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EMPLOYMENT TRIBUNALS

BETWEEN

Claimant
Mr P Quail

and

Respondent
Envirocure Ltd

Held at Ashford on 23 November 2017

Representation

Claimant:
Respondent:

In Person
Mr J Vachter, Counsel

Employment Judge Kurrein

JUDGMENT

The Employment Tribunal has jurisdiction to hear the Claimant's claims.

REASONS

- 1 This matter came before me at an Open Preliminary Hearing to consider the above issue.
- 2 The following chronology is not in dispute:-
 - 2.1 The Claimant was employed by the Respondent from 22 August 2011 until the Claimant walked out, allegedly in response to a Director's, Mr Green's, conduct, on 27 January 2017.
 - 2.2 Early Conciliation started on 21 April 2017 and ended on 21 May 2017.
 - 2.3 The time limit for the Claimant to present his claim expired on 21 June 2017.
 - 2.4 The Supreme Court gave judgment in the case of R (on the application of UNISON) v Lord Chancellor [2017] IRLR 911 on Wednesday 26 July 2017.
 - 2.5 The Claimant presented his claim on Tuesday 2 August 2017.
- 3 I heard the evidence of the Claimant and considered the documents he presented to me. I heard the submissions on behalf of the Respondent and the Claimant. I make the following further findings of fact.
- 4 In June 2017 the Claimant lived with his wife and their children, aged 8 and 18 and both in full time education, in a property they owned subject to a mortgage.

- 5 The Respondent did not pay the Claimant his salary for January 2017. The Claimant found agency work for two weeks and then a new full time job earning slightly more than he had previously. His net pay, with substantial overtime, is about £2,000 per month. Mrs Quail works part-time in catering earning about £650 net per month.
- 6 Unfortunately their financial circumstances, like millions of others in the UK, were precarious. They were only paying interest on their mortgage, at a rate of £450 per month, and were repaying debts to credit card and catalogue companies at a rate of £350 per month.
- 7 Mr Quail told me, and I accepted, that their financial position was so poor they were reduced to obtaining loans from Wonga, at astronomical interest rates, to get by.
- 8 In addition to these issues Mrs Quail's father sadly died in 2016 leaving her mother, who is in poor health, with only ½ his pension and needing financial, physical and emotional support that necessitated Mrs Quail travelling by train to Lancing at a cost of £350 per month for a once weekly ticket.
- 9 At this time they had obtained limited advice from solicitors under their home insurance policy and were aware of the relevant time limits.
- 10 I accepted Mr Quail's evidence that in the above circumstances, he simply could not find the sum of £250.00 needed to start his claim. He had just £1 in a savings account and his outgoings exceeded his income by a substantial margin. Indeed the house is now on the market.
- 11 I concluded that after deducting loan repayments and housing costs, and leaving aside Mrs Quail's travel costs, there was less than £1,850 per month to support the entire family. By reference to 2017 figures in the JRF research on Minimum Income Standards, as referred to by the Supreme Court in R (on the application of UNISON) v Lord Chancellor [2017] IRLR 911 in respect of 2013, when fees were introduced, this family would need well over £2,000 to meet that standard.
- 12 I have had regard to the following statutory provision and those analogous to it:-
- 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.

- 13 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?

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.

- 14 I am satisfied that the only and substantial cause of the Claimant's failure to present his claim in time was the unlawful requirement that he pay a fee in order to have access to justice. He could not reasonably afford to pay that fee.
- 15 In light of all the evidence Mr Quail has satisfied me on the balance of probabilities that it was not reasonably practicable for him to present his claim within the time limited.
- 16 Mr Quail learned of the decision in R (on the application of UNISON) v Lord Chancellor [2017] IRLR 911 shortly after it was made. On 1 August 2017 Mrs Quail emailed ACAS on a "long shot" to ask if there was a way that they could now present the Claimant's case. She received advice and the claim was presented the very next day.
- 17 Having accepted that evidence I am satisfied on the balance of probabilities that the claim was presented within a reasonable time of the expiry of the original time limit. In reality it was presented almost as soon as it could be.
- 18 I am therefore satisfied that the Tribunal has jurisdiction to hear the Claimant's claims. The case will be listed in due course for a one day hearing.

Employment Judge Kurrein
23 November 2017