



THE EMPLOYMENT TRIBUNALS

Claimant: Mr PA Hudson

Respondent: Foster Maddison Property Consultants Limited

Heard at: North Shields Hearing Centre **On:** 2nd April 2019

Before: Employment Judge Martin

Members:

Representation:

Claimant: In Person

Respondent: Mr S Duncan (HR Representative)

JUDGMENT

1. This tribunal does not have jurisdiction to hear the claimant's complaint of unfair dismissal. His complaint is hereby dismissed.

REASONS

1. The Tribunal was provided with some documents from the claimant and the respondent, which included the offer of employment; letter of dismissal and the claimant's P45. The claimant gave evidence to the tribunal. Mr Alexander Pearson of the respondent company also gave brief evidence to the tribunal.
2. The Tribunal considered section 111(2) of the Employment Rights Act 1996 which provides that a tribunal shall not consider a complaint of unfair dismissal 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. The Tribunal also noted section 207(b) of the Employment Rights Act 1996 which provides for the extension of time limits to facilitate conciliation through ACAS, whereby time limits are extended during the period of that conciliation process. The Tribunal also considered the case law relating to the

extension of time limits. This included the case of *Dedman v British Building and Engineering Appliances Limited* 1974 ICR 53 where it was held that time limits are limits. It also held that “reasonably practicable” means feasible. The Tribunal also considered the case of *Walls Meat Company Limited v Khan* 1979 ICR 52 where the EAT held that a lack of knowledge or mistaken belief will not be reasonable if it arises from the fault of the claimant. The Tribunal also considered the case of *Nottinghamshire County Council v Entwhistle* 2010 IRLR 740 where the EAT held that the fault itself had to be reasonable, for example where the employee might have been misled on a particular factual issue, which then made it not reasonably practicable for a claim to be presented in time.

3. The claimant’s employment terminated on 27th June 2018. He was made redundant. He said during his evidence that around the time of the redundancy process there was a merger or takeover of the business by Baskeys. He understood that there had been a change in directors of the respondent company.
4. The claimant said that the discussions and meetings that he had regarding his redundancy and outstanding commission/holiday pay had been undertaken by Mr Alex Pearson and Mr Dan Salmon. He said that the correspondence regarding his redundancy and commission came from them at their e-mail address of Baskeys. He did however acknowledge that in all the correspondence both Mr Pearson and Mr Salmon stated that the decisions being made were by the respondent company or directors of that respondent company, namely in relation to the claimant’s redundancy, as is noted from the correspondence produced to this tribunal, in particular the letter of dismissal. The claimant is not suggesting at any stage that he believed that his employment had transferred to another organisation. He accepts that he was employed at all times by the respondent.
5. On 1st August 2018 the claimant contacted ACAS to undertake the early conciliation process. The certificate was issued on 1st September. Therefore the time was extended by one month to enable him to present his claim to the tribunal. When the claimant contacted ACAS he named his employer as the respondent. The certificate issued by ACAS was for the respondent named in these proceedings. On 22nd September 2018 the claimant submitted his claim on line. He cited the respondent as Mr Alex Pearson and Mr Dan Salmon. He said that this was because he understood from the question which he was being asked on the form to identify the people who dealt with his redundancy or his employer. He was not able to explain why he contacted ACAS and named the respondent but when he came to submit his claim form he named a different respondent. His only explanation was that he thought that the question which he was being asked on the claim form was different to the question asked regarding ACAS conciliation.
6. His claim was rejected on 24th September 2018. An e-mail was sent to the claimant from the tribunal informing him that his claim was rejected because the name of the respondent on the claim form was different to the name on the ACAS conciliation. The claimant said that the e-mail went into his spam inbox and he did not notice it. He said he was not aware of the timescales for bringing

claims although he acknowledged that there is reference he acknowledged that there is a reference to timescales for acknowledgement of claims at the end of the claim form which he said followed on from the diversity and monitoring information which he did not complete and which he understood effectively to be small print.

7. The claimant contacted the tribunal on 6th November 2018 to be informed that his claim had been rejected and that he had been notified on 24th September. He then sought to resubmit his claim which was again rejected. This was because he again identified the same respondents as he had done on the original claim form.
8. The claim was then resubmitted again and was accepted on 12th November 2018 five weeks after the prescribed time limit.
9. The claimant admitted that the error was his in relation to both citing of the wrong respondent and in not picking up e-mails in his spam inbox.
10. This tribunal finds that the claimant's claim is out of time. It was submitted five weeks after the prescribed time limit.
11. The tribunal consider that it was reasonably practicable for the claimant to have presented his claim in time. He did in fact present his original claim in time. The Tribunal does not accept that the claimant's error in citing the wrong name of the respondent was reasonable, as the claimant had clearly identified the correct respondent to ACAS only a few weeks earlier.
12. Further the Tribunal does not consider that the claim was presented within a reasonable time period thereafter. The claimant was notified on 24th September that his claim was rejected and therefore he had time to present his claim in time. The claimant's further error in not checking his spam inbox was not reasonable.
13. For those reasons this Tribunal finds that the claimant's claim was not presented in time and accordingly this Tribunal has no jurisdiction to hear his claim for unfair dismissal. For those reasons his claim is hereby dismissed.

EMPLOYMENT JUDGE MARTIN

**JUDGMENT SIGNED BY EMPLOYMENT
JUDGE ON 25 April 2019**

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