



EMPLOYMENT TRIBUNALS

Claimant: Mr J A Fenn
Respondent: Re-Covered Furniture Enterprise Ltd
Heard at: Nottingham
On: Tuesday, 20 March 2018
Before: Employment Judge Blackwell (sitting alone)

Representatives

Claimant: In person – representing himself and gave evidence on own behalf

Respondent: There were representatives present for the Respondent, but since they have not entered a response, they did not take part in the hearing.

JUDGMENT

1. All of the Claimant's claims were brought outside the relevant time limits. The Tribunal does not therefore have jurisdiction to hear them and they are all dismissed.

REASONS

1. The purpose of the hearing was to determine whether any, or all, of Mr Fenn's claims could be permitted to continue. In other words, does the Tribunal have jurisdiction to hear them? Mr Fenn brings 4 claims before the Tribunal. Firstly, a claim for unfair dismissal, secondly a claim of disability discrimination, thirdly a claim of age discrimination, and finally, a claim of unlawful deduction from wages.
2. Mr Fenn states that he was dismissed summarily on the 22nd March 2017, and the chronology is as follows.
3. Mr Fenn says that on the 25th May, or thereabouts, he submitted a claim form online. He has produced a document which bears the date of 25th May 2017. It indicates that if you wish to save your claim, you can do so by filling in the claim number, which is stated as PGKA-9SDG, and by using a password, you can return to that document. At that stage, Mr Fenn tells me that he had not been to ACAS because at that time he did not know that he was required to do so. I have examined the document that Mr Fenn produces, but it seems to me to do no more than to indicate

that a claim form had been started. It is not evidence that it had been completed.

4. Mr Fenn went on to tell me that when he'd heard nothing for about three months, he wrote to the Tribunal. In fact, he produced a hand-written letter which he says was addressed to this Tribunal address – ie. Nottingham. That letter dated 10th October 2017 reads:

“Dear Sir/Madam, I was sacked from Re-covered Furniture Enterprise Ltd on 22nd March 2017. I could not continue lifting furniture upstairs because I developed the muscle disease Polymyalgia Rheumatica which I am still on tablets for to this day called PMR. I went to the CAB in Nottingham and they told me to appeal which I did. The same result I was still sacked. Because of my illness confusion set in and I did not understand the correct procedure to go to a Tribunal. I knew about the 3 months and a day rule. I did not know I had to go to ACAS first. I went straight to the Tribunal on the computer. I got on the GOV.UK Employment Tribunal site. I filled in the application and was told to send a copy to you at:

Employment Tribunal Central Office, In Leicester. PO BOX 10208,
Leicester LE1 8EG
My claim number is PGKA-9SDG”

and he gives his email address and a memorable word

“On this paper it says ‘you can save your claim and return to it at any time’. This was dated on or around 25th May 2017”

5. There was a reply by return dated 11th October from the Leicester Office, which read as follows:

“I am returning your paperwork as it was received at an Employment Tribunal Office. After searching our system, I cannot find a case that matches your details. It is possible that your case did not register on our system. Kindly either submit a new ET1 Application Blank Copy attached or Submit a new online ET1 application. Please send the attached (returned) paperwork back including any other evidence as proof that you made an in-time application to the above address together with your details and any new Claim Number and a Judge will decide”.

6. On 17th October, Mr Fenn obtained from ACAS an EC Notification and certifying the date of issue was 17th October 2017.

7. The claim form that I have in front of me was received by the Tribunal on 8 November 2017.

8. To turn first to the claim of unfair dismissal and unlawful deduction from wages. The Law is that as set out at Section 23 and Section 111 of the Employment Rights Act 1996. The first issue is whether it was reasonably practicable for Mr Fenn to have brought his claim on time. As to this, I take into account Mr Fenn's letter. Also in evidence he has produced a Nottingham NHS Treatment Centre letter of 21st July 2017, indicating the following: Firstly, that he suffers from long-standing polymyalgia,

polyarthralgia with normal investigations, previously seen by rheumatology in 2012 to 2013. There are other conditions indicated, but the relevant one is polymyalgia. There then follows a list of prescription medicines totalling nine different drugs. Mr Fenn also told me that he suffered from constant headaches, and that he had difficulty in concentrating. I accept that evidence.

9. However, turning back to the definition of reasonable practicability, it is plain that in May Mr Fenn was able, at least to begin to complete a claim form online. In my view it was therefore reasonably practicable to complete a claim form at that time.
10. If I am wrong about that, Section 111 also requires a claim to be brought within such further time as the Tribunal considers reasonable. Here it is some 5 months before Mr Fenn acts having heard nothing from the Tribunal.
11. He then takes another three weeks to obtain an ACAS Certificate, and file the claim form which was received on 8th November. In my view, that does not satisfy the definition of a reasonable period.
12. I therefore find that in relation to the unfair dismissal and unlawful deduction from wages claims, the Tribunal does not have jurisdiction to hear either.
13. As to the two claims of discrimination, namely age and disability, both are governed by Section 123 of The Equality Act 2010. The provision is different because it imports a discretion on the part of the Tribunal, in circumstances where it would be just as equitable to extend the period, so as to render the claim within time.
14. A number of factors have to be taken into account, and in particular the fact, to which I give great weight, that Mr Fenn will lose the opportunity to bring his Equality Act claims. The effect of the delay, which amounts to some 5½ months, on the cogency of the evidence is a factor. The Respondents have ceased trading but remains as a legal entity. I am also to look at the length and reasons for the delay, which I have described above. I have also taken into account, again, Mr Fenn's medical condition. I have also taken into account that it is apparent from his correspondence, that he has had advice from the CAB.
15. In all those circumstances, my decision is that I cannot exercise my discretion in Mr Fenn's favour, and again, that means that his claims of discrimination cannot go forward, and therefore they are dismissed.

Employment Judge Blackwell
Date: 26 March 2018

JUDGMENT SENT TO THE PARTIES ON

27 March 2018

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FOR THE TRIBUNAL OFFICE