



EMPLOYMENT TRIBUNALS

Claimant Mr S Medley

Respondent: Sanipex UK Limited

HELD AT: Leeds

ON: 17 January 2019

BEFORE: Employment Judge Cox

Representation:

Claimant: In person

Respondent: Mrs S Gibbens, Human Resources Manager

JUDGMENT AT PRELIMINARY HEARING

1. This claim of unfair dismissal has been presented outside the statutory time limit.
2. It was reasonably practicable for the claim to be presented within that time.
3. The Tribunal has no power to consider the claim and it is dismissed.

REASONS

1. Mr Medley presented a claim to the Tribunal alleging that Sanipex UK Limited (“the Company”) had unfairly dismissed him.
2. The Tribunal had to decide as a preliminary issue whether the claim was presented within the statutory time limit laid down in Section 111(2) of the

Employment Rights Act 1996 (the ERA). That section states that, as a rule, a Tribunal cannot consider an unfair dismissal claim unless it is presented before the end of the period of three months beginning with the effective date of termination of the Claimant's employment. If the claim is presented after that date, the Tribunal can still consider the claim, but only if it is satisfied that it was not reasonably practicable for the claim to be presented within three months and it was presented within a further reasonable period.

3. There are statutory provisions that extend the time for bringing a claim to allow for the early conciliation process that must be completed through ACAS before a claim is made. These provisions do not apply, however, if the Claimant does not contact ACAS until after the time limit has already expired.
4. Whether it was reasonably practicable for a claim to be presented within the three-month time limit is a question of fact and depends upon the circumstances surrounding the timing of the claim by the individual Claimant. The appeal courts have confirmed that the onus is on the Claimant to show that it was not reasonably feasible to present the claim in time (Porter v Bandridge Ltd (1978) ICR 943, Palmer and another v Southend-on-Sea Borough Council (1984) ICR 372).
5. Mr Medley was dismissed on 5 March 2018. He contacted ACAS under the early conciliation procedure on 30 July and an early conciliation certificate was issued on 6 August. Because he did not contact ACAS until the time limit for bringing his claim had already passed, the statutory provisions that extend time to allow for the early conciliation process did not apply. The date by which Mr Medley should have presented his claim was 4 June 2018. He in fact presented his claim on 5 September 2018, over three months after the time limited had expired.
6. The Company maintained that Mr Medley was dismissed for redundancy, having decided to delete the post of Warehouse Supervisor that Mr Medley filled. At the Preliminary Hearing, the Tribunal clarified with Mr Medley the basis on which he believed his dismissal was unfair. He first thought there was something unfair about his dismissal when someone who was still working at the Company told him in early April that the Company was taking on agency staff in the warehouse. At the meeting on 5 March at which the Operations Manager, Mr Howes, told Mr Medley that his employment was terminated, Mr Medley had asked about the possibility of working as an Operative in the warehouse but Mr Howes had told him there were no vacancies. This did not fit with the Company now recruiting agency staff. Then on or around 18 or 19 July Mr Medley was alerted to an advertisement the Company had placed for a Warehouse Supervisor, which was the post he had filled and which the Company had said it no longer needed. In addition, Mr Medley believed that the Warehouse Manager, Mr Burrows, who was working his notice of resignation at the time of Mr Medley's dismissal, had been telling lies about him to Mr Howes. He had no evidence of this, it was just

what he suspected Mr Burrows was doing because Mr Medley had criticised his performance as Warehouse Manager to Mr Howes.

7. Mr Medley's then explained the circumstances surrounding the presentation of his claim.
8. After hearing about the Company's use of agency staff in the warehouse, Mr Medley obtained advice from a solicitor in mid-April to find out whether he could challenge his dismissal. The solicitor told him he might have a claim and that there was a three-month time limit for bringing one. The solicitor explained that if Mr Medley could not afford to pay for legal help with his claim he could bring a claim himself. Mr Medley looked at the ACAS website at beginning of May. He took no action to present a claim because he was unsure whether he would win.
9. The three-month time limit for presenting the claim came and went.
10. After seeing the advertisement for a warehouse supervisor on around 19 July Mr Medley 'phoned another couple of firms of solicitors to see whether he could find a lawyer who would help him with his claim on a "no win, no fee" basis but he could not find anyone willing to do so. He took no steps to bring a claim himself. It was not until 30 July that he contacted ACAS under the early conciliation procedure. Although the early conciliation certificate was issued on 6 August, Mr Medley did not present his claim to the Tribunal until a month later.
11. Mr Medley was unable to give any reason for his substantial delay in acting to bring a claim, other than that he had started a new job and he had his children to look after. The Tribunal accepts that Mr Medley had the usual pressures on his time that arise from work and family, but the Tribunal does not accept that these made it not reasonably practicable for him to present a claim to the Tribunal by 4 June. By then he knew that he believed Mr Burrows had set Mr Howes against him. He also knew that the Company had taken on agency staff. A solicitor had told him about the three-month time limit for a claim soon after he was dismissed and he knew how to bring a claim, having consulted the ACAS website in early May. He was well capable of presenting a claim without legal help, as was evidenced by the fact that he himself did eventually draft and present his claim form.
12. Even if the Tribunal had accepted that it was not reasonably practicable for Mr Medley to bring a claim until he had the additional information on around 19 July about the Company advertising for a Warehouse Supervisor, it would not have accepted that he presented his claim within a further reasonable period. He delayed a further six weeks before bringing his claim with no good reason for doing so.

13. The Tribunal concludes that it has no power to consider Mr Medley's claim as it has been brought outside the statutory time limit. The claim is therefore dismissed.

Employment Judge Cox
Date: 18 January 2019