Appeal No. UKEATPA/0107/13/GE

EMPLOYMENT APPEAL TRIBUNAL

FLEETBANK HOUSE, 2-6 SALISBURY SQUARE, LONDON EC4Y 8JX

At the Tribunal
On 15 July 2013

Before

HIS HONOUR JUDGE McMULLEN QC

(SITTING ALONE)

MR B WILLIAMS APPELLANT

DHL SERVICES LTD RESPONDENT

Transcript of Proceedings

JUDGMENT

RULE 3(10) APPLICATION - APPELLANT ONLY

APPEARANCES

For the Appellant	MR B WILLIAMS (The Appellant in Person)

SUMMARY

JURISDICTIONAL POINTS – Extension of time: reasonably practicable

The Employment Judge could not be faulted in finding that it was reasonably practicable for the Claimant to submit his claim within three months, when he was almost a year out of time. He failed to apply for written reasons in time. This was in character.

This judgment is provided at public expense without the Claimant having to make a case for it, inexplicably in times of austerity when the Claimant heard the judgment, given in line with those of the Employment Judge and the EAT judge.

HIS HONOUR JUDGE McMULLEN QC

1. This case is about the striking-out of an unfair dismissal claim on the ground that it was presented outside the three-month period. I will refer to the parties as the Claimant and the Respondent.

Introduction

2. It is an appeal by the Claimant in those proceedings, who represents himself, against a Judgment of Employment Judge Vowles, sitting on 4 December 2012 at Ashford, Kent. The Respondent was represented by counsel. The issue at the PHR was whether the claim had been presented within the three-month time limit in section 111(2) of the **Employment Rights Act 1996**. The Judge determined that it was not, and the complaint was therefore struck out. Oral reasons were given on the day. The Claimant applied out of time for written reasons, and the Judge refused because they were sought out of time.

3. The appeal came before Singh J on the papers who said the following:

> **"I do not think that the appeal has any reasonable prospect of success. The Claimant wishes to appeal against the Employment Tribunal judgment sent to the parties on 12 January 2013, in which it struck out the claim of unfair dismissal on the ground that it was made outside the normal time limit of three months and it was reasonably practicable for it to have been presented within that time. The Employment Tribunal heard evidence from the Claimant and considered all the other evidence before it. It reached a decision of fact. It gave its reasons orally at the time of the decision on 4 December 2012. I note that the Claimant requested written reasons for the Employment Tribunal's decision but this request was refused because it was made outside the 14 day limit. The Grounds of Appeal dated 17 January 2013 raise what are essentially complaints about the merits of the decision (in particular that the Claimant was ill at the relevant time)."**

4. The matter comes before me afresh under rule 3(10). I refer to my Judgment in **Cheema v Singh t/a JS Carpets v Kumar** UKEATPA/0250/12 for my approach to this kind of hearing; I make my own decision.

The legislation

5. The relevant provisions of the legislation are not in dispute. It is for the Employment Tribunal to determine under section 111 whether or not it was reasonably practicable for the claim to be put in within a period of three months.

The appeal

6. I will give my decision in relation to this on the basis of the material presented to me. There are no written reasons. I today have not been asked for written reasons to be sought, and I see no reason to challenge the Employment Judge's refusal.

7. The chronology is stark. The Claimant signed a letter acknowledging that his last day of working and his redundancy was 13 August 2011. The Claimant had relied on 14 August, but he accepts before me that that is not right and time begins to run on 13 August. So the claim form should have been put in *on or before 12 November 2011*. It was not put in until 18 September 2012, almost a year out of time.

8. The Claimant relies throughout upon his certificated illness from 3 November 2011. I have seen a GP's letter which indicates that he had back pain for all of this period, and the Claimant tells me he was in bed for that time. When he put his claim in, he acknowledged that he was potentially out of time. The Respondent took the time point, and so that is why there was a PHR.

9. In the absence of reasons, I have to rely upon the material which was exchanged. The sole basis now advanced before me by the Claimant is that between 3 and 12 November 2011

he had back pain and could not submit the form. That of course would correspond to it not being reasonably practicable, other things being equal. But I bear in mind that he had, prior to this time, some 11 weeks in which to put in the form.

10. No explanation is given to me, or that I can deduce from the papers, as to why he did not put the form in before that. He tells me he was stressed at losing his job, but there is nothing in the documentation to cover those 11 weeks. It seems to me that the Employment Judge must have decided that it was reasonably practicable from 13 August at least up to 3 November 2011 to put the claim in, and the Claimant did not. That would defeat the appeal.

11. I bear in mind that in a case like this there is intense scrutiny of the last part of the three-month period (see **Schultz v Esso Petroleum Ltd** [1999] IRLR 488) and that there may well be a reason occurring only in the last (on this footing) nine days. But I have not been told anything about this. I am told this was put before the Judge and the Judge in his oral reasons failed to see the Claimant's point.

12. At a subsequent stage in these proceedings, the Claimant received legal advice, and then he received legal advice from what is said to be a charity known as Employment Law Centres. They wrote on his behalf on 17 October 2012 raising for the first time the issue that the Claimant did not know of his right to complain. There is no evidence at all to support this in the papers. Nor does Mr Williams before the EAT in any of the many papers he has sent, or orally today, make that point. I pay no attention to that point raised by Employment Law Centres ostensibly on his behalf but now it seems without instructions.

13. The sole issue is whether throughout that period it was not reasonably practicable, and it seems to me that the Judge's holding is sufficient for the period up to 3 November. It was reasonably practicable. Thereafter I can find no reason why it was not reasonably practicable while the Claimant was in bed. As he said, he was being taken care of. If he had already formed the view the claim form should be put in, then it could have been put in at that stage. I also bear in mind that this is a very substantial overrunning of the period. The Claimant would have to say that he acted promptly as soon as he knew that he was out of time, and yet he does not give any dates as to when he was told that he should put his claim in.

Conclusion

14. Mr Williams signed the document dating 13 August as being his final date, and he agrees with me that time runs from 13 August to 12 November 2011. He was almost a year late. I see no reason to interfere with the Judge's decision on the factual finding as to what was reasonably practicable. I now note the Claimant was out of time to seek reasons from the Employment Judge. This is not out of character. This appeal is therefore dismissed.

Transcript

15. At substantial public expense this judgment is provided to the Claimant at his request without any reasoned case for it. I question why the Practice Direction still allows for this in times of austerity when the Claimant heard me decide against him, as did Employment Judge Vowles and Singh J.