



EMPLOYMENT TRIBUNALS

Claimant: Mr F Ahmad

Respondent: City West Homes

Heard at: London Central

On: 29 September 2017

Before Judge: A Isaacson

Representation

Claimant: In person

Respondent: Ms N Desouza (HR)

JUDGMENT

The Judgment of the Tribunal is as follows:

1. That it was reasonably practicable for the claimant to have presented his claim for unfair dismissal within three months of his effective date of dismissal. His claim was submitted out of time and therefore his claim for unfair dismissal is dismissed.
2. The Tribunal is not minded to exercise its discretion to extend time to allow the claims under the Equality Act 2010 for race discrimination, harassment and victimisation to proceed out of time. Therefore all his Equality Act 2010 claims are dismissed.

REASONS

Issues

1. The issues before the Tribunal are whether:

- a) Whether the unfair dismissal claim should be allowed to proceed because it was not reasonably practicable to present it in the 3 months and it was presented within a reasonable time thereafter?
- b) Whether it is just and equitable to allow the Equality Act 2010 (EqA) claims of race discrimination, harassment and victimisation to proceed out of time.

Evidence

2. The Tribunal was presented with a bundle of documents from both the claimant and the respondent and the claimant presented a witness statement and answered questions from the Tribunal. Both parties gave oral submissions.

Findings of Fact

3. The claimant had continuous employment with the respondent from 8 January 2010. On the 29 September there was an incident at work. The claimant was called to an investigation meeting. On the 23 November 2016 the claimant was sent a letter inviting him to a disciplinary hearing.
4. After receiving this letter the claimant contacted his union, the GMB, and spoke to Pat Calvin ("PC"), a GMB Convenor. She then accompanied the claimant to his disciplinary hearing on the 12 December 2016.
5. On the 16 December 2016 the claimant started a grievance.
6. On the 21 December 2016 the claimant was sent the outcome to his disciplinary hearing letter. The letter confirmed that he was being dismissed with 2 weeks notice. The Tribunal finds that the claimant's effective date of termination ("EDT") was the 4 January 2017. Therefore the 3 month time limit for presenting his claims expired on 3 April 2017. This may have been extended if the claimant had entered into early conciliation with ACAS before that date.
7. Around this time the claimant looked at an ACAS guide to information regarding TUPE transfers. This demonstrates that the claimant was aware of ACAS and how to seek advice and information from it at this time.
8. On the 3 January 2017 the claimant appealed his dismissal. On the 22 February 2017 he attended a grievance hearing, accompanied by PC.
9. On the 9 March 2017 the claimant received a letter of the outcome to his grievance.
10. On the 16 March 2017 he attended an appeal hearing accompanied by PC. On the 17 March 2017 he appealed the outcome to his grievance.
11. On the 28 March 2017 the claimant entered into early conciliation with ACAS about a case for monies he believed he was owed from his former employer and not this respondent. This demonstrates that within the 3 months time limit the claimant was aware of early conciliation and could

have entered into early conciliation with ACAS regarding these claims at this time.

12. On the 31 March 2017 he received the outcome to his appeal against his dismissal. Although there was a delay in the appeal process by the respondent and they did not comply with the timetable in their own procedures, it is clear that the claimant received the decision on his appeal within the 3 months time limit for presenting his claims.
13. The claimant says that prior to the decision on the appeal he was told by the GMB and by the respondent that there was a real chance he might be reinstated. Even if the claimant was told this he still had the opportunity to enter into early conciliation and present his claim within time once he received the final outcome to his appeal.
14. The correspondence in the bundle demonstrates that the claimant tried to make contact with PC at this time without success. It appears that the claimant did speak to PC on 24 April 2017 and then contacted Gary, an organiser from the GMB on the 26 April 2017 who took over as his union representative. Gary told the claimant to immediately contact ACAS to start early conciliation. The claimant filled in the form on line and then ACAS contacted Gary as his representative.
15. Gary also notified the claimant on 26 April 2017 of the union's telephone number for legal advice.
16. The claimant started early conciliation on the 27 April 2017. This was extended for various reasons until 9 June 2017 when a certificate was issued. In the email exchange from ACAS to Gary, and copied to the claimant, ACAS stated that the claimant would have at least a month from receipt of the certificate in which to lodge a Tribunal claim. This advice was incorrect because the claimant had only started early conciliation after the 3 month time limit had expired.
17. In the meantime on the 22 May 2017 the claimant presented a claim to the Tribunal against his previous employer for monies owed. This demonstrates that he was fully aware of his right and how to present a claim to an Employment Tribunal by this date.
18. On the 12 June 2017 Gary told the claimant it was his responsibility to lodge his claim form and said that he had one month from the ACAS certificate and gave the number for the GMB legal helpline.
19. The claimant presented his claim form on the 9 July 2017.

The law

20. The time limit for presenting a claim for unfair dismissal is 3 months from the EDT as set out in section 111(1) Employment Rights Act 1996 ("ERA"). The Tribunal is able to consider complaints presented out of time only if it is satisfied (1) that it was not reasonably practicable for a complaint to be presented before the end of the relevant 3 month period, and (2) if so, that it was presented within such further period as it

considers reasonable. The burden lies on the claimant at both stages of the test.

21. It is a question of fact in each case whether it was reasonably practicable to present a claim in time. There may be various relevant factors including the claimant's knowledge of the facts giving rise to their claim and their knowledge of their rights to claim and the enforcement of those rights.
22. Mere ignorance of the time limit for bringing a claim for unfair dismissal does not of itself amount to reasonable impracticability, especially where the employee is aware of their right to bring a claim. The question is was the claimant's ignorance reasonable?
23. Where an employee has knowledge of their right to claim unfair dismissal there is an obligation on them to seek information or advice about enforcement of those rights.
24. The existence of an ongoing internal appeal is not by itself sufficient to justify a finding of fact that it was not reasonably practicable to present a complaint in time to the Tribunal.
25. Section 123 of the EqA provides that a claim may not be brought after the end of 3 months starting with the date of the act to which the complaint relates, or such other period as the Employment Tribunal thinks just and equitable.
26. The Tribunal has wide discretion in determining whether or not it is just and equitable to extend time and it is a wider discretion than for unfair dismissal. It should consider everything that it thinks is relevant. However time limits should be strictly applied and the exercise of the discretion is the exception rather than the rule. There is no presumption that the Tribunal should exercise its discretion.
27. The Tribunal is not legally required to but may consider the check list set out in Section 33 of the Limitation Act 1980 in considering whether to exercise its discretion:
 - a) the length and reason for the delay;
 - b) the extent to which the cogency of the evidence is likely to be affected by the delay;
 - c) the extent to which the party sued had cooperated with any requests for information;
 - d) the promptness which the claimant acted once he knew the facts giving rise to the cause of action; and
 - e) the steps taken by the claimant to obtain appropriate professional advice once he knew of the possibility of taking action.
28. The Tribunal will consider whether a fair trial is still possible and the prejudice to the respondent.

Applying the law to the facts

29. The claimant's claims are out of time as the EDT was on the 4 January 2017 and the claim form was only presented on the 9 July 2017. Early ACAS conciliation only commenced on the 27 April 2017, after the 3 month time limit had expired and consequently did not extend time for presenting the claim.
30. The Tribunal finds that it was reasonably practicable for the claimant to have presented his unfair dismissal claim in time and finds that it would not be just and equitable to extend time in relation to his EqA claims.
31. The claimant had union representation from December 2016. PC should have told him of the 3 month time limit after he was notified of his dismissal on 21 December 2016. Around this time he looked for guidance from ACAS in relation to TUPE and could have sought advice from them in relation to the time limit for bringing his claims.
32. Although there was some delay by the respondent to deal with his appeal the claimant was aware of the final outcome on the 31 March 2017. On the 28 March 2017 the claimant had entered into early conciliation in relation to a claim against his former employer. Therefore it is clear to the Tribunal that the claimant was fully aware of his rights to bring a claim to an Employment Tribunal and about the need to enter into early conciliation before the 3 month time limit had expired. Therefore it was reasonably practicable to have done so.
33. Even if the claimant had not actually been aware of the time limits at that stage the Tribunal finds his ignorance as unreasonable as he had union representation and was aware of ACAS and the Tribunal.
34. The Tribunal has considered the length and reason for the delay. It is not a considerable delay; the delay would not affect the cogency of the evidence and the ability to have a fair hearing. However Tribunal time limits should be adhered to strictly and there is no good reason why the claimant did not submit his claim in time.
35. Looking at all the circumstances the Tribunal does not feel it is just and equitable to use its discretion to extend time. The claimant had union representation early, he knew about ACAS and early conciliation within the 3 months time limit. He was not misled by the respondent. The delay in the appeal process did not prevent the claimant from contacting ACAS to start early conciliation in time to benefit from the time extension. Although ACAS later suggested that the claimant had a month to present his claim after the issue of the ACAS certificate, by then his claims were already out of time.

36. Accordingly all the claimant's claims are out of time and are dismissed.

Employment Judge Isaacson
29 September 2017