



EMPLOYMENT TRIBUNALS

Claimant:
Mr M Bannister

v

Respondent:
John Lewis PLC

Heard at: Reading **On:** 25 February 2019

Before: Employment Judge S Jenkins (sitting alone)

Appearances

For the Claimant: In person

For the Respondent: Mr E Capewell of Counsel

JUDGMENT having been sent to the parties on **13 March 2019**, and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013, the following reasons are provided:

REASONS

Background

1. The Claimant brought a claim of unfair dismissal on 19 July 2017, following a period of early conciliation with ACAS between 28 April 2017 and 28 May 2017, arising from his dismissal by the Respondent on 2 February 2017. This preliminary hearing, following two earlier postponed hearings, was to consider the issues identified by Employment Judge Vowles at a previous preliminary hearing, at which the Claimant had not been in attendance due to illness, on 8 May 2018.

Issues and Law

2. The primary issue to be considered was whether the Tribunal has jurisdiction to consider the current complaint of unfair dismissal having regard to the time limit for presenting such a complaint.

3. In terms of the law surrounding that particular issue, section 111(2) of the Employment Rights Act 1996 ("ERA") notes that an employment tribunal should not consider a complaint unless presented before the end of three months beginning with the effective date of termination or, more accurately within three months before the effective date of termination where the period is extended by virtue of early conciliation. If the claim is presented within that period, then it proceeds. If not, then the question needs to be considered as to whether it was reasonably practicable for the claim to have been presented within time and, if not, whether it was issued within

such further period as the tribunal considers reasonable.

4. In this particular case, the primary time limit for unfair dismissal expired on 1 May 2017, and the Claimant made contact with ACAS on 28 April 2017, with the ACAS certificate being issued on 28 May 2017. Applying the terms of section 207B of the ERA, time was then extended to one month from that latter date, i.e. to 28 June 2017.
5. The claim form in this case was not however issued until 19 July 2017 and therefore it is clear that it was not submitted within the primary three month time limit as extended. I was therefore looking at the question of whether it had been reasonably practicable for the claim to have been submitted within that time period and, if not, whether it was submitted within such further reasonable period.

Findings

6. I heard oral evidence from the Claimant, largely in response to questions from me and from the Respondent's representative. The evidence of the Claimant was not directly challenged. In fact, it was not really capable of being directly challenged by the Respondent as it was not in a position to provide contradictory evidence to the comments of the Claimant, although I did note the Respondent's contention that there was no direct medical evidence before me from the relevant period, i.e. May, June and July 2017. Overall, whilst the Claimant was, in many areas, confused, I was satisfied that that arose from his state of health, and that his evidence before me was genuine and able to be accepted.
7. The Claimant was also not able to provide detailed evidence with regard to his recollection of specific dates due, he asserted, to the health issues prevailing upon him which I touch on in more detail below.
8. The Claimant's evidence was that a number of issues were bearing on him at the relevant time, which caused him not to be in a position to submit his claim in time. One of these was the financial aspect. He confirmed that he had been advised by ACAS to work on his claim form and submit it, and that he did work on that form prior to the expiry of the deadline but then hit a problem with regard to the payment of a fee. He himself was not in a position to pay it, and he was not aware of the tribunal process which catered for help to pay via the remission programme. The Claimant's evidence was that he telephoned the Watford Tribunal who suggested that he ask someone with a card, a friend, to pay, but that was not feasible and at that point, the Claimant confirmed that he "gave up" due to the issues bearing on him, particularly from the medical perspective which I will come on to.
9. The Claimant went on a holiday, a holiday pre-booked by about a year and paid for by his partner, on about 18 June 2017 for a week but when he returned he had some further problems with regard to the submission of the tribunal claim form. First, he had to complete the form again, and then he had to go through the remission process. Ultimately, that was completed, and the claim was submitted on 19 July 2017.

10. Another aspect that the Claimant indicated was bearing on him at the time was that the ACAS Officer had commented that he was not able to pursue or submit his claim form whilst a grievance with his employer was ongoing. It appears from the Respondent's response that a grievance was submitted by the Claimant and dealt with post-employment, and also that an appeal against that grievance was subsequently dealt with. The Claimant's evidence was that he had been told he could not pursue a tribunal claim whilst the grievance was ongoing, but he also commented that he had been told by the ACAS officer that the Respondent had not been willing to engage with early conciliation whilst the grievance process was ongoing. I pointed out to him, whilst giving his evidence, that those were not necessarily the same thing and that he may have been confused, and that time generally continues to run notwithstanding that internal processes are still ongoing. The Claimant could therefore potentially have been in a position to submit his claim form notwithstanding that a grievance process was ongoing.
11. The third element which was bearing on the Claimant at the time was his health. The Claimant confirmed that he suffered from mental health issues, had mild learning difficulties, and also had suffered problems with addiction. He had been an alcoholic in the past but had recovered from that and had been in recovery over the last 11 years. He also however suffered from a cannabis addiction, which he indicated had arisen due to self-medication with regard to dealing with several physical pain-related conditions. Positively, the Claimant indicated he was now clear of that addiction, albeit only in the last four months, i.e. from about October 2018.
12. The Claimant's evidence indicated however that he was not able at the time to cope with normal day-to-day matters due to his health issues, let alone to cope with submitting his claim form at the time. He felt that he had done the best he could in the circumstances.
13. With regard to the period of time after the expiry of the primary time limit, i.e. 28 June 2017, the Claimant confirmed that he had returned from holiday a few days prior to that, on about 25 June 2017. He had then taken some time to focus on his mental health and taken a period of time to re-complete the form and then to submit the application with an application for remission of fees. He confirmed in his evidence that it was not clear what had spurred him on to act on 19 July 2017, other than perhaps that he had had a moment of clarity at that particular point.

Conclusions

14. I was conscious that the case of Marks & Spencer PLC v Williams-Ryan [2005] EWCA Civ 470 indicated that a tribunal should give a broad interpretation to section 111(2) ERA when considering the issue of reasonable practicability. It is also clear from that case that a number of factors can be considered when assessing the issue of reasonable practicability, which include potentially the three aspects put forward by the Claimant.
15. Looking at those in turn, with regard to the problem with submission of the claim form due to difficulties over the fee and the remission process, the

EAT, in McFadyen and others v P B Recovery Limited and others (UKEATS/0072/08), indicated that it is not generally viewed as sufficient to say that it was not reasonably practicable to submit a claim form due to problems with the process where the problems that had arisen had been potentially within the claimant's control. By contrast, in Tyne and Wear Autistic Society v Smith (UKEAT/0652/04), the EAT accepted a submission that it was not reasonably practicable to submit the claim form where the delays had arisen due to the system itself.

16. In this case, I could see that the Claimant confirmed that he was dealing with the process prior to the expiry of the time limit and therefore was aware of what was required. I was also satisfied that the employment tribunal website at the time when fees were in place was reasonably clear about what needed to be done regarding the payment of fees or the application for a remission. This matter therefore would not have caused me to consider that it had not been reasonably practicable for the Claimant to have brought his claim within time.
17. Similarly, with regard to the Claimant's evidence that he felt he could not submit the claim form because of the ongoing grievance process, I would not have been satisfied that that was a factor which made it not reasonably practicable for the Claimant to have submitted his claim within time. The Claimant in his evidence accepted that he had been told that the Respondent was not willing to engage with early conciliation whilst the grievance was ongoing, but that would not have impacted on his ability to have submitted a claim form, notwithstanding that there were internal matters which were still in progress.
18. However, with regard to the Claimant's health, I was satisfied that, as a result of the various conditions bearing upon the Claimant at the time; notably his mental health, his problems with addiction and his mild learning difficulties; that, taken together, they meant that it had not been reasonably practicable for him to have brought the claim within time.
19. I was also then satisfied that the claim had been brought within a reasonable period thereafter, as, whilst the Claimant did take some three weeks following the expiry of the time limit, I was satisfied that, due to the issues that were prevailing upon the Claimant at the time, it was a reasonable period after the expiry of the primary time limit. I was therefore satisfied that the Claimant's claim should be allowed to proceed to a full hearing.

Employment Judge S Jenkins

Date: 8 April 2019.....

Reasons sent to the parties on

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For the Tribunal office

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