



EMPLOYMENT TRIBUNALS

Claimant

Mr B Botev

Respondent

Greenwich Leisure Limited

AND

HEARD AT: London Central **ON:** 17 October 2018

BEFORE JUDGE: Employment Judge Hemmings

Representation

For Claimant: Not present

For Respondent: Mrs P De Chavez – HR Business Partner

JUDGMENT ON A PRELIMINARY HEARING

The Judgment of the Employment Tribunal in respect of the Claimant's claims that he was discriminated against on the grounds of disability, is owed outstanding sums in respect of statutory sick pay, and is owed other, unspecified, payments is to dismiss those claims because the Claimant presented his claims out of time and in circumstances where the Tribunal does not have a discretion to extend time.

REASONS

1. By a claim Form presented to the Employment Tribunal on 26 January 2018, the Claimant complains of disability discrimination, non-payment of statutory sick pay and other complaints in respect of outstanding payments which are not readily identifiable as claims which an Employment Tribunal has jurisdiction to deal with. The Claimant appears to blame the Respondent in his Claim Form for the breakdown in his health, which may explain the high level of compensation he is seeking without, in all probability, appreciating that personal injury claims are brought in the County Court or the High Court.
2. The Claimant seeks £5 million compensation from the Respondent, for whom he undertook shifts, on a casual basis, as a lifeguard and leisure assistant at its Leisure Centre in Swiss Cottage for just over four months from 24 August 2015 until 3 January 2016, his last day at work.

3. The Claimant engaged the ACAS Early Conciliation process over two years later, on 9 January 2018, and subsequently commenced these proceedings. The Respondent defends the claims, seeks clarification of those which are obscure, applies to have the claim struck out, both because the claims are time-barred, not having been instituted within three months of the matters complained of, and because the claims, the Respondent contends, have no reasonable prospect of success. In the absence of the claims being struck out the Respondent applies for Deposit Orders to be made.
4. A Case Management Preliminary Hearing took place before Employment Judge Snelson on 20 August 2018 when today's Preliminary Hearing was ordered. The Claimant did not attend that Hearing, nor did he make any representations by any means, or through anyone on his behalf, to the Tribunal.
5. That Tribunal made five Orders, including that today's preliminary hearing should be held to determine:
 - (1) Whether the claims (or any of them), were presented out of time and recording the outside the Tribunal's jurisdiction;
 - (2) Whether the claims (or any of them) should be struck out as having no reasonable prospect of success;
 - (3) Whether the claims (or any of them), should be the subject of deposit orders as having little reasonable prospects of success.
6. The Claimant is absent today, again, without any apparent explanation and no one is here to represent him. The probability is that the Claimant is currently living in Bulgaria.
7. From the medical documentation supplied by the Claimant to the Tribunal and to the Respondent, it is apparent that the Claimant has not enjoyed good health for a considerable time. The diagnoses from his healthcare professionals provide an explanation for what happened to him on his last day at work in January 2016, and his subsequent extended illness, including a short period of hospitalisation.
8. The deadline for engaging the ACAS Early Conciliation process before issuing proceedings in the Employment Tribunal appears to be in April 2016. The dates of the alleged discriminatory acts, and the timing of any failure to pay statutory sick pay, when and if payable, cannot be determined from the Claim Form, nor from any subsequent communications to the Tribunal from the Claimant, or from any other source. As stated above, the Claimant is not present in the Tribunal to assist the Tribunal in these respects.
9. THE LAW

The procedural rules governing Employment Tribunals are in Schedule 1 of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013, as amended ("the Rules").

The Overriding Objective of the Rules is expressed in Rule 2 to be to enable Employment Tribunals to deal with cases fairly and justly.

A sensible starting point for an Employment Tribunal is to establish at the outset that it has jurisdiction to decide a claim.

Disability Discrimination Claim

Section 123 of the Equality Act 2010 (the 2010 Act) provides that a complaint may not be brought after the end of the period of three months starting with the date to which the complaint relates, or such other period as the employment tribunal thinks just and equitable:

Unauthorised Deductions Claim – Statutory Sick Pay

Section 23 of the Employment Rights Act 1996 (the 1996 Act) provides that an employment tribunal shall not consider a complaint unless it was presented to the tribunal before the end of the period of three months beginning with the date on which employer made the deduction or within such further period as the tribunal considers reasonable in the case were it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

There is much case law about the meaning of “reasonably practicable”. One of the leading cases is still the decision of the Court of Appeal in Palmer and Saunders v Southend-on Sea Borough Council [1984] IRLR 119 which, amongst other guidance from the Court of Appeal, directs the Employment Tribunal to consider the substantial cause of the employee’s failure to comply with the statutory time limit

There are procedural protections available to a party, in certain limited specified circumstances, designed to bring proceedings to an end without incurring the time and expense of a Final Hearing by striking out claims, or at least designed to discourage the other party from pursuing a specific allegation or argument by requiring that party to pay a deposit not exceeding £1000.

The specific procedural protections are in Rule 37 in relation to striking out a claim and in Rule 39 in respect of Deposit Orders.

An Employment Tribunal may strike out a claim where, for example, the Tribunal is satisfied that the claim has no reasonable prospect of success.

The Employment Tribunal may order a deposit to be paid where it considers that any specific allegation or argument in a claim has little reasonable prospect of success.

However, primarily the optimal prospects of achieving justice between parties engaged in a legal dispute is through conducting a fair and reasonable pre-trial process, followed by a fair trial resulting in a just outcome. Accordingly, striking out a claim before trial or placing the obstacle and burden of additional significant cost to a litigant through a Deposit Order are not orders to be made by the Tribunal lightly.

Nevertheless, occasionally, the Overriding Objective of dealing with cases fairly and justly set out in Rule 2 is achieved by the Tribunal exercising its powers under Rule 37 or Rule 39.

10. SUBMISSIONS

On Behalf of the Respondent

The Respondent’s position is a simple one of a short employment relationship, structured under a casual contract; the Claimant leaving work because of the onset of serious health problems; never returning to work; and ACAS process, followed by Employment Tribunal proceedings in opaque and confusing terms, appearing out of the blue more than two years later.

The Respondent asks the Tribunal to bring the proceedings to an end as time-barred, or because whatever the Claimant is actually claiming appears to have no prospect of success, or at the least, to require the Claimant to deposit a sum of money as a condition before he can take any further steps in the proceedings.

11. CONCLUSIONS

- (1) The disability discrimination claim appears to have been instituted about 21 months beyond the deadline for issuing such proceedings.
- (2) Statutory sick pay can be claimed for 28 weeks. Whether or not such a claim is well founded, that claim appears to have been issued more than 12 months beyond its deadline.
- (3) It is not possible to identify any other claim within the jurisdiction of the Employment Tribunal.
- (4) The Tribunal has considered the limited scope it has to extend time in a discrimination claim, where it is just and equitable to do so, and the limited scope to extend time where there has been an alleged failure to pay statutory sick pay and it was not reasonably practicable to issue proceedings in time, and the proceedings have been started promptly once it became practicable.
- (5) In the absence of the Claimant, and any representation on the time-extension issues from the Claimant, or on his behalf, there is no material on which the Tribunal can exercise its discretion.
- (6) The judgment of the Employment Tribunal in respect of the Claimant's claims that he was discriminated against on the grounds of disability, is owed outstanding sums in respect of statutory sick pay, and is owed other, unspecified, payments is to dismiss those claims because the Claimant presented his claims out of time and in circumstances where the Tribunal does not have a discretion to extend time.

Employment Judge Hemmings

Date 18 October 2018

JUDGMENT AND REASONS SENT TO THE
PARTIES ON

19 October 2018

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FOR THE TRIBUNAL OFFICE