



EMPLOYMENT TRIBUNALS

Claimant: Mr Joga Singh

Respondent: Kanes Foods

Heard at: Birmingham

On: 06 March 2018

Before: Employment Judge Macmillan

Representation

Claimant: Mr Barnfield of counsel

Respondent: Ms Kearsley, solicitor

JUDGMENT

The claimant's complaint of unfair dismissal is struck out.

REASONS

The issues

1. This is an application by the respondent to strike out Mr Singh's complaint of unfair dismissal on the grounds that it has no reasonable prospect of success having been presented many months after the statutory time limit had expired. I have heard evidence from Mr Singh with the assistance of his interpreter Mr Saidiq. Mr Singh has been well represented by Mr Barnfield who has manfully attempted to make bricks without straw. The respondent has been represented by their solicitor Ms. Kearsley.

The facts

2. The facts are brief. Mr Singh commenced employment with the respondent on the 19 February 2003. He speaks little English, reads no English and understands only the language of the shop floor. He was dismissed by a letter dated 03 May 2016 and it seems likely that the effective date of termination of his contract was therefore the 04 May 2016.

3. He did however understand that he had been dismissed and why, because by letter dated the 08 May 2016 he launched an appeal. He had been represented by Unite the Union at the disciplinary hearing, but it is not clear whether they authored the appeal letter or whether it was done by a member of his family. Although in the claim form, it is said that the appeal process lingered on until August 2016, in fact the appeal was dismissed by letter dated 15 July 2016. Mr

Singh was again represented by Unite the Union at the appeal and he had the assistance of an interpreter.

3. The letter dismissing the appeal, was explained to him by a friend who, according to Mr Singh's evidence, told him that he had three months to bring a claim to an Employment Tribunal and that those three months ran from the date of the letter dismissing the appeal. That was wrong advice. As Mr Singh now accepts, the three-month time limit runs from the date of dismissal and therefore expired on the 03 August 2016. Mr Singh says he had no advice from Unite the Union about bringing Tribunal proceedings.

4. I am prepared to accept Mr Singh's evidence that he became depressed as a result of losing his job, but there is no evidence which would enable me to conclude that his depression was in any sense a material factor in the failure to start these proceedings on time. There is no evidence from Mr Singh's Doctor and his evidence is limited to a claim that he had visited his GP on an unspecified date in August when he was given some apparently very strong medication which he was to take for two weeks, but which could not be repeated. Nothing more than that is known about his mental state at that time.

5. Mr Singh continued to delay taking action. He did not see a solicitor until an unspecified date in September and he has told me nothing about any advice he was given. Mr Barnfield quite rightly does not blame the solicitor for the ongoing delay. Some advice must have been given to Mr Singh about commencing Tribunal proceedings, because, on the 12 October 2016, he finally contacted ACAS to start the early conciliation process. The certificate was dated the 07 November which is the day on which the early conciliation process ended. By the 08 December when he suffered a heart attack (described in the claim form as "severe" but as he was detained in hospital for only two nights, may well have been rather less than that) he had taken no further steps towards commencing these proceedings.

6. It is of course understandable that having suffered a heart attack, he required time to recuperate and a further delay of two to three months might have been understandable, but these proceedings were not started until the 22 May 2017. I have no medical evidence about this later period other than the documents recording his admission to and discharge from hospital. The claim was therefore out of time by nine months and eighteen days.

The Law

7. The right not to be unfairly dismissed derives from sec 94 of the Employment Rights Act 1996. Section 111 provides that a complaint of unfair dismissal may be brought to an Employment Tribunal, but this is subject to the time limit in subsection (2). This provides so far as material:

... 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.

8. It has been established by a long line of authority which is sufficiently well known not to require me to cite it, that it is for a claimant to satisfy the Tribunal that it was not reasonably practicable for proceedings to be commenced in time. The Tribunal does not have a general discretion to extend time on anything like a felt fair basis. To show that it was not reasonably practicable to commence proceedings in time is a very difficult hurdle for a claimant to surmount. It requires evidence of something along the lines of ill health of sufficient severity to prevent a claimant from exercising rights of which he was aware; or the intervention of a third party, or some catastrophic event which prevents him from exercising those rights; or reasonable ignorance of the right to bring a claim or how to go about bringing it, but such ignorance is not reasonable if no reasonable enquiries about one's rights and how to exercise them have been made.

9. Despite Mr Barnfield's valiant efforts to advance possible explanations for various components of the period of delay, vast gaps remain. Mr Singh had the advantage of union representation throughout the disciplinary and appeal process, and I find it difficult to believe that he was given no advice at all about commencing Employment Tribunal proceedings. If he was not, it seems clear that he didn't ask for any. If he was told that the three-month time limit ran from the date when the appeal was dismissed, he should have realised that it ran from a date around the 16 or 17 July which was probably when he received the letter dismissing the appeal. Even allowing for the possibility that he may have been feeling unwell (and I cannot put it any higher than that in the absence of medical evidence) his delay prior to his heart attack is then unexplained and seemingly inexplicable. It took about two months for him to see a solicitor; it took another month to start the conciliation process which itself lasted roughly a month and then during the next period of a month, again nothing happened. And nothing happened for 5½ months after his heart attack. I have not been told what finally prompted him to act.

10. In short, I have heard nothing at all which could possibly lead me to conclude that it was not reasonably practicable for these proceedings to have been started within the statutory period which ended on the 03 August 2016. For what it is worth, I have also heard nothing at all which could lead me to conclude that it was not reasonably practicable to start these proceedings in the three-month period beginning on the 15 July 2016. It just seems to be the case that Mr Singh completely failed to look after his own interests and to bring this matter before the Tribunal and it appears that he has no one to blame but himself for the fact that this claim is very substantially out of time.

11. It must follow from my inability to say that it was not reasonably practicable to commence the proceedings in time that the Tribunal is not permitted to entertain the claim which is accordingly struck out at this preliminary stage.

Employment Judge MacMillan
8 March 2018