



THE EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Respondent

Mr M B Islam

AND

Tesco Stores Limited

HELD AT: London Central

ON: 28 June 2017

EMPLOYMENT JUDGE: Miss A M Lewzey

Representation

For Claimant: In Person with assistance from Mr N Imtiaz, Son

For Respondent: Mr T Adkin of Counsel

JUDGMENT having been sent to the parties on 29 June 2017 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Issues

1. This is a Preliminary Hearing to consider:
 - 1.1 Whether the claim of unfair dismissal was presented within time, if not whether it was reasonably practicable for the claim to be presented within time and whether the Tribunal has jurisdiction to consider the claim;
 - 1.2 Whether the claim of race discrimination was presented within time, if not whether it is just and equitable for time to be extended in order for the Tribunal to have jurisdiction to consider the claim;

- 1.3 Whether the claims or either of them should be struck out as having no reasonable prospect of success; and/or
- 1.4 Whether a deposit or deposits should be ordered on the grounds that the claim or claims have little reasonable prospect of success, as a condition of the claim or claims proceeding.

Evidence

2 The Claimant gave oral evidence to the Tribunal and referred to correspondence on the Tribunal file.

Material Facts

3 Mr Islam was dismissed by the Respondent on 25 July 2016, which is the effective date of termination of his employment.

4 By a letter dated 2 August 2016 Paul Doran Law agreed to represent Mr Islam on a no win no fee basis and accepted instructions.

5 The early conciliation notification is dated 1 September 2016 and the early conciliation certificate is dated 1 October 2016.

6 On 19 October 2016 Paul Doran Law spoke to Mr Islam and emailed him as follows:

“I write further to our telephone call this morning. As advised we cannot act for you in your claim on the basis that it would be uneconomic for us to do so on a no win no fee basis.

See attached the early conciliation certificate which you will need if you wish to pursue your claim at the Tribunal. You advise that you have another solicitor waiting to take on your case. As such you should provide your new Solicitor with this form advising them of your leaving date which I understand is 25 July 2016. I would strongly recommend you submit your claim by no later than 25 October 2016 to ensure your claim is protected.”

Mr Islam’s evidence was that he did not know how to submit a claim to the Employment Tribunal.

7 Mr Islam wrote to the Respondent’s head office on 23 October 2016, but received no reply.

8 Mr Islam went to the Ilford Citizens’ Advice Bureau on 7 and 14 November 2016. On the second occasion Mr Islam was referred to the Tower Hamlets Law Centre for free advice. That advice centre was only open one day per week. Mr Islam said in evidence that he may have visited the Tower Hamlets Law Centre in December. He confirmed that the Tower Hamlets Law Centre told him of the time limit and that he should apply to the Tribunal and the tribunal would decide whether the case could go ahead.

9 Mr Islam presented his ET1 form to the Tribunal on 27 January 2017.

Submissions

10 Mr Atkin, for the Respondent made oral submissions. Mr Islam, with the assistance of his son, Mr Imtiaz, also made oral submissions. I have taken those submissions fully into account in reaching my decision.

The Law

11 In relation to the claim of unfair dismissal, section 111(2) Employment Rights Act 1996 provides:

“(2) 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.”

12 In relation to the claim of race discrimination, section 123 Equality Act 2010 provides:

“(1) Subject to sections 140A and 140B, proceedings on a complaint within section 120 may not be brought after the end of—

- (a) the period of 3 months starting with the date of the act to which the complaint relates, or
- (b) such other period as the employment tribunal thinks just and equitable.”

13 Section 207B Employment Rights Act 1996 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”).

But it does not apply to a dispute that is (or so much of a dispute as is) a relevant dispute for the purposes of section 207A.

(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. I'm getting excited about first the following week

(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

Conclusions

14 I first consider the claim of unfair dismissal. The effective date of termination was 25 July 2016 and therefore the primary three month time limit would have expired on 24 October 2016. Adding the early conciliation period of one month means that the time limit expired on 23 November 2016. The claim was not presented until 27 January 2017 and is therefore out of time.

15 The issue for me is whether it was reasonably practicable for Mr Islam to present his claim within time. I take into account that Paul Doran Law told him that he had until 25 October 2016 to present his claim. In fact, he had a further month. Mr Islam sought Tower Hamlets Law Centre in December and was advised to send in his claim quickly. Mr Islam says that the reason why he did not send his claim in earlier was because of the fee but it was open to him to submit his claim and seek remission of the fee at the same time. The claim is two months out of time. Mr Islam knew of the time limit from 19 October 2016 by the email from Paul Doran law. Even if he had not understood that email, he must have done so when he saw the Tower Hamlets Law Centre in December. There is no explanation for why he then delayed until 27 January 2017.

16 I note that the cogency of the evidence, which is not all paper-based and, accordingly, will be largely reliant on oral evidence will be minimally affected by any extension to the time limit.

17 I also consider the question of promptness. There was a delay between 19 October 2016 when Mr Islam was told to file his claim swiftly and a further delay after he saw the Tower Hamlets Law Centre in December 2016 for which there is no explanation.

18 The reasonable practicability test is strict. It was reasonably practicable for Mr Islam to present his claim within time or in any event by December 2016. There is no jurisdiction to consider the claim of unfair dismissal which is dismissed.

19 The second claim is the claim of race discrimination for which there is a different test, namely whether it is just and equitable for time to be extended. The particulars of the claim contained in Mr Islam's letter of 23 March 2017 but there are no particulars in the claim form as to the names of the individuals said to have discriminated against Mr Islam. No good reason has been put forward as to why time should be extended.

20 I take into account the guidance of Auld LJ in **Robertson v. Bexley Community Centre t/a Leisure Link [2003] IRLR 434** as follows:

"It is also of importance to note that the time limits are exercised strictly in employment and industrial cases. When tribunals consider their discretion to consider a claim out of time on just and equitable grounds there is no presumption that they should do so unless they can justify

failure to exercise the discretion. Quite the reverse. A tribunal cannot hear a complaint unless the applicant convinces it that it is just and equitable to extend time. So, the exercise of discretion is the exception rather than the rule.”

21 No good reason has been put forward to justify an extension of time on the grounds that it is just and equitable to do so. In those circumstances there is no jurisdiction to consider the claim of race discrimination which is dismissed.

EMPLOYMENT JUDGE LEWZEY
18 July 2017