



EMPLOYMENT TRIBUNALS

Claimant: Mr P Vaughan

Respondent: Department for International Trade

Heard at: London Central

On: 8 November 2018

Before Judge: A Isaacson

Representation

Claimant: Mr C Miles, PCS

Respondent: Not in attendance

JUDGMENT

The Judgment of the Tribunal is as follows

Although the claim form was not presented within three months of the last alleged act of discrimination and/or the claimant's dismissal the Tribunal finds that it was not reasonably practicable to present the claim in time and that the claim was then presented within a further reasonable period and it is just and equitable to extend time .

REASONS

The law

1. The time limit for presenting a claim for unfair dismissal is 3 months from the effective date of termination ("EDT") as set out in section 111(1) Employment Rights Act 1996 ("ERA"). The Tribunal is able to consider complaints presented out of time only if it is satisfied (1) that it was not reasonably practicable for a complaint to be presented before the end of the relevant 3 month period, and (2) if so, that it was presented within such further period as it considers reasonable. The burden lies on the claimant at both stages of the test.
2. It is a question of fact in each case whether it was reasonably practicable to present a claim in time. There may be various relevant factors including the claimant's knowledge of the facts giving rise to their claim and their knowledge of their rights to claim and the enforcement of those rights.
3. Mere ignorance of the time limit for bringing a claim for unfair dismissal does not of itself amount to reasonable impracticability, especially where the employee is aware of their right to bring a claim. The question is was the claimant's ignorance reasonable?

4. Where an employee has knowledge of their right to claim unfair dismissal there is an obligation on them to seek information or advice about enforcement of those rights.
5. If a solicitor is at fault the Tribunal will usually consider that it was reasonably practicable for the claim to have been presented in time.
6. A claimant's illness maybe relevant to the question of reasonable practicability and a Tribunal is prepared to exercise leniency in such situations but the Tribunal still needs to decide whether it was reasonably practicable for the claimant to have presented his claim in time.
7. The existence of an ongoing internal appeal is not by itself sufficient to justify a finding of fact that it was not reasonably practicable to present a complaint in time to the Tribunal.
8. Section 123 of the EqA provides that a claim may not be brought after the end of 3 months starting with the date of the act to which the complaint relates, or such other period as the Employment Tribunal thinks just and equitable.
9. The Tribunal has wide discretion in determining whether or not it is just and equitable to extend time and it is a wider discretion then for unfair dismissal. It should consider everything that it thinks is relevant. However, time limits should be strictly applied and the exercise of the discretion is the exception rather than the rule. There is no presumption that the Tribunal should exercise its discretion.
10. The Tribunal is not legally required to but may consider the check list set out in Section 33 of the Limitation Act 1980 in considering whether to exercise its discretion:
 - a) the length and reason for the delay;
 - b) the extent to which the cogency of the evidence is likely to be affected by the delay;
 - c) the extent to which the party sued had cooperated with any requests for information;
 - d) the promptness which the claimant acted once he knew the facts giving rise to the cause of action; and
 - e) the steps taken by the claimant to obtain appropriate professional advice once he knew of the possibility of taking action.
11. The Tribunal will consider whether a fair trial is still possible and the prejudice to the respondent.

The facts

12. It appears from the limited information on the Tribunal's file and from hearing evidence from both the claimant and his union representative, Mr Miles, that the claim form was first presented possibly in December 2016 but stamped as received on 4 January 2017. There is some correspondence regarding fees in early December 2016.

13. The claimant was dismissed on 29 April 2016. He entered into early acas conciliation through his union representative on 26 July 2016 and an acas certificate was issued on 26 August 2016. Therefore, the claimant had a further month in which to present a claim following the acas certificate.
14. On the face of the file the claim was presented out of time. It appears the claim was later struck out due to non payment of fees or a failure to apply for remission. On the 24 November 2017 the Tribunal wrote to the claimant notifying him that his claim could be reinstated. The claimant then applied for reinstatement and his claim form was acknowledged on 31 January 2018 and notice of the claim was sent to the respondent on the same date.
15. The Tribunal accepts the evidence of the claimant that following his dismissal he was suffering from depression, living with his parents, barely leaving his room. It was difficult for Mr Miles to take instructions from him. Mr Miles did consult with the union's lawyers and was aware of the three months time limit and presented a claim as soon as he was able to take instructions from the claimant.
16. A part of the time delay was also due to Mr Miles and the claimant's concerns about the fees and how it could be paid and how the claimant could apply for remission. The Tribunal accepts the evidence of Mr Miles and the claimant that there was some communicating with the Tribunal and being passed from different offices to clarify the situation regarding fees.
17. The Tribunal finds that due to the claimant suffering from severe depression and not being fit to give instructions and due to confusion regarding the Tribunal's fee system and remission it was not reasonably practicable for the claimant to present his claim in time but that he did present his claim form within a reasonable period thereafter. The Tribunal also finds that it is just and equitable to extend time to allow the claimant's discrimination claim to be heard. A fair trial is still possible and the prejudice to the claimant of not allowing the claim to be heard outweighs the prejudice to the respondent in allowing the claim to go ahead.
18. Therefore, the Tribunal does have jurisdiction to hear his claims for unfair dismissal, discrimination on the grounds of disability (a failure to make reasonable adjustments) and redundancy pay.

Employment Judge A Isaacson

Date 8 October 2018

JUDGMENT & REASONS SENT TO THE PARTIES ON

9 October 2018

FOR THE TRIBUNAL OFFICE