



EMPLOYMENT TRIBUNALS

Claimant

Mr R Elks

Respondent

Loomis Limited

v

PRELIMINARY HEARING

Heard at: Cambridge

On: 16 November 2017

Before: Employment Judge Ord

Appearances:

For the Claimant: Did not attend and was not represented.

For the Respondent: Mr J Gidney, Counsel.

STRIKE OUT JUDGMENT

1. The claimant's complaint that he was unfairly dismissed was presented out of time and the tribunal has no jurisdiction to hear it. The complaint is therefore dismissed.

REASONS

1. This matter was listed before me today to consider the respondent's application that the case should be struck out because it was presented outside of the statutory time limits.
2. Notice of hearing was sent to the claimant on 22 October 2017. Directions were contained in that notice of hearing for exchange of documents and witness statements.

3. Notwithstanding their attempts to contact the claimant the respondent has heard nothing from him and nor has the tribunal. He did not attend today and the matter proceeded in his absence.
4. Under s.111 of the Employment Rights Act 1996 a complaint of unfair dismissal will not be considered by an employment tribunal unless it is presented before the end of the period of 3 months beginning with the effective date of termination or 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 3 months.
5. Under s.207B (extension of time to facilitate conciliation before institution of proceedings):-

“Day A is the day on which the complainant or applicant concerned complies with the requirement in sub section (1) of 18A of the Employment Tribunals Act 1996 (requirement to contact ACAS before instituting proceeding)

Day B is the day on which the complainant or applicant concerned receives or, if earlier is treated as receiving ... the certificate issued under sub section (4) of that section.

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 be counted.

If a time limit set by a relevant provision would (if not extended by this sub section) 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.”
6. In this case the claimant was dismissed summarily by letter dated 26 April 2017. Although that letter purported to terminate the claimant's employment with effect from 25 April 2017 the claimant could not be retrospectively dismissed. The letter was posted first class on 26 April 2017 and would have been received by the claimant in the ordinary course of post by 28 April 2017, and that therefore is the effective date of termination.
7. Accordingly the period of three months beginning with the effective date of termination expired on 27 July 2017.
8. The claimant did not provide early conciliation information to ACAS until 4 August 2017. By that time the claimant was eight days out of time to present his claim.
9. The early conciliation certificate is dated 7 August 2017 and on that same date the claimant presented his claim to the employment tribunal. The only complaint was of unfair dismissal and the claim was presented eleven days after the expiry of the limitation period under s.111.
10. No extension is afforded to the claimant under s.207B because the three month period under s.111 had already expired before Day A.

11. Accordingly the complaint is out of time.
12. It is for the claimant to show that it was not reasonably practicable for him to have presented his claim in time.
13. In the claim form the claimant says that he had been “going through the grievance and dismissal procedures at work and I have only just come to the end and did not realise I only had 3 months to do this in”.
14. At the disciplinary hearing which took place on the 18 April 2017 the claimant was not represented.
15. The claimant did however raise a grievance which was heard on 10 May 2017 at which time he was represented by his Trade Union representative (Nicky Bowles) who was the shop steward. That same representative attended with the claimant on his appeal against dismissal on 1 June 2017 (the outcome was confirmed in a letter of the same date and the appeal was unsuccessful). The same representative also attended with the claimant on 17 July 2017 at the Claimant’s appeal against the grievance outcome.
16. Throughout this period the claimant was able to enquire of his representative what steps he needed to take in order to protect his position if he wished to pursue an action against the company outside of the internal processes. His Trade Union officer was in a position to advise him of that in any event.
17. In Reed Partnership Limited v Fraine [2011] EWCA Civ 1310 Mummery LJ dismissed an appeal against the Judgment of the employment appeal tribunal in a case where the claimant said that he was ignorant of the time limit and how it was calculated. The judge held that it could not be concluded in law that it was not reasonably practicable to bring a case within the time limits simply relying on ignorance of the way the time limit operates. Mummery LJ indicated that a potential claimant should take steps to know what was to be done and within what timescale. It was reasonably practicable for him to find that out from the tribunal and (in the instant case before me) from a Trade Union officer.
18. Mummery LJ concluded:-

“I am afraid you cannot say it is not reasonably practicable simply because you did not know and you did not know because you did not ask.”
19. In Palmer and Saunders v Southend on Sea Borough Council [1984] IRLR 119, Browne-Wilkinson LJ stated that delay whilst an internal disciplinary or dismissal procedure was invoked would not of itself justify a finding that it was not reasonably practicable to present the claim in time although:-

“There may be cases where the special facts (additional to the bare fact that there is an internal appeal pending) may persuade a tribunal, as a question of fact, that it was not reasonably practicable to complain to the tribunal within the time limit. But we do not think that the mere fact of a pending internal appeal, by itself, is sufficient to justify finding a fact that it was not “reasonably practicable” to present a complaint [in time].”

20. The claimant was represented by a Trade Union officer throughout all stages of the matter post dismissal and during his grievance process. He had the opportunity to ask what steps he needed to take to protect his position and he did not do so. Common sense dictates that that enquiry should have been made and it cannot be said that it was not reasonably practicable for the claimant to present his claim in time.

Conclusion

1. The claimant failed to present his claim to the employment tribunal within the time limit laid down by s.111 of the Employment Rights Act 1996.
2. It was reasonably practicable for the claim to be presented in time.
3. Accordingly the claim is dismissed.

Employment Judge Ord
Date: 6 December 2017

Sent to the parties on:

.....6 December 2017

For the Tribunal:

.....