



EMPLOYMENT TRIBUNALS

Claimant

Mr NJ Lawn

v

Respondent

**Chief Constable of Norfolk
Constabulary**

PRELIMINARY HEARING

Heard at: Norwich

On: 30 November 2017

Before: Employment Judge Postle

Appearances:

For the Claimant: Mr J Ratledge, Counsel.

For the Respondent: Mr P Strelitz, Counsel.

JUDGMENT

1. The tribunal has no jurisdiction to hear the claims as the claimant failed to comply with the mandatory requirements of s.18A of the Employment Tribunals Act 1996.
2. The claimant's claims are in any event out of time and it was reasonably practicable to have issued within the three months period pursuant to s.111 of the Employment Rights Act 1996.

REASONS

1. This is a preliminary hearing and there were two issues of jurisdiction before the tribunal, whether the requirements of s.18A of the Employment Tribunals Act 1996 have been complied with. Secondly whether it was reasonably practicable for the claimant to have issued his claims within three months of the date of dismissal, namely 9 May.

2. It is agreed that the claim was filed at the Watford Employment Tribunal on 8 September 2017.
3. The claimant contacted ACAS on 7 September and an ACAS pre conciliation certificate was issued on 11 September 2017.
4. In this preliminary hearing I have heard from the claimant who gave evidence through a prepared witness statement. I have also read statements from the following on behalf of the claimant, namely:-
 - 4.1 Mr Luke Davey.
 - 4.2 Mr William Nisbett.
 - 4.3 Mr Anthony Lawn, the claimant's father.
 - 4.4 Mr Derek Rutter.
5. Two GP letters/reports from Acle Medical Partnership dated 22 March 2017 and 11 April 2017.
6. The claimant was a serving police officer with some 16 years unblemished service. He was dismissed on 9 May following a misconduct hearing which lasted over two days. The claimant was notified of the decision to dismiss from the respondent on 9 May.
7. Throughout the investigations leading up to and including the hearing itself the claimant was represented by Cartwright King Solicitors funded by the Police Federation.
8. The Police Federation also funded an appeal against the panel's decision, and the grounds for that appeal was settled by the claimant's counsel around the end of June. The preliminary hearing for the Police Appeal's Panel was on 6 August at which they determined the claimant's appeal had no prospect of success. Further representations were made by the claimant's counsel on 9 August and a final determination was made on 15 August. That was communicated to the claimant by email that day or day after by the federation's now solicitors Slater Gordon that the appeal still had no prospect of success.
9. In the intervening period the claimant had registered with an employment agency around 4 June and was now undertaking driving jobs.
10. It is accepted that the claimant did have a background of psychiatric illness and certainly in 2015 and 2016 which were set against the background of a marital breakdown. It is also clear that the claimant was suffering from anxiety and stress in the early parts of 2017 not surprisingly given the investigation he was subject to and the impending hearing of the Police Misconduct Panel.
11. The claimant says he did not issue proceedings immediately fearing reprisals from his job, from the respondent. He simply wanted to save his job. Furthermore at the time his mental health and wellbeing prevented him from bringing a claim and it was only after his health improved that he was able to bring a claim.

Conclusions

12. It is clear the early conciliation certificate under s.18A(1) makes it clear that:-

“Before a person (the prospective claimant) presents an application to institute relevant proceedings relating to any matter, the prospective claimant must provide to ACAS prescribed information, in the prescribed manner about that matter.”

13. These are clearly relevant proceedings. It is clear that the claimant notified ACAS on 7 September the day before he instituted proceedings but that is not sufficient for the mandatory provisions of s.18A(8) which says:-

“A person who is subject to the requirement in sub section (1) may not present an application to institute relevant proceedings without a certificate under sub section (4).”

14. The certificate that the claimant obtained is dated 11 September. It is clear therefore it is absolutely mandatory that the certificate is granted before the proceedings are issued. There is no discretion and no room for any exceptions.

15. Under those circumstances the tribunal has clearly no jurisdiction to hear the claim as the pre conciliation requirements have not been satisfied.

16. Even if the tribunal were wrong on the above analysis, there is the time point and under s.111 of the Employment Rights Act 1996 it is clear three months from the date of dismissal, claims have to be issued subject to any extension which the ACAS pre conciliation certificate might allow under s.207B of the Employment Rights Act 1996. Clearly that is not relevant in this case.

17. Firstly the claimant has to show why it was not reasonably practicable to have issued within the three month period. Then s.111(2)(b) provides the tribunal with a discretion, if the claim is not presented within three months period was it presented within such further period as the tribunal considers it reasonable.

18. It is a high hurdle to overcome and it is simply not a case of saying I was not well enough to issue proceedings at the time. The onus on proving that presentation in time was not reasonably practicable rests with the claimant. That imposes a duty upon him to show precisely why it was that he did not present his complaint in time.

19. It is accepted in 2015/2016 that the claimant was suffering severe psychiatric issues. It is also clear in 2017 the claimant was suffering anxiety and stress as a result of the investigation and the proceedings before the Police Misconduct Panel.

20. However it is also clear throughout the above process the claimant was being advised by lawyers who not only represented him on the lead up to the misconduct hearing, but from March while the investigations were being undertaken. The claimant was also represented for the appeal against the Police Misconduct Panel by counsel and that counsel made further representations

when the appeal was first turned down. The final determination was the 15 August, there is absolutely no reason from that date why the claimant could not have issued his claim albeit it would have still been a few days out of time. Furthermore it is not clear why the claimant could not have issued his claim after the 9 May when the decision of the Police Misconduct Panel was communicated to him as it was clear at that stage his job had not been saved. Further there was no question from that time on, as the claimant puts it reprisals from the respondent.

21. Furthermore the claimant was physically and mentally able to register with an employment agency on 4 June and undertake a driving job thereafter.
22. In the circumstances I am not persuaded that it was not reasonably practicable to have issued the claim within the three month period following the claimant's dismissal.

Employment Judge Postle

Date: 18 December 2017

Sent to the parties on:

.....18 December 2017.

For the Tribunal:

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