EMPLOYMENT TRIBUNALS

Claimant: Mr Nigel Lyttle

Respondent: Wolverhampton City Council

Heard at: Birmingham **On: 28 March 2019**

Before: Employment Judge Findlay

Representation
Claimant: In person
Respondent: Mr J. Bryan, Solicitor

REASONS

1. Notice of the hearing today had been sent to the parties on 7 December 2018. The notice clearly states that the hearing was to determine the following issue: "To consider whether any of the claimant's claims are made in time and if any of them are not, whether time should be extended."

2. I explained at the start of the hearing that this was the purpose of the hearing, and the process which would be followed.

3. I said that if the claimant had any questions or needed anyone to repeat anything, he should let me know.

4. Mr Lyttle is dyslexic and had hand-delivered documents about his condition to the Tribunal, which I have read.

5. The Respondent had not seen them, so I got those (and other documents handed in by the Claimant today) copied by the Clerk to the Respondent; the Respondent had also produced written submissions which were copied to the Claimant today.

6. There is a copy of a request for further information from the respondent to the claimant on the tribunal file. The claimant had told the respondent that he would not reply in writing, due to his dyslexia. Judge Perry had, on 15 March 2018, directed the claimant to supply the information within 7 days. Subsequently, the claimant called the tribunal

stating that he could not comply with the Order due to his dyslexia. He said he had no issue with providing information verbally. Judge Woffenden wrote to the claimant on 20 March 2019, stating that he should convey the information requested verbally to a friend or family member who could write it down for him and send it to the Tribunal and Respondent by no later than 4pm on 25 March 2019 (this was not done). She said that, at the start of this hearing, the claimant would be asked what special arrangements/adjustments he would need to enable him to take part in the hearing, and that he should bring with him any medical evidence he has about those arrangements /adjustments.

7. I asked Mr Bryan to summarise his written submissions orally in order to assist the Claimant, during the period the documents were being copied (see below) and he did.

8. I asked Mr Lyttle if he needed any further adjustments to the proceedings and he said no.

9. There was a delay of about 50 minutes whilst the documents produced today were copied (and to enable the parties sufficient time to read them- note: Mr Bryan summarized his submissions to the claimant orally in this period – see above). In addition, the clerk copied the Claimant's claim form for him, so he had an additional copy of it. I checked that the parties had been given sufficient time to look at the additional documents, and they said they had.

Relevant Law:

10. The claims are of: unfair dismissal, detriment and/or dismissal on the grounds of public interest disclosure, for holiday pay, unlawful deduction of wages and/or breach of contract, for a redundancy payment and for discrimination on the grounds of age, race, disability, sex and/or religion or belief. The claims were made by a claim form received on 3 November 2018, although the ACAS certificate is dated 13 November and was issued on the same day. The claim form says that the claimant has dyslexia but it is hand written.

11. The claim says that the claimant's employment ended in "2014" – the respondent clarified that this was 24 July 2014. The claimant was a qualified youth leader/support worker.

12. The time limit for bringing all of the claims, except the redundancy payment claim, ran out at the latest on the 23 October 2014 and for the redundancy payment claim, the primary time limit ran out on the 23 January 2015 (sections 23, 48, 111, 164 of the Employment Rights Act (NB section 164(2) not satisfied), regulation 30 of the Working Time Regulations 1998, Article 7 of the Employment Tribunals (Extension of Jurisdiction) Regulations 1994 and section 123 of the Equality Act 2010.
In the case of the non-Equality Act claims, (save for redundancy payments) the claim is to be brought within 3 months of (at the latest) the effective date of termination/date when last wages should have been paid. In those cases, the Employment Tribunal shall not consider a complaint unless it is presented to the Tribunal before the end of the period of 3 months, or 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.

13. In the case of the Equality Act claims, under section 123, proceedings on a complaint may not be brought after the end of a period of 3 months starting with the date of the act to which the complaint relates, or such other period as the employment tribunal thinks just and equitable. Under section123(3), conduct extending over a period is to be treated as done at the end of the period; see also sections 123(3)(b) and (4).

APPLICATION OF LAW TO FACTS

14. Mr Lyttle confirmed that his complaints covered the period up to the end of his employment in July 2014. I have had produced to me evidence that the Claimant was unfit for work due to anxiety and stress between February 2014 and October 2014.

15. I have seen a letter from Dr. Maganty dated 30 December 2014 saying that the Claimant had been under his care at Reaside Clinic in November and December 2014, and was insufficiently well to have his vehicle released from the Police at that time.

16. On the 4 December 2015, the Claimant's appeal against conviction for assaulting a Police Officer was allowed by the Crown Court.

17. On the 5 February 2015, the Claimant had received a letter from the Home Office which he produced today. It directed him to sources of advice regarding his employment situation; the Claimant had been dismissed by that stage and it gave him telephone numbers for the Community Legal Advice Directory and the Citizens Advice Bureau. It is addressed to the Claimant at the Reaside Clinic, where he was staying and where he could (and probably did) have had it read to him. He was clearly able to seek advice and write to the Home Secretary in January 2015 (or have a letter written on his behalf) whilst staying at Reaside, which is why he received a reply in February 2015.

18. I asked Mr Lyttle if he had followed up the sources of advice given in this letter from the Home Office, but he said "*no because I was unwell at the time*". He said he was released from Raeside without a care-plan in April 2015 and that he eventually contacted the Citizens Advice Bureau in 2017. The Citizens Advice Bureau told him he would have to make a claim to the Tribunal, which he eventually did in November 2018, at least a year later.

19. At the start of the hearing, Mr Lyttle told me he had been to the Citizens Advice Bureau again 2 weeks before the hearing. This weas in answer to my question of whether he had any other documents he wanted me to look at regarding the time limit issue i.e why he had not made a claim to the Tribunal any earlier. He said he needed to go back to the Bureau to get it and that he had no other documents regarding the point at which he made the claims (or why he delayed) with him.

20. I asked Mr Bryan if, were the claimant to request an adjournment to obtain any further relevant documents, would he agree to a postponement? Mr Bryan said that he would, but Mr Lyttle said that he wanted me to proceed today without the letter from the CAB/Equality Advisory Support Service.

21. Mr Lyttle told me that sadly his son died in 2008 and that he considers that Wolverhampton City Council contributed to this in some way. He later produced a document which I have seen, and asked for it to be shown to the Respondent, which refers to the inquest (in 2008).

21. He then, after I adjourned to consider my Judgment, asked to speak to our Clerk Martin Roberts and said that he was in prison for approximately 6 months in 2014 and that he considered he had post-traumatic stress disorder thereafter. He also said that he thought today was a Full or Final Hearing, not about "time issues" and that he has spent time preparing to answer points that Mr Bryan had previously raised with him (the request for information). This is despite the fact that he had previously told me that he had spoken to someone at the CAB/ Equality Advisory Support Service about why his claim was made out of time (and had referred to the letter which he had omitted to bring).

22. Before I gave Judgment, I told Martin to tell Mr Lyttle that he could address me upon these points before I concluded and gave Judgment and made any final decision. I allowed him time to do so, and for Mr Bryan to respond. Mr Bryan did not feel the need to respond.

CONCLUSIONS

1. Having considered all of these matters, I find the following: -

   i. In respect of the claims of unfair dismissal, holiday pay, arrears of pay and whistleblowing, otherwise known as public interest disclosure, the question is whether it was reasonably practicable for the Claimant to claim in time. Even if I conclude that it was not reasonably practicable for him to claim in time due to his mental state, until his discharge from Raeside Clinic in April 2015 or thereabouts, an appeal was clearly pursued to the Crown Courts against conviction with his involvement by December 2015, because the Crown Court heard the case at that point.

   ii. The claimant had received the letter from the Home Office, directing him to sources of advice before that time. If he could pursue an appeal against conviction to the Crown Court by December 2015, in my view, he could act on the Home Office letter and seek advice about his employment situation and any potential claim by that time also. Clearly, he had some access to advice because the appeal against conviction was pursued and also, he would have had access to individuals to read letters to him or otherwise assist him even whilst he was in Raeside Clinic (as the letter he sent to the Home Secretary bears out).

   ii. However, the Claimant did not seek advice from the Citizens Advice Bureau (or so he told me), until sometime in 2017, and then he delayed at least another year before claiming to the Tribunal in November 2018.

   iii. Despite my sympathy for the difficulties with which Mr Lyttle has been faced over the years, I find that even if it was not reasonably practicable for him to claim within the time limits, he did not claim within a reasonable period thereafter,

which I consider would have been by in or about December 2015, when his criminal appeal succeeded.

iv. In respect of the discrimination claims, I have to decide if it is just and equitable to extend time to allow the Claimant to bring these claims. I have considered the factors in the case of British Coal Corporation -v- Keeble and in particular the prejudice to each party.

v. If I do not extend time for the discrimination claims, the Claimant will lose the chance to bring his discrimination claims, but in my Judgment, he could have made them at a much earlier point in time in any event. If I extend time, the Respondent will have to defend unexpected claims more than 4 years after the time for bringing the claims expired, with all the difficulties of recollection (and ensuring that relevant witnesses are available) that this brings.
vi.As Mr Bryan pointed out, memories will have lapsed and it will be difficult for the Respondent to properly address these claims and marshall the documentation and any witness evidence.

vii. I have to look at the reasons for the delay and how quickly the Claimant acted, and whether he knew about sources of advice; clearly, as I have said, whilst he was still in the Raeside Clinic and people were available to assist him to write to the Home Office prompting a response, he could have followed up the suggestions he was given by the Home Office about seeking advice. He was discharged from Raeside, and despite the lack of a care plan was living independently.

viii. The claimant has not acted at all promptly in my Judgment. The Claimant has been ill, I accept that, but he was well enough by December 2015 to successfully pursue an appeal against conviction. He could not explain why he delayed between 2015 and November 2018 in order to bring this claim, or even say why it took him until 2017 to contact the Citizens Advice Bureau, and thereafter another year to make the claim.

2. The Claimant has said that he has had post-traumatic stress disorder but has produced no evidence of that, and it is clear that post-traumatic stress disorder did not prevent him from pursuing his appeal against sentence or contacting the Citizens Advice Bureau in 2017. He refused the offer of a postponement today. I do not accept that he thought it was a Final Hearing today, he must have realised from the notice that was sent out that the time limit was an issue, and he said that he had discussed the delay in making the claim with an advisory service about 2 weeks ago. If he was unclear about what the Hearing was about, he could have asked someone to read the notice to him, because I observed that his verbal skills are good. He must have had help completing the claim form, which is handwritten, or must have completed it himself. The medical evidence does not say that the Claimant cannot read at all, and he plainly was able to deduce that there was a Hearing today and the time of the Hearing, so he must have had an opportunity to read it or have someone read it out.

3. For all of these reasons, I conclude that it is not just and equitable to extend time and all of the claims are dismissed.

Signed by Employment Judge Findlay

Date: 25 April 2019