



EMPLOYMENT TRIBUNALS

Claimants: Mr E Nelson
Mrs J Nelson
Miss E Nelson

Respondent: Picturehouse Cinemas Limited
City Screen (York) Limited

Heard at: Leeds On: 4 January 2018

Before: Employment Judge Trayler

Members:

Representation

Claimants: In person
Respondent: Mr A Williams, Solicitor

RESERVED JUDGMENT

1. The claims by the Claimants were presented outside the statutory time limits and therefore the Tribunal has no jurisdiction to hear them.
2. The claims are therefore dismissed.

REASONS

1. At this preliminary hearing one of the issues to be determined was whether the claims by the Claimants had been presented within the relevant statutory time limits and this Judgment addresses that issue.
2. The Tribunal heard evidence from each of the Claimants Mr Elliot Nelson and Miss Elle Nelson as well as their mother Mrs Janice Nelson.

3. By a claim form presented to the Tribunal on 5 November 2017 Mrs Janice Nelson made complaints to the Tribunal of unfair dismissal, discrimination because of age and discrimination and for other payments. Mrs Nelson completed the box 8.2 of the claim form setting out the details of the claim. Whilst those may not be sufficiently full to allow the Respondent to know the case against it there was at least sufficient particulars in relation to the claim for the claim to be accepted. Mrs Nelson also included with her claim the number of the early conciliation certificate issued by ACAS. A copy of that certificate was also enclosed.
4. Mrs Nelson was represented by her trade union BECTU. On the balance of probabilities it seemed that Mrs Nelson had prepared the particulars within paragraph 8.2 which raised a grievance with the Respondent. That grievance was incorporated by BECTU into the claim form.
5. The claim having been presented on 5 November 2017 and the Claimant Mrs Nelson having made a reference to ACAS on 25 September 2017, ACAS issuing the certificate on 13 October 2017 the claim is apparently not troubled by any issues of complying with the statutory time limit. Mrs Nelson complains of the circumstances of her alleged dismissal, said to be a constructive dismissal, on 20 July 2017.
6. Mrs Nelson's claim was accepted. Also within the claim is a short list of additional Claimants namely Mr Elliot Nelson and his sister Miss Elle Nelson. Mr Nelson and Miss Nelson are the children of Mrs Nelson. All that is provided in relation to Mr and Miss Nelson are their names, dates of birth and the address of their mother as their correspondence address. No information is given as to the nature of the complaints they are making. There is no connection or direct similarity between the complaints that Mr and Miss Nelson seek to make and those of their mother. To be clear, it is not a class action where each of the Claimants have been treated in a similar manner by the Respondent and the Claimants seek to complain about the same or very similar actions on behalf of the Respondent. At the time of the claim of 5 November was presented there is no information as to the complaints which Mr and Miss Nelson seek to make.
7. The claim was considered by an Employment Judge and on 9 November 2017 the Tribunal sent to Mrs Nelson by email and Mr and Miss Nelson by post to their mother's address and notice that their claims had been rejected. The letter explaining this confirms that only their claims had been rejected. The reasons for the rejection are set out namely that the claim appears to be relevant proceedings to which the early conciliation provisions apply, that if the claim is "relevant proceedings" it may not brought until the Claimant's have gone through the early conciliation procedure and thirdly that if the Claimant has gone through conciliation the conciliation number must be given in the claim form whereas in this case no number had been given.
8. On 10 November Mrs Nelson sent an email to the Tribunal confirming the conciliation number in relation to Mr and Miss Nelson and provided copies of the certificates. Mrs Nelson concludes her email by asking the Tribunal to let her know if any further information is required.

9. The early conciliation certificate in relation to Miss Elle Nelson states the date of receipt as 25 September 2017 and the date of issue of the certificate as 13 October 2017, the method of issue is stated to be by email.
10. The file is again referred to an Employment Judge at which point Mrs Nelson's email is acknowledged. However the letter sent to Mrs Nelson on 15 November continues "although the Claimant has now provided early conciliation certificates for the other two Claimants she has not produced any details of the complaints made by the two other Claimants Mr E Nelson and Miss E Nelson in a form that can be sensibly responded to identify the type of complaint made and the details of that complaint (box 8.1 and 8.2) by the Respondents. Until this information is provided in respect of these two Claimants the claims remain rejected and the Respondent is not required to provide a response at this stage. I enclose some explanatory notes".
11. On 20 November 2017 Mr Nelson presents a claim to the Tribunal which also identifies Mrs Janice Nelson and Miss Elle Nelson as Claimants. That claim form includes the certificate number in relation to the conciliation certificate and some particulars of the claim in box 8.2. The claim also includes the certificate itself. Mr Nelson further wrote on 28 November that earlier his claim had been rejected because the Respondent's name differs from that on the early conciliation certificate but that City Screen (York) Limited and Picturehouse Cinemas Limited are one and the same.
12. On 23 November 2011 Miss Nelson similarly presents a claim to the Tribunal which includes the relevant information in relation to early conciliation and a statement of what the claim is about in box 8.2.
13. These claims are referred to an Employment Judge. On 28 November a letter is sent to Mr Nelson confirming his claim form submitted on 5 November had been referred to an Employment Judge who had decided that his claim remains rejected because the name on the early conciliation certificate provided differs entirely from the name given on the ET1 claim form. It is stated that the claim submitted on 20 November is rejected for the same reason. However on the same date letter of confirmation is sent to Miss Nelson that her claim had been accepted after reconsideration.
14. By letter of 5 December 2017 the Tribunal wrote to Mr Nelson to confirm that after reconsideration the claim Mr Nelson submitted on 20 November was now accepted. The letter continues "because the original decision to reject the claim was correct but the defect that led to the rejection has since been rectified, the claim form is to be treated as having been received on 28 November 2017 (the date of your email)."
15. By this time all the claims have been served on the Respondent and a preliminary hearing arranged for 4 January amended to deal with the following issues:-
 - a. To identify the issues.
 - b. To determine whether Miss E Nelson and Mr E Nelson's claims have been presented out of time and if so whether the Tribunal should exercise its discretion to allow late claims.

- c. To decide whether the three claims should be considered together.
 - d. To make case management order.
16. The Respondent entered a response to each of the claims and the preliminary hearing was requested to determine the issues identified in above.
17. To deal with the out of time issue the Tribunal heard evidence from each of the three Claimants as to what had transpired as regards the claims. There was insufficient time to determine the out of time point in relation to the two Claimants Mr and Miss Nelson and therefore that Judgment was reserved and attempts made to further identify Mrs Nelson's claims.
18. The relevant dates for presentation of the claims so that they are "in time" (they make solely complaints of unfair dismissal) was agreed by the Respondent.
19. Mrs Nelson and Miss Nelson were each members of the BECTU union. The preparation of the claims as at 5 November was in the hands of BECTU. The person dealing with the matter on behalf of the Respondent was a Mr Doug McGill. The claim as presented on 5 November clearly meets what was required on an initial basis for Mrs Nelson. It was wholly inadequate in relation to Mr Nelson and Miss Nelson as it provided no particulars and no conciliation details.
20. The Claimants relied upon Mr McGill to prepare the claim on their behalf and the fault that it did not comply with what was required by the rules and that the claim was rejected successfully on two bases is due to the content of the claim as prepared by BECTU on behalf of the Claimants Mr and Miss Nelson.
21. By the time the claim was originally rejected the Claimants still had time to rectify matters. This is because, as agreed by the Respondent, the date for presenting the claim for Mr Nelson is 17 November 2017. In relation Miss Nelson the date for presenting the claim is 13 November 2017.
22. In relation to Mr Nelson the last date for presenting the complaint ignoring the requirements of early conciliation and any extensions is 27 October 2017. Mr Nelson had made his ACAS conciliation referral on 17 August and the certificate had been provided on 7 September 2017. The effect of that is that 21 days are to be ignored and thereby giving an effective extension of time for Mr Nelson to 17 November 2017.
23. Miss Nelson's claim related to an alleged dismissal on 20 July 2017 and therefore the date by which the claim needed to be presented, ignoring early conciliation as before, is 19 October 2017. The date of the time limits set by the relevant provision in the Employment Rights Act being within the period from Day A within section 207B of Employment Rights Act 1996 and one month after Day B namely 13 November 2017. As Miss Nelson's claim was presented within that period the extension of time in effect given by early conciliation consent to the end of one month after Day B, 13 November 2017.

24. By that therefore both the claims by Mr Nelson and Miss Nelson were presented after the relevant time limits. The Claimants asked me to allow their claims to continue and I explained the provisions of section 111 Employment Rights Act 1996 and the “extension” of time for presenting a claim if there has been compliance with the requirements of section 207B of the Employment Rights Act 1996 as to early conciliation.
25. Section 111 therefore is to be read in connection with 207B and therefore the Tribunal shall not consider a complaint unless it is presented to the Tribunal before the end of the period of three months beginning with the effective date of termination (or as extended by section 207B) 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 three months. I explained to the Claimant with the agreement of the Respondent that I have to deal with this issue in two stages. Firstly I have to see whether it was not reasonably practicable to present the claim within the original time limit, in this case extended as explained above. If I find that it was not reasonably practicable to present the claim within that period I may then consider whether it was presented within such further time as is reasonable. However I cannot make that consideration unless I have already found that it was not reasonably practicable to present the claim in time.
26. I reserved this point as I needed to give consideration to the role of the Tribunal as well as the Claimants in the way that this matter proceeded from 5 November due to acceptance of the claims by Mr and Miss Nelson.
27. The Respondent submits that the claim form presented to the Tribunal on 5 November in relation to each of the Claimants shows without any arguable doubt that it was reasonably practicable to present the claim to the Tribunal within the original time limits. Clearly if the claim had been accepted as at 5 November no out of time issue arises. The fault for the inadequacy of the claim form rests, on my finding, with BECTU upon whom the Claimants relied. I made some enquiries of the Claimants as to whether they were dealing with an employed official of the trade union rather than a person with less knowledge or information. I was informed by the parties that Mr McGill is an official of the union employed at its office. On that basis the Claimants have relied upon the actions of their advisors and this has resulted in the claim being presented in a valid form outside the time limits extended by the early conciliation provisions of section 207B of the 1996 Act.
28. What does concern me in this case is that the Tribunal had rejected the claim initially on the basis that no conciliation information had been provided. That was clearly an appropriate step because the rules require that such information is given. No further explanation or warning is given to the Claimants as to any other deficiencies in the claim nor any time by which those matters should be resolved. I make the finding that none of the Claimants have any previous knowledge or experience in relation to making Tribunal claims but they have proved themselves able and willing to research matters on the internet albeit the question of time limits and the inter-relationship of early conciliation is not a simple matter.

29. It is clear also that the Claimants having been notified that the claim had been found to be deficient did deal with these matters without significant delay and I take into account the fact that having sought the advice of the union previously they could therefore have done so again.
30. The evidence of Mrs Nelson which I find to be correct is that the union had agreed to deal with the matter up to conciliation with ACAS but indeed the claim of 5 November was on my finding based on the evidence of Mrs Nelson prepared and presented by BECTU.
31. So far as Mr Nelson is concerned he left his employment by the Respondent on 28 July 2017. Thereafter he has been moving house between York and Todmorden/Hebden Bridge some one and a half hours away from York. He has also been endeavouring to learn about software systems for the purposes of alternative employment and been fulfilling engagements to provide tuition in music to individuals and a dance school near to his new home. Mr Nelson also has a history of depression and whilst he feels able not to take medication at present says that it is a somewhat distracting prospect for him in that he does not always feel able to deal with matters promptly and in an organised manner because of his condition. It is true to say however that there is no evidence from Mr Nelson that there are any episodes of unusual ill health within the period in question which inhibited his ability to deal with matters within the time limit.
32. Mr Nelson as I have said before has no experience or knowledge with Tribunal processes or proceedings or any relevant experience in relation to such matters and has had to learn as he went along or rely upon the advice of his trade union above.
33. So far as Miss Nelson is concerned she initially did not know about the letter rejecting the claims against them but issued the claim on 23 November. Miss Nelson was out of the country on holiday leaving from Gatwick on 11 or 14 November and arriving back in the early hours of 19 November. Miss Nelson started a new job in a Christmas market temporary bar working 12 hours on 20 November, 10 hours on 22 November and again 10 hours on 23 November. The bar where she worked is some 20 minutes away from her home in the centre of York. As above Miss Nelson was able to present her claim on 23 November.
34. My judgment in this matter is that the claims by Mr and Miss Nelson are out of time and therefore the Tribunal has no jurisdiction to hear them.
35. I have to see whether it was not reasonably practicable to present the claim within the time limits as above. I considered the decision in the Alliance and Leicester v Kidd 0078/07 which similarly involved the negligent failure of a trade union. At the Employment Appeal Tribunal stage it was found that the Claimant was unable to rely upon the mistake of a trade union as excusing his failure to present the claim in time. It is clear here that it was reasonably feasible to present the claim within time as explained in Palmer and Another v Southend Borough Council 1984 ICR 372CA. There is nothing to prevent the Claimants presenting the claim in time in essence save for the errors in the way the claim was prepared in the first place and therefore these being due to an advisor which is a trade union. I cannot make the finding that was

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not reasonably practicable to present the claim in time. Miss Nelson's holidays coincide with the ending of the limitation period but by then the damage had been done by the rejected claim being presented by BECTU.

36. As is explained in the Alliance and Leicester case, if there has been a negligent failure by a representative the Claimant may seek to pursue compensation from that representative if fault can be found. What I have to decide however is not whether BECTU have a liability for any failures on their part to the Claimants but to decide whether on the basis of the provisions of section 111 as amended and the case law it was not reasonably practicable to present the claim in time. My finding therefore is that it was reasonably practicable to present the claim in time. What made me hesitate in relation to this and to reserve Judgment in this matter is to decide whether on the basis of the correspondence sent by the Tribunal to the parties there was any difference following the failure of BECTU.
37. In my judgment there is not because the Claimants having been advised by BECTU in relation to the claim and finding that the claim as presented was inadequate could, as I have found them to have no personal knowledge of the ins and outs of presenting claims to Tribunals, refer the matter back to BECTU and obtain that advice and have the matter rectified. This did not happen and therefore that the Claimants are bound by the errors of BECTU because I cannot find that it was not reasonably practicable to present the claim in time and therefore the claims by those two Claimants are dismissed. The claim made by Mrs Nelson continues and a separate order has been issued in relation to that claim.

Employment Judge Trayler

Dated: 15 January 2018