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EMPLOYMENT TRIBUNALS

Claimant: Mr P Heath
Respondent: UPS Limited
Heard at: East London Hearing Centre
On: 6 November 2017
Before: Employment Judge Brown

Representation

Claimant: In person
Respondent: Ms K Belmar (Counsel)

JUDGMENT

The judgment of the Tribunal is that:

1. The Claimant's claim was presented out of time.
2. It was reasonably practicable for the Claimant to bring his complaint in time and, therefore, the Tribunal does not extend time for presentation of his claim and his claim is dismissed.

REASONS

1 By a Claim Form presented on 27 May 2017, the Claimant brought a complaint of unfair dismissal against the Respondent, his former employer. The Claimant had engaged in ACAS Early Conciliation and the Early Conciliation Certificate said that day A was 21 May 2017 and day B was 23 May 2017.

2 The Claimant had been employed from 1 September 2006 until 19 July 2016. To have been in time his unfair dismissal complaint, the Claimant would have to have presented his claim to the Employment Tribunal by 18 October 2016 (plus any relevant

Early Conciliation period). Accordingly, when the Claimant presented his claim to the Tribunal on 27 May 2017, the claim was presented 7 months out of time.

3 On 29 August 2017 the Tribunal sent a notice of a Preliminary Hearing to the parties and said that, at this hearing, it would consider whether time should be extended for presentation of the Claimant's claim.

4 On 26 September 2017 the Respondent presented an ET3 Response, contending that the Claimant's claim was out of time and that the Claimant had been dismissed for gross misconduct.

5 At the hearing today, the Claimant gave evidence and presented a detailed witness statement with supporting documents. He was cross-examined by the Respondent and gave further evidence-in-chief. His wife also gave evidence. My findings of facts with regard to the evidence are as follows.

6 When the Claimant was dismissed, he considered that his dismissal was unfair. He knew it was possible to bring a claim to a court against employer for unfair dismissal. He also knew there was likely to be a time limit for bringing claims, but he thought that the relevant time limit was 6 years. The Claimant had previously brought a personal injury claim against his employer. He had obtained the help of a solicitor to do that. He had sought and obtained a solicitor via an online search.

7 The Claimant has a computer. The Claimant did not undertake an internet search for solicitors or legal advice about his claim for unfair dismissal when he was dismissed. It is well-known that online information about claims to Employment Tribunals is easily available through internet searches.

8 I find that the Claimant's ignorance of the 3 month time limit for bringing a claim to the Employment Tribunal was unreasonable, because he did not undertake even a basic search online, or otherwise, about unfair dismissal claims following his dismissal - when he knew that it was possible to bring a claim and he knew that there was likely to be a time limit for doing so.

9 The Claimant did eventually see a solicitor in November 2016. The solicitor told the Claimant about the three month time limit and that his claim was out of time. The Claimant did not attempt to bring an ET claim in November 2016, either.

10 The Claimant had financial worries when he was dismissed, but, at the date of his dismissal, he had about £10,000 savings, or about £9,000, odd, after paying his bills. The Claimant, therefore, had the financial means to obtain legal advice, if he sought to do so and/or to pay the Employment Tribunal issue fee. The Claimant's financial situation rapidly deteriorated following his dismissal but later he was in receipt of job seekers allowance and he could have applied for remission of fees (which he did eventually do when he submitted his claim in May 2017).

11 Following his dismissal, the Claimant was able to engage with County Court process with regard to housing possession proceedings in 2016 and 2017.

12 The Claimant told me that his dismissal appeal hearing was not heard by the Respondent until September 2016 and he was not given the result of the appeal until two weeks before expiry of the ET time limits.

13 After his dismissal, the Claimant had health concerns, including heart problems, and so did his wife. They visited the GP and the hospital on numerous occasions following the Claimant's dismissal and the Claimant himself was in hospital from 10 – 14 September 2016. His wife was in hospital from January until March 2017. However, at other times, the Claimant and his wife, who was not in work, were able otherwise to go about their normal day-to-day activities.

14 I find that their financial and health worries did preoccupy them, but did not prevent them, for example, from going to shops, dealing with the dismissal appeal hearing, applying for benefits or from organising housing and house moves.

Law

15 The time limits for presenting complaints of unfair dismissal to an Employment Tribunal as set out in *s 111 Employment Rights Act 1996*.

16 By *s 111(2) Employment Rights Act 1996*

“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 the period of three months.

17 Where a Claimant fails to present his claim in time and seeks an extension of time, the employee must show that it was not reasonably practicable to present his claim in time. The burden of proving this rests on the Claimant, *Porter v Bandridge Ltd* [1978] IRLR 271, [1978] ICR 943, CA. If he succeeds in doing so, the Tribunal must be satisfied that the time within which the claim was, in fact, presented was reasonable.

18 The question of whether it was reasonably practicable for the complaint to be presented is one of fact for the Employment Tribunal, taking into account all the relevant factors *Palmer and Saunders v Southend-on-Sea Borough Council* [1984] 1 All ER 945, [1984] IRLR 119, [1984] ICR 372, CA. Relevant factors can include the manner of, and reason for, the dismissal; whether the employer's conciliation machinery had been used; 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.

19 The fact of a pending internal appeal does not, on its own, allow a claimant to establish that it was not reasonably practicable to present a claim in time.

20 The Claimant's lack of knowledge of his rights and of the time limit may, however, assist the Claimant in establishing that it was not reasonably practicable to present the claim where an internal process was also being followed. In *Marks & Spencer v Williams-Ryan* [2005] ICR 1293, the Claimant's belief that she had to complete an internal appeal before starting tribunal proceedings, combined with her reasonable ignorance of the time limit for bringing an unfair dismissal claim, meant that it was not reasonably practicable for her to make her claim in time. In *John Lewis Partnership v Charman* UKEAT/79/11 the EAT held that it was not unreasonable for the Claimant to be ignorant of his right to bring a Tribunal claim where the Claimant was pursuing an appeal and deferred investigation of his rights until after the appeal had been concluded.

This Case

21 In this case I find that the fact that there was a pending internal appeal did not mean it was not reasonably practicable for the Claimant to bring a complaint in time. The Claimant knew of his rights to bring a claim to the Employment Tribunal and knew that there was a time limit, but did not undertake even the most basic research into Employment Tribunal claims and the time limits which applied to them.

22 His financial and health worries did preoccupy the Claimant but, again, did not prevent him from going to the shops, dealing with his internal appeal, applying for benefits and organising housing and housing moves.

23 I found that his financial and health worries did not mean it was not reasonably practicable for him to bring a claim.

24 I find that, even taking the appeal, the Claimant's financial and health worries together, it was still reasonably practicable for the Claimant to bring his claim within the three months time limit, when he knew of his right to bring a claim, he had a computer and he had previously sought solicitors' advice on other claims, but failed to do so with regard to an Employment Tribunal claim. He had sufficient funds at the date of his dismissal to secure legal advice and to pay the ET issue fee.

25 Accordingly I found that the Claimant's claim was presented out of time and I did not extend time for it.

Employment Judge Brown

15 November 2017

