



EMPLOYMENT TRIBUNALS

Claimant: Mr Zdzislaw Dabrowski
Respondent: The Haulage (Holding) Organisation Limited
Heard at: Leeds **On:** 5 December 2018

Before: Employment Judge T R Smith

Representation

Claimant: Mr R Dabrowski (the Claimant's son)
Respondent: Mrs A Datta (Counsel)
Interpreter: Ms Cain

JUDGMENT

The Claimant's complaint was not presented before the end of the period of three months beginning with the effective date of termination or within such further period as the Tribunal considers reasonable. The Claimant's complaint is therefore dismissed.

REASONS

Issue

1. On 9 October 2018 Employment Judge Keevash directed there would be a preliminary hearing to determine the following:-
 - 1.1. Whether the Claimant's claim form was presented out of time to the Employment Tribunal.
 - 1.2. If not, was it reasonably practicable for the Claimant to have presented it in time.
 - 1.3. If not, had the Claimant presented it within such further time as the Tribunal considered reasonable.

2. Today before me it was conceded that the claim form was presented out of time.
3. In relation to the third question posed by Employment Judge Keevash namely if it was not reasonably practicable to have been presented in time whether it was presented within such further time as the Tribunal considers reasonable Mrs Datta whilst not formally conceding the point did indicate that she was in difficulties in arguing, on the facts that if I was for the Claimant on question 2 that question 3 would not be answered in his favour.

Findings of fact

4. The Claimant worked as a lorry driver.
5. The Claimant was paid weekly.
6. The Claimant worked for the Respondent for some 11 years in the United Kingdom.
7. The Claimant's son, who represented him here today, has been in the United Kingdom for approximately 12 years.
8. I accept that the Claimant himself speaks little if any English.
9. The Claimant's son speaks good English.
10. On 9 May 2018 the Claimant appears to have been summarily dismissed. At that meeting his son was present.
11. Both the Claimant and his son felt immediately after the dismissal that it was unfair and wrong.
12. Whilst the Claimant may have suffered from an element of depression following his dismissal he did not seek any medical attention.
13. Initially the Claimant did nothing. He explained this on the basis that he thought he would be receiving some form of lump sum from the Respondent.
14. I do accept that it was not until early July 2018 that the Claimant contacted the Respondent and told there was no lump sum payable.
15. Between 9 May and early July 2018 the Claimant took no efforts to ascertain his rights.
16. The Claimant's son, who was advising the Claimant was aware that in Poland there were employment courts able to resolve employment disputes. He was not aware of the existence of Employment Tribunals in the United Kingdom. In early July steps were taken to obtain legal advice.
17. A visit was made to solicitors in Brighouse. By this stage, at the latest, the Claimant considered that he had been unfairly treated and was seeking legal redress. He was told that no employment specialist was available to see him.
18. Approximately one week thereafter there was a visit to Halifax. I make no criticism of the delay between the visit to Brighouse and Halifax. I accept the evidence of the Claimant's son that he had been subject to an operation which impacted on his ability.
19. In Halifax the Claimant and his son visited between four to five solicitors. They were either told that assistance could not be offered or that they would be contacted in due course.
20. At all material times the Claimant's has had access to the internet.

21. The primary time period for presentation of the claim form was on or before 8 August 2018 given the effective date of termination was 9 May 2018.
22. The claim form was not presented till 11 August 2018.
23. On or about 10 August 2018 the Claimant's son contacted ACAS. He did so having received a phone call from a solicitor. On the basis of that advice arrangements were made to submit a claim form the following day, the 11 August.
24. I should note at this stage that the ACAS early conciliation documentation was not entered into until after the expiration of the primary time period.
25. There is no suggestion on the evidence presented to me that there was any form of deception or hiding of relevant information by the Respondent to the Claimant or his son.

Submissions

26. I do not intend to repeat the helpful submissions made by both parties but will merely summarise the principle matters placed before me.
27. The Claimant's son asked me to take into account that his father did not speak English and they both had a lack of familiarity with the English Tribunal system. The Claimant's son pointed out that as soon as they obtained advice from ACAS they acted promptly.
28. Mrs Datta submitted that ignorance of the law was not an excuse in this particular matter. It was feasible for the Claimant to have presented his claim within time.

Discussion

29. The starting point is section 111 of the Employment Rights Act 1996 which reads as follows:-
 - “(i) A complaint may be presented to an Employment Tribunal against an employer by any person that he was unfairly dismissed by the employer.
 - (ii) [Subject to the following provisions of this section] 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 the period of three months.
30. I am of course conscious of the provisions of section 207B of the Employment Rights Act 1996 which, put succinctly, impact upon time limits. The net effect is that during a period of ACAS early conciliation the time limit running against a claimant is effectively stopped. In addition to it being stopped in certain cases it may even be extended by a period of one month.

31. Section 207B however is not relevant in this particular case because the stop the clock provisions cannot apply once the primary time limit has expired. I reached this conclusion by analogy with the case of **Ullah v Hounslow London Borough Council** 2302599/15. That was a case on the provisions of section 207B and held that the stop the clock provisions did not apply before dismissal. As I say, by analogy the same principal must apply after the primary time limit has expired.
32. The burden of proof is upon the Claimant and the standard of proof is the balance of probabilities.
33. The Claimant's complete ignorance of his rights to claim unfair dismissal may make it not reasonably practicable to present a claim in time, but the ignorance itself must be reasonable, see the speech of Lord Scarman in the old case of **Dedman v British Building and Engineering Appliances Limited** [1974] ICR 53 Court of Appeal. As Lord Scarman noted where a claimant relied upon ignorance as to his rights the Tribunal is required to ask questions such as "what were his opportunities for finding out that he had rights? Did he take them? If not why not? Was he misled or deceived?" I have also borne in mind, in determining this case the helpful review of the relevant case law in relation to section 111 of the Employment Rights Act 1996 set out in **Palmer v Southend on Sea Borough Council** [1984] IRLR 119 Court of Appeal.
34. This case really hinges on whether it was not reasonably practicable for the Claimant to present the complaint in time. It is not in dispute that the claim was out of time. On the basis of the evidence I heard if I find that it was not reasonably practicable to have presented the claim in time then I would find that the complaint was presented within such further period of time as was reasonable given how promptly the Claimant and his son acted having received advice from ACAS.
35. I therefore turn to the reasonable practicability question. This is not an easy case to determine. I bear in mind that the Claimant knew from the effective date of termination that something was wrong. Certainly by early July he was seeking legal advice. That reinforces my view that the Claimant thought not only that something was wrong but that he was entitled to redress. The Claimant had access to the internet certainly via his son. I take into account the length of time both parties have resided in the United Kingdom. I am not satisfied that they did not know that institutions such as the Employment Tribunals existed for dealing with employment disputes. I am not satisfied that they could not have taken further steps to obtain information as regards the primary time limit. That is not to say that I disbelieve what I have been told by either the Claimant or his son. That is not the question that I need to determine.

They may well have been ignorant. The issue is whether the ignorance is reasonable. In the particular circumstances of this case I have come to the conclusion that the ignorance was not reasonable and therefore it is with some regret that I must dismiss the claim.

Employment Judge T R Smith

20/12/2018