



EMPLOYMENT TRIBUNALS

Claimant: Mr M Spasov
Respondent: Hugh Lowe Farms Ltd

Heard at: Ashford on: 16 August 2018

Before: EMPLOYMENT JUDGE CORRIGAN
Sitting Alone

Representation

Claimant: In person
Respondent: Mr D Dracass, Counsel

PRELIMINARY HEARING

REASONS

For Judgment sent to the parties on 24 September 2018

Reasons requested by the Respondent on 25 September 2018

1. By his claim presented on 5 October 2017 the Claimant brought a claim of breach of contract against the Respondent. He also included a number of other claims but these were either withdrawn by the Claimant or struck out at the preliminary hearing on 8 March 2018.
2. By the date of this preliminary hearing there was therefore one remaining claim of breach of contract. The claim related to employment in 2014 and this preliminary hearing was listed to consider:
 - 2.1 Was the claim of breach of contract presented within the time limit;
 - 2.2 If not, was it reasonably practicable to present the claim within the time limit;
 - 2.3 If not, was it presented within such further period as the Tribunal considers reasonable?
3. The issue had been raised too late before the last preliminary hearing for the matter to be addressed then.

4. The Claimant accepted that the claim had not been presented within the time limit (his employment had terminated 17 June 2014) and therefore the matters remaining to be determined were the issues at 2.2 and 2.3 above.
5. The Claimant gave evidence on his own behalf. There was a bundle of documents and further documentation added by each side.
6. Based on the evidence heard and the documents before me I found the following facts.

Facts

7. The Claimant is Bulgarian. He has a law degree and Masters in Law acquired in Bulgaria. This did not cover UK law. When he has access, he is proficient in online research.
8. The Claimant had only been in the UK since April 2014. After his dismissal on 17 June 2014 his income was minimal. He initially spent some days in temporary accommodation. His situation was precarious and his focus was on becoming settled and having a stable life in UK. Until 8 September 2014 he earned under £250 a week and paid rent of £110-£140 per week. Thereafter there was a period of approximately 9 weeks when he claimed benefits. For two months of the time after his dismissal he was without a smart phone and was focused on making ends meet (ie making just enough money to live on).
9. He did nevertheless manage to contact ACAS on 7 September 2014 and a certificate was issued on 7 October 2014. The Claimant then made a decision not to pursue his claim because of the Tribunal fees. He was not aware of the fee remission scheme. He retained an intention to take his claim to the County Court and entered correspondence with the Respondent about this between July 2016 and January 2017.
10. The fee to submit the contract claim was £160 and the hearing fee was £230. Of course the claim as a whole with the multiple other claims involved would have cost the higher level of fees (£250 for the claim and £950 for a hearing). The County Court fees for a claim under £10,000 would have been £445 to issue and £330 for a hearing. It is likely that the Claimant would have been eligible for fee remission given his low income (less than £6,000 in 2014-2015).
11. The Claimant did seek free advice after the deadline and was told he could not do anything. He was not told about fee remission.
12. The Claimant pinpoints the end of Summer 2015 as being the moment when his finances stabilized. He began working in hotels and eventually earned better than the Minimum Wage. Since then he has issued a number of other tribunal claims. He issued one in 2015 for which he paid the fee. He issued another in 2017 for which he paid the fee. Finally he submitted another claim after July 2017 and the decision in R (Unison) v Lord Chancellor [2017] UKSC

51. He had been ready to pay a fee but then discovered it was not necessary. That claim related to an incident in July 2017 and so the deadline was in October. In the meantime this claim was lodged on 5 October 2017.
13. He found out the possible effects of the Unison decision on this claim in September 2017 whilst on holiday in Malta, through reading legal articles online. He did not want to interrupt his holiday to submit his claim. He was out of the country for the whole of September. He believes he should have had a further three months to submit his claim at that point. He also wanted to do further research prior to submitting his claim. He acted promptly on his return from holiday, submitting within days of his return.
14. He has now been refunded the fees which he paid to bring his other complaints.

Relevant law

15. Article 7 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 provides that contract claims must be submitted within three months of the termination of employment (subject to any extension as a result of contacting ACAS).
16. One exception is where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented within the normal time limit in which case it can be considered by the Tribunal if it was submitted within such further time as the Tribunal considers reasonable (article 7(c)).

Conclusions

Was it reasonably practicable to present the claim within the time limit?

17. The Claimant was able to contact ACAS within the time limit. He made a decision not to pursue the claim because he could not afford the fee. He was not aware of the remission scheme though it is likely he was eligible. He is proficient at online research and he was capable of finding out. However he did not, and in the Supreme Court's decision in Unison v Lord Chancellor there is some suggestion that the fee remission scheme was underutilized ie not everyone who was eligible accessed it. It was not the fees but lack of knowledge of fee remission that was the hurdle to bringing the claim.
18. The test is not whether the Claimant did absolutely everything he could have to submit his claim. The question is whether it was reasonably practicable to submit his claim within the time limit. I find it was not reasonably practicable for the Claimant to submit within the time limit. The Claimant was still relatively new to the country and during the months leading up to the deadline in his claim (early November 2014) he was focused on financial survival. I accept that despite the contact with ACAS the Claimant believed he had to

pay the fee and took the decision not to issue because he could not afford it. He was not aware of fee remission. Even once he took advice after the deadline he was not informed of fee remission.

If not, was it presented within such further period as the Tribunal considers reasonable?

19. I cannot ignore the fact that after the deadline for this complaint the Claimant did issue two other complaints and paid the fees. He was also taking action in relation to this claim in 2016 with a view to issuing proceedings in the County Court. He has always been prepared to pay the relevant court fee once his finances stabilized which was at the end of summer 2015. He could therefore have brought this claim much earlier by paying the fee. I don't find that the Claimant submitted the claim within a further reasonable period. The original reason for not bringing the claim (unaffordability of fees) ceased to be operative at the end of summer 2015. He has paid fees to issue other claims.
20. The Claimant has only brought this claim now because of the publicity about the Unison decision which was handed down on 26 July 2017. There has also been some delay since the Unison decision.
21. At that time the Claimant was contemplating a separate claim arising out of an incident in July 2017 (which he did eventually submit to the Tribunal). He also stood to be refunded the fees in the other cases. It is surprising therefore that he was not aware of the implications for this case sooner. Nevertheless I have accepted that he was not aware of implications for bringing an old case late until September, but he could then have issued the case more promptly. He chose not to do so until he returned although he accepts he had access to a computer and was doing research whilst away as that was how he found out about the impact of Unison whilst on holiday. He had already had protracted correspondence with the Respondent over the issue and this would have been his third or fourth tribunal claim.
22. I accept that it is not ideal to issue a claim whilst on holiday and that he acted quickly on his return, but as he was away for a month and needed to act promptly it was not reasonable to wait. He relies on there normally being a three month time limit but that is not a reasonable time period to take in these circumstances when the claim was already substantially late.

23. It follows that the Tribunal does not have jurisdiction to hear the Claimant's complaint.

.....

Employment Judge Corrigan
6 December 2018