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EMPLOYMENT TRIBUNALS

Claimant: Mr A Simpson

Respondent: Provide Community Interest Company

Heard at: East London Hearing Centre **On:** 5 November 2018

Before: Employment Judge O'Brien (sitting alone)

Representation

Claimant: In person

Respondent: Ms Patterson of Counsel

JUDGMENT

The Claimant brought his claims of constructive unfair dismissal and public interest disclosure detriment out of time and consequentially they are dismissed.

REASONS

1 On 2 August 2018, the Claimant presented complaints of constructive unfair dismissal, which was said to be automatically unfair by reason of public interest disclosure, and detriment by reason of public interest disclosure.

2 The claim is summarised in box 8.1 of the claimant's ET1 thus "I raised three issues of medical negligence and areas of clinical risk within provide and had false allegations made against me and sent on garden leave of which they are now trying to deny". It was suggested today that a further detriment was suffered by the claimant in that Stephanie Dawe told Central North West London Mental Health (CNWLMH) for whom the claimant was a contractor at that time that the claimant was a whistleblower and that he had "jumped before he was pushed". This statement was said to have been made on or around 4 April 2018

3 It is further suggested today that these comments were continuing; however, such allegation was not part of the present claim and cannot presently be particularised. The claimant is hoping soon to learn more details about the ongoing

detriments he believes he is suffering, and indicated that they would form part of a future claim.

4 The respondent resists the claims and asserts that they are all out of time. The claimant accepts that the claims were not brought within the primary time limit but argues that it was not reasonably practicable to do so and that they were brought within a reasonable time thereafter. It is these questions which the present preliminary hearing has been listed to determine.

5 The Employment Tribunal had the benefit of a 91-page bundle of documents prepared by the respondent, and also took into account a number of emails sent by the claimant to the Tribunal, including in particular an email of 15 October 2018 which contained a response to the ET3. The respondent also provided written submissions.

6 I also heard oral evidence from the Claimant, who was cross-examined by Ms Patterson.

7 I took into account all of the evidence to which I was taken whether or not referred to in these reasons

The Facts

8 The claimant worked for the respondent as a systems trainer and support and development lead from 2 February 2015 to 2 March 2018.

9 The claimant asserts that he made three public disclosures which, as best I can glean from the particulars of claim, were made over the period between February 2017 and January 2018. He asserts that the treatment he received in response to these public interest disclosures caused him to resign on 5 February 2018 giving one month's notice. It seems to be agreed that the claimant was asked to go on garden leave. He asserts that he was told at the meeting of the 5 February 2018 that allegations had been made against him but he was not given any details of those allegations.

10 The claimant managed to find work to start on 5 March 2018 with CNWLMH. For this reason, and also because he believed at that point that his complaints were being investigated, the claimant decided not to bring a claim against ex-employers. However, he was told on 5 April 2018 by CNWLMH that they were going to terminate his contract arrangements in May 2018. The claimant believes that the reason for this change of heart (as he understood it) was that Stephanie Dawe had told CNWLMH that he had blown the whistle on his former employer and also that he had resigned before he could be dismissed.

11 This prompted the claimant to commence early conciliation on 8 April, in respect of which he obtained an early conciliation certificate on 13 April. The claimant also began filling out an ET1 online on 15 April. The claimant was aware from one or both of the ACAS and Employment Tribunal websites that strict time limits applied to tribunal claims.

12 At around this time, the claimant was trying understandably to find replacement employment. He was also experiencing family difficulties in respect of a son for whom

he is the sole parent (the claimant's wife passed away 10 years ago). However, the claimant has given no further details of the precise nature of these problems.

13 At around the beginning of July 2018, the claimant learned the outcome of that an investigation into one or more of his complaints and into the respondent's healthcare provision. That outcome led the claimant to believe that a cover-up was being undertaken and a meeting was arranged between the claimant and representatives of the respondent on 19 July 2018.

14 At that meeting, the claimant learned more about the allegation against him mentioned at the 5 February 2018 meeting: an allegation of bullying and harassment made by Antu Bassal (which the claimant told me today had been made before his public interest disclosures). The claimant welcomed being given more details of the allegation which he considered to be entirely groundless.

15 The claimant frankly admits that until this point he prioritised finding work and his family issues over bringing a claim. However, on 20 July 2018, the claimant resolved to bring claim and try to find legal representatives. Eventually, the Citizens' Advice Bureau advised the claimant to bring his claim without further delay, and he submitted his ET1 on 2 August 2018.

16 The particulars of claim submitted with the ET1 comprise one A4 page which had been drafted in or around April 2018, plus a further four pages which had been drafted in July 2018. No mention is made in these particulars of claim about Stephanie Dawe making derogatory statements to CNWLMH or anyone else, either in April 2018 or afterwards.

The Law

17 Regarding claims for unfair dismissal, pursuant to section 111(2) of the Employment Rights Act 1996:

“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 that period of three months.”

Subsection (2)(a) makes provision for the extension of time because of early conciliation.

18 In that respect, section 18A of the Employment Tribunals Act 1996 makes it a necessary step before presentation of a claim that early conciliation must have been undertaken and an early conciliation certificate issued by ACAS. Where early conciliation is undertaken during the ordinary limitation period, the effect of section 207B is that limitation expires no earlier than one month after issue of an early

conciliation certificate.

19 Analogous provisions apply to the claimant's detriment claim.

20 The phrase not reasonably practicable has been held to mean not reasonably feasible, see **Palmer and another v Southend on Sea BC [1984] I.R.L.R. 119**. This is a question of fact which must be judged taking into account all of the relevant circumstances of the case which include as also set out in the same case such matters as knowledge of rights, any misrepresentations made by the employer to the employee, advice given to the employee and any substantial failure made by the employer or his or her representative.

Conclusions

21 In reaching my conclusions on the question of jurisdiction, I proceed on the basis that the claimant's pleaded claim is well-founded: that he did in fact make a public interest disclosure; that he did in fact resign because of treatment by the respondent because he made a protected disclosure; and that he was in fact subjected to a detriment on 4 April 2018. The ordinary time limit for these claims was 6 June 2018 and 7 July 2018 respectively.

22 However, the claimant knew on 5 February 2018 why he resigned, and in particular held the belief that the behaviour he had suffered was because he had made a protected disclosure. The claimant chose not to bring a claim in the immediate aftermath because he had found alternative work and believed that his complaints were being investigated. Furthermore, the claimant knew on 5 April 2018 that his contract with CNWLMH would terminate on 5 May 2018 and believed that that was because Stephanie Dawe had denigrated him because of his public interest disclosure. Therefore, the claimant believed at that point that he had been subjected to a public interest disclosure detriment. Indeed, it was that apparent detriment which prompted the claimant to commence a claim.

23 The claimant says that he was making for more information before submitting the claim but, in truth, no more information was necessary to submit a well-founded claim. The claimant was aware of the time limits, from accessing the ACAS and Employment Tribunal websites. Even if these time limits were not at the forefront of his mind, the information necessary to work out the time limit for submitting his claim was easily accessible to the claimant.

24 At the time that the ordinary time limit expired for the claimant's constructive dismissal claim, the prospect of a meeting with the respondent on 19 July had not even arisen. By the time of the meeting itself on 19 July, the time limit for bringing a claim for detriment on 4 April had already passed. Whilst I accept that the claimant had other matters occupying his attention, he could have brought his claim nevertheless. The fact that he made a conscious decision to delay bringing his unfair dismissal claim is not a good reason to find that it was not feasible to bring the claim; indeed, it is evidence to the contrary. Ultimately, the claimant has not identified any factors which show that it was unfeasible to bring either of his complaints in time.

25 Even if I were to have accepted that it had not been reasonably practicable for

the claimant to bring his claim until 20 July 2018, when he learned further information about the respondent's continuing attitude to him, he could easily have submitted his claim within days thereafter. He had already started drafting the claim and had undergone early conciliation. Therefore, even if I been satisfied that it had not been recently practicable to bring these complaints within the ordinary time limit, the claimant has not satisfied me that the claim was brought within a reasonable period thereafter.

26 In the circumstances, I find that the claims were brought out of time and therefore the Employment Tribunal has no jurisdiction to hear the claim.

27 It follows that the claims must be dismissed.

Employment Judge O'Brien

7 December 2018