



EMPLOYMENT TRIBUNALS

Claimant: Mr. G. Lumley

Respondent: Logical Personnel Solutions Limited

Heard at: Bristol

On: 26th March 2018

Before: Employment Judge R. Harper

Representation

Claimant: Mr. G. Lumley

Respondent: Mr. J. Austin

JUDGMENT

The tribunal does not have jurisdiction to hear the claims of unfair dismissal

REASONS

1. The EDT was 18/9/17. The ET1 was filed on 21/1/18. The first referral to ACAS was outside the primary three month period on 2/1/18 and the ACAS EC certificate was issued on 17/1/18. The claim was clearly filed out of time.
2. The claimant states that he brought a claim of unfair dismissal and discrimination. He has not. There is no discrimination claim. The two claims he brings are,
 - i) A claim for “ordinary” unfair dismissal. This requires a minimum of two year’s continuous service. The claimant did not have two year’s service. He worked for the respondent between 17/10/16 to 18/9/17.
 - ii) A claim under S.103A ERA 1996 alleging automatic unfair dismissal as a result of having made a protected disclosure. This does not require a minimum period of service.

However, whether it is a claim of ordinary unfair dismissal or a S. 103 A claim the claims must be filed within three months (S.111) and the reasonably practicability test is a much stricter one than the just and equitable test for discrimination claims.

3. The claimant was represented by a union representative at the disciplinary. The claimant doubts the independence of that person as they were on the payroll of the respondent. However that is a very common scenario. The claimant was represented at the appeal hearing by another union representative who he only saw for five minutes beforehand. The claimant was clearly not impressed by that individual. The claimant told me that he told that union representative that he wanted to take the matter further. The union representative told him he would contact the claimant after he(the union representative) had returned from holiday but he did not do so.
4. The claimant clearly had access to union assistance. The claimant says that he contacted the union and was told that he only had about three days left before filing the ET1 and he said that he acted quickly within that time frame to do so. Regrettably the four important dates set out in paragraph 1 do not support the claimant's contention. As no ACAS EC certificate was obtained the primary limitation period expired on 17th December 2017. I was told that it was not possible to request an ACAS EC certificate between 17th December and 2nd January because of Christmas and because the claimant was sorting out some debts. Neither is a very convincing argument.
5. No medical evidence has been produced to me to show that there was any medical reason why the claim could not have been filed in time. The claimant repeatedly told me that he had suffered with work related stress whilst employed but did not produce any confirmation to me of this.
6. Mr. Austin made the reasonable point that when filing an ET1 claim online an early window pops up reminding the potential claimant of the need to go through early conciliation. The claimant said that he saw no purpose in conciliating as it he could not see that he would resume working for the respondent. This approach rather misses the point about the EC process.
7. In an email to the tribunal dated 12th February 2018 the claimant stated, *"I would also like to apologise to the Court about the late delay in bringing this claim to the Court as I was waiting for contact from my Union with regards to appealing the dismissal but never received any. Having contacted the union I was told I only had three days left to make my claim and this was done online by myself. Not really understanding the procedure, I made a bit of a hash of it and had to apply for mediation as requested by the court and get a case number before applying to the court to make the claim."*
8. I find that it was reasonably practicable to have filed the claims in time and that nothing the claimant has said has convinced me that he had any good reason at all for delaying. Neither do the self evident dates of referral to ACAS bear out his assertion that he acted promptly in trying to obtain the EC when he knew or ought to have known of the obligation to do so.
9. It follows therefore that the tribunal does not have jurisdiction to hear the claims and the final hearing dates of 19th and 20th June 2018 are vacated and this is the end of the case.

Employment Judge R. Harper

Date 26th March 2018