



Case Number: 2300894.2017

MK

EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Mr D Krol

and

Respondent

Sweep Kuusakoski Ltd

Held at Ashford on 21 August 2017

Representation

Claimant:

In Person, with a Polish
Interpreter

Respondent:

Mr T Brennan, EEF Advisor

Employment Judge Kurrein

JUDGMENT

The Tribunal has no jurisdiction to hear the Claimant's claims and they are struck out as having no reasonable prospect of success.

REASONS

- 1 This matter came before me at an open preliminary hearing to consider whether or not the Claimant's claims alleging unfair and wrongful dismissal were out of time.
- 2 The chronology, which was not disputed, was as follows:-
 - 2.1 Employment commenced on 30 October 2008.
 - 2.2 The Claimant was summarily dismissed and his EDT was 24 October 2016.
 - 2.3 The Claimant started early conciliation on 14 February 2017.
 - 2.4 Early conciliation ended on 23 February 2017.
 - 2.5 His ET1 was presented on 3 April 2017.
- 3 It is immediately apparent that:-
 - 4 early conciliation was not started within 3 months less one day of the EDT;
and
 - 5 the basic time limit expired on 23 January 2017; and
 - 6 the claim was not presented by the expiry of the extended three month time limit, as extended by early conciliation, which expired on 8 February 2017;
and

7 the Claimant delayed from 23 February until 3 April before he issued his claim.

8 I heard the evidence of the Claimant and make the following findings of fact:-

8.1 He is a Polish national who has been resident in the UK since 2004, but has limited English.

8.2 Immediately following his dismissal he researched his rights on the internet.

8.3 He was unable to obtain legal assistance as he could not afford it.

8.4 Within a month of his dismissal he had learned from a web site in Polish created to advise on employees' right in the UK that:-

8.4.1 he was entitled to bring a claim to a Tribunal;

8.4.2 he was required to undertake early conciliation with ACAS before he could make a claim.

8.5 The Claimant contacted ACAS in November and spoke to someone with the assistance of an ACAS provided interpreter.

8.6 As a consequence of the above research and contact the Claimant was aware of the relevant time limits.

8.7 He emailed ACAS in November 2016 but heard nothing in response.

8.8 He took no steps to follow up his email until early February 2017, when he telephoned. He said he had been too busy looking for work to act sooner.

8.9 Following early conciliation he had been vacillating as to whether to present a claim and he had not previously been involved in legal proceedings and it was a "big step".

9 These claims are clearly out of time. The test I have to apply as to whether I can extend time in the unfair dismissal claims is set out in S.111 Employment Rights Act 1996, and the test for the wrongful dismissal claim is in identical terms.

111 Complaints to employment tribunal

(1) A complaint may be presented to an employment tribunal against an employer by any person that he was unfairly dismissed by the employer.

(2) Subject to subsection (3), 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.

10 I have had regard to the following guiding principles:-

Wall's Meat Co Ltd v Khan [1978] IRLR 499, Lord Denning, quoting himself in Dedman,

'It is simply to ask this question: Had the man just cause or excuse for not presenting his complaint within the prescribed time?

- 11 Palmer and Saunders v Southend-on-Sea Borough Council [1984] IRLR 119, the matters to be considered include:-
- The substantial cause of the claimant's failure to comply with the time limit;
 - Whether there was any physical impediment preventing compliance, such as illness, or a postal strike;
 - Whether, and if so when, the claimant knew of his rights;
 - Whether the employer had misrepresented any relevant matter to the employee;
 - Whether the claimant had been advised by anyone, and the nature of any advice given; and whether there was any substantial fault on the part of the claimant or his adviser which led to the failure to present the complaint in time.
- 12 In light of all the evidence the Claimant has failed to satisfy me on the balance of probabilities that it was not reasonably practicable for him to have started early conciliation by 23 January 2017. In my view he clearly could have done so had he applied himself to what he wished to do. Whatever the reason for his email not being responded to he is fundamentally at fault for not following it up.
- 13 Even then, and supposing that delay was not unreasonable, the Claimant again delayed for over a month from when he could have presented his claim before he did so. That delay is also unreasonable.
- 14 I have no power to extend time in this case and the claims must be struck out.

Employment Judge Kurrein

21 August 2017