



EMPLOYMENT TRIBUNALS

Claimant

Mr Z Mussajibai

Respondent

v (1) Angard Staffing Solutions Limited
(2) Royal Mail Group Limited

Heard at: Cambridge

On: 1 February 2019

Before: Employment Judge Ord

Appearances

For the Claimant: In person

For the Respondent: Miss Anaman, Trainee Solicitor

JUDGMENT ON PRELIMINARY HEARING

1. The claimant's complaint that he was unfairly dismissed by the second respondent is struck out. The second respondent was not the claimant's employer.
2. The claimant's complaint of unfair dismissal against the first respondent is struck out because the claim was presented out of time. It was reasonably practicable for the claim to have been presented in time.
3. The claimant's complaint that he was the victim of unlawful discrimination on the protective characteristic of disability proceeds.

REASONS

1. The claimant was employed by the first respondent as an agency worker working at the second respondent from 31 October 2014 until his dismissal on 19 June 2017.
2. The claimant confirmed that at all times he was employed by the first respondent and not the second respondent. On the basis of that admission, he accepted that he could not pursue a claim for unfair

dismissal against the second respondent and accordingly that claim was to be struck out.

3. The claimant was dismissed on the stated ground of gross misconduct on 19 June 2017 and his dismissal took effect that day. The claimant entered into early conciliation on 7 November 2017 on which date he presented early conciliation information to Acas. The period of early conciliation ended on 7 December 2017 and the claimant presented his claim on 3 January 2018.
4. The claimant was dismissed on 19 June 2017 and thus the period of time in which he could present a complaint of unfair dismissal under s.111 of the Employment Rights Act 1996, was (subject to any extension provided by the early conciliation process), 18 September 2017.
5. The claimant commenced early conciliation against the first respondent on 7 November 2017, seven weeks after the expiry of the three month period referred to in s.111 of the Employment Rights Act 1996.
6. The claimant's evidence regarding delay was confused. He referred to having contact with Acas who told him that he could not present his claim to the Employment Tribunal until he had exhausted all of the appeal stages within the respondent's internal procedure. He says he was told this about three or four times. He was uncertain as to when he had first contacted Acas, initially he stated that it was before the decision had been taken to dismiss him, but then changed that until definitely before December 2017, before settling on "*about October 2017*" which is consistent with the provision of early conciliation information to Acas on 7 November.
7. The claimant also said, however, that he had contacted solicitors about this matter and had been advised that he had missed his deadline for presenting a claim by some of them. He said he had contacted 10 or 12 different law firms. He referred to one particular law firm (Landau Law) that he had contacted on 3 August 2017. He also confirmed that he had had representation from his Trade Union at internal meetings but they had not advised him about going to a tribunal or the three month time limit. He accepted that he had heard about Employment Tribunals and had heard about unfair dismissal claims, that he had access to the internet and that he did not carry out any research to identify what to do and when. He accepted that he had been told in August 2017, by solicitors, that he did not have to wait until all internal procedures had been completed before presenting his claim to the tribunal. He had also received advice from a Mr Suleman (apparently providing advice at a community level paid for by the local authority), after the claimant's dismissal but before the hearing of his first appeal.
8. The claimant was clearly not ignorant of his rights. He was aware of the existence of the Employment Tribunal and of his ability to bring a complaint of unfair dismissal.

9. I was reminded of the case of Porter v Bandridge Ltd. [1978] ICR 943, where the Court of Appeal confirmed that in relation to issues of reasonable practicability the test is not whether an individual knew of (for example) time limits, but whether they ought to have known of them and the case of Asda Stores Ltd. v Kausar (Employment Appeal Tribunal 165/07), stating that the question for the tribunal to ask was whether on the facts found it was reasonable to expect that that which was possible would be or was done.
10. In the circumstances of this case, the claimant has not satisfied me that it was not reasonably practicable for him to present his claim in time. He was aware, at the latest, in August 2017 that he did not have to wait until all internal procedures were completed before presenting his claim, but he failed. He could and should have made enquiry as to how long he had to present his claim given that he knew he did not have to wait and had access to sources of advice which would have provided him with that information.
11. For those reasons the claim of unfair dismissal against the first respondent is dismissed. The claimant presented his claim out of time and the tribunal has no jurisdiction to hear it.
12. The claimant's last complaint regarding his claim to have suffered unlawful discrimination on the protected characteristic of disability relates to his final appeal which was presented and heard on 6 September 2017, in respect of which he says he has received no decision. Failure to provide a decision within a reasonable time constitutes, he says, an act of discrimination. That complaint is not out of time and the claimant says it is part of a series of events. Accordingly, the last part of the complaints of disability discrimination has been presented in time and proceeds, although it will be a matter for the final tribunal to determine whether there was a connected series of acts and whether some, all or any of the earlier complaints have been presented in time.

Employment Judge Ord

Date: 18 March 2019

Sent to the parties on: ...20/3/19.....

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For the Tribunal Office