April 2016 in response to the news of his dismissal. Mr Srinivasan spoke to him, confirmed that he had been dismissed because his whereabouts were unknown and made a contemporaneous note of the date of their conversation in his diary. The claimant gave evidence that he recalls having a telephone conversation with Mr Srinivasan, but contends that it was not possible to obtain details of the reasons for his dismissal until his return back to the UK on 13 July 2016.

17 A dismissal can only take effect when the fact of the dismissal is communicated. The dismissal was communicated to the claimant no later than 9 April 2016.

18 Having presented his claim form on 15 September 2016 it was outside of the primary time limit in any event.

19 The claimant gave evidence that he only returned to the UK on 13 July 2016, although he did not provide any documentary evidence in support of the date he returned. The claimant gave evidence that he read the dismissal letter on 14 July 2016 for the first time. He then sought legal advice on or about 15 or 16 July 2016. He was informed by all of the advisors that his claim was late and that the time limits were applied strictly in the employment tribunal. Some 'no win, no fee' lawyers offered to help but only if he paid a fee. Thus, on his own account the claimant was aware that he had the right to present a claim and the applicable time limits. The claimant received correct legal advice within two days of reading the dismissal letter from two or more solicitors. Nevertheless, the claimant decided not to present a claim immediately. He decided to commence an internal appeal against the decision to dismiss him. This he did by writing a letter of appeal himself and by posting the letter of appeal to the respondent on or about 22 August 2016. The respondent replied on 12 September 2016 rejecting the appeal as having been received too late. The following day the claimant contacted ACAS to enter into early conciliation and submitted his claim on 15 September 2016.

20 Although it was asserted by the claimant, the Tribunal found no facts that might have supported his contention that it was not reasonably practicable for him to have presented his claim either within time or within a reasonable time thereafter. There were insufficient grounds to begin counting the primary time from the date or 14 July 2016 given that he knew of the dismissal in April 2016 and had made no arrangements to contact the respondent as required under the respondent's code when his initial period of authorised leave had expired.

The submissions

21 The case for the claimant is that there are reasons why his claim was presented late. He waited until the respondent had dealt with his appeal. He was out of the country when he learned of his dismissal, he had domestic issues to deal with on his return to the UK, including (although the tribunal notes there was documentary evidence to the

contrary) finding a school for his daughter or ensuring his daughter was registered at a school. He had ongoing health issues and he had financial problems as a consequence of having been dismissed in February 2016. All those matters the claimant submits taken together, meant that it was not reasonably practicable for him to present his claim.

22 The respondent submitted that there is no evidence as to why it was impracticable for the claimant to present his claim form. Had he acted swiftly he could have presented his claim within three months of 9 April 2016 and he has provided no evidence as to why he was not able to contact the respondent and no evidence to support his contention that he could not have presented his claim in time.

The conclusions

23 The burden is on the claimant to establish that it was not reasonably practicable for him to present his claim within three months of the dismissal or within such further time as was reasonable in the circumstances. The Tribunal finds that the claimant should have presented his claim within three months of the date on which he was notified of his dismissal by his manager on 9 April 2016, at the latest. In the alternative, the claimant could have submitted his claim immediately upon reading the letter of dismissal on 14 July 2016. The tribunal bears in mind that the claimant made no effort to remain in regular contact with his employer when his period of authorised absence expired, and that he gave no evidence of the reasons why he paid no attention to the need to keep in contact. The claimant also gave no evidence about what arrangements he made to see to his post in his absence. The Tribunal therefore finds that the claimant has not proved on the balance of probabilities that it was not reasonably practicable for him to present his claim in time by.

24 In arriving at this decision the Tribunal accepts the respondent's submissions. It is a relatively straight forward matter to present a claim to the Employment Tribunal. It requires only that the claimant contacts Acas and submit a claim on line.

25 The claimant had personal matters to deal with when he returned to the UK but if that was on 13 July 2016, on his own evidence the claimant obtained legal advice very quickly on his return. The claimant could reasonably have submitted his claim immediately upon being advised that the claim was already late, but he chose not to do so.

26 The fact of the claimant having lodged an internal appeal in August 2016 does not assist him. The Tribunal accepted the respondent's submission that there is legal authority that the time for presenting a claim is not extended because the claimant presents an appeal against a disciplinary sanction to their employer.

27 Having considered all of the circumstances the Tribunal finds that the claimant has failed to establish that it was not reasonably practicable to present his claim to the tribunal within the applicable time limit. Therefore this claim fails and is dismissed.

Regional Employment Judge Taylor

30 March 2017