



on 7 May. That course of action extended the date for submission of the claim until 7 June 2016. Accordingly the Claim was presented approximately 15 months outside of the time limit.

2. The Claimant accepted that his claim had been brought out of time but asserted the following within his Claim Form:

“... it was not reasonably practical (sic) for me to make my application sooner because of the Tribunal fees that applied until very recently. After I received the ACAS EC certificate I went to see Walsall CAB and I also saw a local solicitor. They both told me the fees I would have to pay and didn't mention that there was a remission system. At the time I was in receipt of benefits and had no savings with which to pay the fees.”

3. The time limit point was taken by the Respondent in their Response and a preliminary Hearing was requested. On 15 December 2017 EJ Broughton considered the application and stated that an Open Preliminary Hearing would be held on 19 February 2018 at which the issue of jurisdiction would be considered taking into account the time limit issue raised.
4. The matter came before me on 19 February and both parties were represented on that day. The Claimant had not provided a witness statement but gave oral evidence and was cross examined. Both parties then made closing submissions and I gave an oral judgment on that day and, having permitted the Claim to proceed, gave directions for the future conduct of the matter.
5. I will deal in detail with the reasons why the Claimant was permitted to proceed below but in broad terms the Claimant in his oral evidence persuaded me that the statutory test for extension was met and that his claims should be allowed to proceed. The primary finding that I made was that the Claimant did not have sufficient funds so as to pay the fees in relation to his unfair dismissal claim and accordingly it was not reasonably practicable for his claim to have been submitted in time.
6. I was surprised that the Claimant had failed to produce any bank statements showing his precise financial position at the material time and expressed the same at the time. I made a direction in the following terms:

“The Claimant shall send to the Respondent by no later than 2 March 2018 all bank or building society statements of accounts held solely or jointly in his name for the period 1 January 2016 until 30 June 2016”

The purpose of this direction was to have the best evidence available to demonstrate the Claimant's asserted impecuniosity at the relevant time.

7. There were a number of options available to me at that hearing. I could have drawn adverse inferences against the Claimant for failing to provide clear and cogent evidence of his financial position which corroborated his oral position. I could have adjourned the matter for the Claimant to produce those bank statements or I could have reserved my decision pending receipt of those statements and then convened a further Preliminary Hearing to deal with any consequential directions. At the time both those options seemed to be contrary to the overriding objective because they would have led to delay and/or extra cost to the parties. In the event I decided to make a Judgment that the claim should be permitted to proceed and that the Tribunal did have jurisdiction and set down directions so that the final hearing could be held in early August. I did so in the anticipation that the bank statements would corroborate the Claimant's oral testimony and in those circumstances it was better to get on with the case. Whether or not that was the correct course or not is a moot point but at the time I did not have the benefit of the knowledge that I now have and in my view my original course remained a reasonable one open to me.
8. What was quite clear in my oral judgment was that I wanted to see corroborating evidence of the Claimant's means at the material time and made the point that in the absence of such evidence or evidence that did not support the Claimant's stated position at that hearing then the Respondent could seek a reconsideration of my Judgment.
9. On 5 March the Respondent wrote to the Tribunal applying for a reconsideration of the Judgment on the basis that the bank statements had not been disclosed. I subsequently directed that time for producing the bank statements should be extended until 19 March and that the reconsideration application would be considered in light of what transpired.
10. On 20 March the Claimant's solicitor sent through to the Respondent's solicitors some bank statements. Those statements were in relation to an account with HSBC in the Claimant's sole name. Clearly 15 pages had been downloaded or provided but every alternate page was missing. The period covered was 2 December 2015 until 2 June 2016. Even today the Claimant has failed to fully comply with the order made to disclose all of his bank statements for the material period. The Respondent renewed its application for reconsideration on the basis

that they were provided late and secondly because of what they disclosed.

11. On 25 April I wrote to the parties indicating that all directions for trial preparation were stayed. I further invited the Claimant to set out in writing its response to the Respondent's application and thereafter for the parties to indicate whether an oral hearing was required and whether there were to be any further applications made by either of the parties.
12. The Claimant's representative responded on 2 May and relies upon that response today and indeed the Claimant adopted some of that letter in his evidence today. On 10 May the Respondent indicated that it considered that an oral hearing was necessary and today's hearing has been listed following that representation and no further representations from the Claimant.
13. Today's hearing is, therefore, listed to deal with the Respondent's applications for a reconsideration of my judgment following the hearing on 19 February 2018 and sent to the parties the following day. The Judgment reads as follows:

“Upon the Tribunal finding that it was not reasonably practicable for the Claimant to have brought his complaints of wrongful and unfair dismissal within the relevant statutory time limit and that the Claims were brought within a reasonable period thereafter, the Tribunal has jurisdiction to consider these Claims.”
14. Pursuant to Rule 70 of Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 I can, on the application of a party (as here) reconsider any judgment where it is in the interests of justice to do so and upon that Reconsideration I am entitled to confirm, vary or revoke the Judgment. There is nothing within Rules 71-73 that would prevent a reconsideration in this case and I am quite satisfied as evidence would be required that an oral hearing would be appropriate.
15. Prior to consideration of that which has gone on before I will clearly set out my findings on the last occasion in February. I am able to do so from notes I made at the time which became the basis for my oral judgment. I have detailed above that the issue to be determined at the hearing was in relation to time limits. Section 111(2) states that a Tribunal shall not consider a complaint of unfair dismissal 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. Section 111(2A) deals with the extensions to that period on account of early conciliation. I have set out when various time limits expired in the opening paragraph of these reasons.

16. The time limit provisions for the wrongful dismissal claim is set out at Article 7 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 and so far as is material the test is as set out for unfair dismissal.
17. On the basis that it was accepted by the Claimant that his claim had not been brought within the statutory time limit the Tribunal would have jurisdiction if I was satisfied on the balance of probabilities that it was not reasonably practicable for the Claimant to have presented the Claim in time and that if that were the case it was then lodged within a period that I considered reasonable.
18. At the February hearing the Claimant had a written witness statement which was supplemented by oral evidence and I heard oral submissions from the Claimant's solicitor and both oral and written submissions from the Respondent's counsel.
19. At the first hearing I formed the view having heard the Claimant's evidence that the Claimant was trying his best to assist the Tribunal and was doing the best he could to provide an accurate account of matters which were relevant. There were some matters of detail upon which the Claimant lacked consistency and I determined to weigh those matters in the balance when coming to my decision.
20. When the Claimant was summarily dismissed on 26 January he went to seek advice from a solicitor near Walsall Station. From the evidence tendered there did not seem to be a great deal of enthusiasm from the solicitor to take the case on and the Claimant stated that he was quoted 1,200 pounds as the cost of registering the Claim at the Employment Tribunal. Of course that sum would have been what was required to issue and to have the claim fully heard but I found as a fact that this was the sum that was quoted to him.
21. The Claimant then turned to the CAB for assistance as he had used them previously for his immigration asylum claim. The CAB confirmed that fees would be payable but told the Claimant that Early Conciliation (EC) would need to be undertaken first. The Claimant went through the EC process but then elected not to issue a claim. I found that:

- a) The Claimant believed that he had a claim against his former employers;
- b) The Claimant took ad hoc advice and was under the clear impression that 1,200 pounds was required for the claim;
- c) The Claimant decided not to proceed for the sole reason of the cost of so doing and the fact that he did not have the means to do so.

22. I considered whether the Claimant had the means at the material time to pay the fees. The Claimant had made life difficult for himself in this regard because he had failed to provide his bank statements, however taking into account his low wage and his clear evidence that he did not have any savings at the time and that even if he had a small amount set aside the Claimant was entitled to take a slightly longer term view taking into account that he may be unemployed for a period moving forwards.

23. There was an inconsistency in a letter dated 20 November 2017 which indicated that it was the complexity of the fee remission process that had put him off applying via that route as opposed to him having no knowledge of remission but again I was prepared to excuse that as an error on the part of his solicitor. Taking all of the above into account I concluded that it was not reasonably practicable for the Claimant to lodge a claim in time taking into account the effect of the fees on his particular circumstances which were that he did not have the funds to pay what he believed was required, there were no other viable options available to him to raise money and that he did not know of the remission scheme. In all the circumstances I found it was not reasonably practicable for him to have brought the claim in time and that he had brought it within a reasonable time thereafter.

24. I have looked back at my notes from the evidence that the Claimant gave on the last occasion. He indicated to the solicitor who he saw and who informed him that the fees would be 1,200 pounds that he "could not afford it". To the CAB he explained "that I would not have been able to bring the Tribunal fees at that time" and also that he "couldn't afford it". The Claimant stated that he had a bank account and that when he was working he was sometimes left with two to three hundred pounds at the end of the month. The Claimant told me that he did not consider bringing his bank statements was necessary. In re-examination the Claimant said that he had no savings from which he could have brought a claim. In closing submissions I was asked to make an inference from all that was known about the Claimant that he would not have had the means to pay the fees at the time.

25. Pausing there for a moment I concluded at that hearing that at the material time the Claimant did not have the means by way of savings or other source to pay the fees he believed were going to be required. I held residual concerns hence my direction to the Claimant to produce bank statements for the material period and I asked for them because it was a central and material consideration in my decision to permit the Claimant to proceed and I wanted to assure myself that the view I had taken about the Claimant not having the means was the correct one and it did not seem to me to be an issue for the Claimant to provide the proof.
26. It was therefore somewhat of a surprise when the Claimant's bank statements (or some of them) arrived in March. The opening balance of the sole account disclosed is a credit of 9987.78 pounds. As at the date of dismissal the balance is a credit of 10,754 pounds. As at the last date provided the sum is 6274.48 pounds. The expenditure on the account appears modest and comprises almost exclusively of card purchases and cash taken out. There appears to be regular 300 pounds cash taken out at the start of each month and between 2 April 2016 and 26 April 2016, a period not covered by a statement the balance is reduced by circa 2,700 pounds which is unexplained.
27. As stated above the Claimant was asked to give a response to the application for reconsideration and his solicitor did so on his behalf on 2 May 2018. So far as is material they said as follows:
- "The Respondent say that the Claimant had a balance of 7129.26 pounds on 26 April 2016 and that those funds should have been used to pay the issue fee at the time and that the claim should have been issued on 26 April. The Respondent's solicitors are looking at this in the raw and simply making a judgment. The Claimant states that he could not risk using the monies for paying the fees because he was a) out of work and had to be careful about how that money was used given that he had all his expenses to pay for living and b) the Claimant was supporting his sister's children in Cameroon and that he has always supported them since her husband died. Indeed that money was used to send to his sister. In this case the sum of money in the Claimant's account was temporarily inflated in anticipation of financial hardship to come. It was that particular fear that stymies (sic) the Claimant".
28. The Claimant then cited the dicta in the Unison case at para 21 which suggests that balances in banks may be artificially inflated on account of various reasons but I do not consider that there is any artificiality about the Claimant's balance in this case.

29. The Claimant attended again today represented by his solicitor. There was no witness statement prepared and the Claimant had brought some sundry documents in support of his position. Those documents were as follows:

- a) Two documents evidencing a debt of 2,279.06 for overpaid tax credits from 2010/2011 and 2011/2012. There is a letter sent on 25 September 2015 on behalf of a debt collection agency asking for payment and then a further letter from HMRC saying that the debt has been passed back to them on 21 July 2017. From these documents it is clear that at the material time in this case there was an outstanding debt of 2,279.06 of some age which the Claimant did not pay off using the funds available to him in his bank account between January 2016 and June 2016. The Claimant told me but without any form of corroboration that he had done a deal with HMRC so that this overpayment would be deducted from his state pension when he got it. With no written evidence to support it that seems unlikely.
- b) An Npower bill for 2,440.23 pounds based on an estimated reading and purportedly covering a period of 9 December 2016 and 16 March 2017.
- c) A overdue account notice dated 9 December 2016 offering a 50% discount on an outstanding water bill of 1847.86 pounds relating to water provided between 2008 and 2015.
- d) A bill for 400 pounds dated 23 January 2013 relating to immigration work undertaken for the Claimant by a firm of solicitors.
- e) A bill for 900.64 dated 14 June 2016 relating to unpaid council tax for the 2016-2017 year. It should be noted that most people will pay on a monthly basis and once that is in place the full amount does not become due.
- f) An outstanding bill for 1079.68 pounds for gas dated 8 April 2014.
- g) A front page to a booklet entitled Naturalisation as a British Citizen with some hand written sums on it.

30. In the Claimant's oral evidence he indicated that he wished to rely upon the matters set in the 2 May letter detailed above and also the documents cited in the previous paragraph. He explained to me that whilst he had said he did not have savings he does not consider that to be an untruthful as he did not consider the monies in his current account to be "savings". He pointed out that his debts would take up all of the money in his account. Pausing there I observe that there was no evidence before me of any of this money being used to pay debts owed. He also explained that he felt that he had to prioritise his family and that is why he felt he could not afford the fees



31. It is noteworthy that:

- a) Even at this hearing some 4 months or so after the original hearing, at which it was emphasised how important bank statements were to assess the Claimant's means, a full complement of the said statements have not been given;
- b) The Claimant was not able to identify any transactions at all which had been sent to his family in the Cameroon despite being specifically asked to do so;
- c) No bill could be identified as being paid within the six month period that the statements covered;
- d) There was no written evidence of any of the bills the Claimant brought to court with him having been discharged by the monies shown in the account or indeed at all.

32. I have no hesitation in concluding that the Claimant provided a misleading account at the first hearing. He asserted that he did not pay the fees because he did not have the financial wherewithal at the time to do so and as a consequence the fees were a barrier to justice and that it was not reasonably practicable for him to lodge the claim within the primary time limit.

33. From the evidence that I have now seen it is quite clear to me that the Claimant did have sums available to him by which he could have paid the fees. He chose to allocate his money elsewhere. I am not satisfied on the evidence that his debt situation was such he needed to retain sums to pay those and indeed it does not appear that he did so in any event. Much of the documentation is not pertinent to the period in question in any event. There is also no evidence of the monies being sent overseas either.

34. I consider that it is in the interests of justice for my previous Judgment to be reconsidered as fresh evidence has come to light that is highly pertinent to the decision I made. Having taken into account all that I have heard today I shall revoke that judgment wherein the Tribunal accepted it had jurisdiction to hear the claim and also all the directions made need not be complied with.

35. I have further considered the matter of time limits and have considered whether, in light of all I have heard over the two hearings, it was reasonably practicable for the Claims to be presented within the three month period. The onus on demonstrating that falls upon the Claimant and it is an onus that he has failed to discharge.

36. I find that from a financial perspective the Claimant had the means to discharge the fees that he believed he had to pay but he chose to allocate the sums at his disposal elsewhere. There is nothing within the documents I have been given or the evidence tendered that would suggest that need was such elsewhere that the required sum could not be found to issue proceedings. In particular considering the amount of money in the Claimant's account there would still have been a significant cushion to pay day to day expenses even after the Tribunal fees had been paid. In those circumstances it was feasible / reasonably practicable for him to bring his claim within the relevant time limits and accordingly the tribunal does not have jurisdiction to consider the Claim. The Claims are dismissed.

**Employment Judge Self**

04 July 2018