



EMPLOYMENT TRIBUNALS

Claimant: Mr G Johnson

Respondent: Arconic Forgings and Extrusions

Heard at: Nottingham **On:** Wednesday 16 May 2018

Before: Employment Judge Brewer (sitting alone)

Representatives

Claimant: Mr A Steel, Representative

Respondent: Mr M Warren-Jones, Solicitor

JUDGMENT

The claim for unfair dismissal was submitted out of time and the Employment Tribunal does not have jurisdiction to hear the claim. The claim is therefore dismissed.

REASONS

Introduction

1. This case was listed for an open Preliminary Hearing on the question of whether the claim is out of time and if so whether time from submission of the claim should be extended. Given that this is a claim for unfair dismissal, Section 111 of the Employment Rights Act 1996 is the applicable statute at least as the starting point for a consideration of this matter. I heard evidence from the Claimant Mr Johnson and listened and have considered submissions from both representatives.

Issues

2. The issues in this case as are follows:-

2.1 Was the claim for unfair dismissal brought within 3 months beginning with the effective date of termination as modified by Section 207B of the Employment Rights Act 1996?

2.2 If not, was the claim brought within such further period as the Tribunal considers reasonable if it was satisfied that it was not reasonably practicable for the complaint to be presented within the normal time limit?

Law

3. In respect of the legislation I have considered Section 111(2)(a) and (b) along with Sections 207A and 207B of the Employment Rights Act 1996.

4. I have also considered the Employment Tribunals (early conciliation) Exemptions and Rules of Procedure Regulations 2014 and in particular Regulation 9. I shall refer to one or two cases in the discussion below.

Findings of Fact

5. The Claimant was summarily dismissed on 1 August 2017 which for our purposes is the effective date of termination.

6. It follows from that the normal 3 month time limit for bringing a claim for unfair dismissal ended on 31 October 2017.

7. For the purposes of Section 207A and 207B of the Employment Rights Act 1996, the Claimant contacted ACAS on 29 September 2017 which is Day A. The early conciliation certificate was issued on 16 October 2017 which is Day B. The day after Day A to Day B is a period of 17 days and applying Section 207B(3) the new time limit for bringing a claim for unfair dismissal in time ended on 17 November 2017. Given that this is more than one month after the original time limit would have expired there is no need to go on to consider the effect of Section 207B(4).

8. The claim was submitted on 23 November 2017. As the Claimant accepts, his claim was submitted out of time.

9. Following his dismissal the Claimant was in regular contact with his trade union representative from the trade union Unite.

10. The Claimant did institute an internal appeal against his dismissal but that appeal was outside of the time limit set in the Respondent's procedure and the appeal was therefore not heard. Nothing turns on that in relation to this preliminary issue.

11. The Claimant owns a computer and confirmed that he accessed the internet to read about how to start a claim in an Employment Tribunal. He says that he did not know about early conciliation certificates being required to start a claim but he was aware of the early conciliation process.

12. The Claimant says that the early conciliation certificate was issued on 16 October 2017 and that is apparent on the face of the certificate itself. The Claimant says however that the certificate was not sent to him but was sent to his trade union representative, one Mr Tindley. In the circumstances I have not found it necessary to make a specific finding about that although I do note that Regulation 9 of the Early Conciliation Rules of Procedure Regulations state that ACAS "must" send the early conciliation certificate to the prospective Claimant and the prospective Respondent. They are not precluded from sending it to anyone else but they at least must do those two things. It is surprising therefore if the Claimant was not sent the early conciliation Certificate.

13. The Claimant confirmed that he was not expecting Unite to submit his Employment Tribunal claim on his behalf. His evidence was that he was always

going to do that himself.

14. There was clearly some issue with the union not being responsive to the Claimant and indeed at some point he was told by the union that they had never received the early conciliation certificate but Mr Johnson's evidence was that eventually his representative Mr Tingley, who was off sick at the time, confirmed that in fact he did have a copy. In any event on 21 November 2017 the union confirmed to Mr Johnson that they would not support him any further.

15. On 22 November the Claimant contacted ACAS and ACAS e-mailed him a copy of the early conciliation certificate.

16. Mr Johnson completed his claim form and submitted it on line. He did say in evidence that he had previously attempted to complete an ET1 on line but when he came to the box which required the early conciliation number as he did not have that he did not complete or save that version of his claim form.

Discussion

17. The Court of Appeal in the case of **Dedman and British Building and Engineering Appliances Limited** [1974] ICR 53 states that Section 111(2)(b) should be given a liberal construction in favour of the employee. However that does not mean that ignorance, which is what this case is about, will always enable an Employment Tribunal to allow a late claim to proceed. The question is whether, if an employee pleads ignorance of a material matter which he says gives rise to the late claim, that ignorance is reasonable. See for example the case of **Porter v Bandrige** [1978] ICR 943.

18. Moreover in the case of **Trevelyan's (Birmingham) Limited v Norton** [1991] ICR 488 it was held that where the Claimant is generally aware of his rights, ignorance of the time limit will rarely be acceptable as a reason for delay. This is because a Claimant who is aware of his rights will generally be taken to have been put on enquiry as to the relevant time limit. In that case Mr Justice Wood said that when a Claimant knows of his or her right to complain of unfair dismissal he or she is under an obligation to seek information and advice about how to enforce that right. Failure to do so will usually leave the Tribunal to reject the claim but not necessarily in every case. The cases tend to be fact sensitive.

19. This case is essentially about ignorance of what seemed to me to be two matters. The first is the date of the extended time limit and the second is the need for inclusion of an early conciliation certificate number on the claim form in order to submit a valid claim.

20. I start off by pointing out what I think is an inherent contradiction in the Claimant's case. If the Claimant was of the view that it was up to him to submit his claim form and if he did not know that he needed an early conciliation certificate number why not submit the claim within the original 3 month time limit? The e-mail system does not reject a claim which fails to include even vital information on a claim form and therefore not having a piece of information is not a bar to submitting a claim. Quite regularly ET1's are received and accepted where information is missing. It may be that the claim form is rejected at that stage, but at least it would have shown that the Claimant intended to bring a claim in time.

21. It seems to me that when considering the reasonableness of the Claimant's state of mind it is important to bear in mind what he did know. He knew the following:-

- He could claim unfair dismissal
- To contact ACAS and their role
- How to start of claim, because he had looked it up on line
- To call up, complete and file an ET1 on line, albeit that he failed to do that the first time he tried.
- In particular he knew on 21 November that he was already out of time which suggests that he knew what the time limit was

22. Given that the test as to whether it was reasonably practicable to bring the claim in the normal time limit is whether there was some physical or mental impediment to bring in the claim in time and given that the only impediment pleaded in this case is ignorance I go back to the fact that for me to find that it was not reasonably practicable for Mr Johnson to bring his claim within the extended time limit his ignorance would have to be reasonable.

23. Given all of the above, given the plethora of information on line about how to make a claim, given that he had already been in contact with ACAS and all that I have said above I cannot conclude that the Claimant's ignorance of the particular matters he relies upon; that he did not know that he needed an early conciliation certificate and the number, was reasonable. These are matters he ought reasonably to have known.

24. In conclusion therefore this claim was submitted out of time and I conclude that it was reasonably practicable for Mr Johnson to bring the claim in time. That being the case I do not have to consider whether the extra time taken was reasonable; although for the avoidance of doubt I do not consider the delay of one or two days of itself to be unreasonable. Nevertheless the Tribunal does not have jurisdiction to hear this claim which is therefore dismissed.

Employment Judge Brewer
Date: 05 June 2018

JUDGMENT SENT TO THE PARTIES ON

09 June 2018

.....
.....
FOR THE TRIBUNAL OFFICE