



# THE EMPLOYMENT TRIBUNALS

## PUBLIC PRELIMINARY HEARING

**Claimant:** Mr C P Young

**Respondent:** Sky In-Home Service Limited

**Heard at:** Teesside **On:** 3 August 2018

**Before:** Employment Judge Johnson

***Representation:***

**Claimant:** In person

**Respondent:** Mr M Leon, Solicitor

## JUDGMENT ON PRELIMINARY ISSUE

It was not reasonably practicable for the claimant to present his claim form to the Employment Tribunal within the three months' time limit established by section 111 of the Employment Rights Act 1996. However, the claim was not presented to the Employment Tribunal within a reasonable period of time thereafter. Accordingly, the claim is out of time and the Employment Tribunal does not have jurisdiction to hear that claim. The claimant's claim of unfair dismissal is dismissed.

## REASONS

- 1 This matter came before me this morning by way of a public preliminary hearing. The sole issue to be decided at the hearing was whether the claim form alleging unfair dismissal had been presented to the Employment Tribunal within the three months' time limit established by section 111 of the Employment Rights Act 1996. If not, was it reasonably practicable for the claimant to have presented the claim form in time? If not, was the claim form presented within a reasonable period of time thereafter?
- 2 The claimant attended in person and gave evidence under oath. The respondent was represented by Mr Leon, solicitor. Mr Leon had kindly prepared a bundle of

documents for use at the hearing. That bundle is marked R1 and comprises an A4 ring binder containing 54 pages of documents.

- 3 By claim form presented to the Employment Tribunal on 23 February 2018, the claimant brought a single complaint of unfair dismissal. In section 5 "Employment details" the claimant states that he was employed as a "Sky engineer". In the box which asks the question "If your employment has ended, when did it end?" – the claimant has stated "Not sure". In its response form presented on 9 May 2018, the respondent states at section 4 that the claimant's employment with the respondent began on 1 October 2013 and ended when he was dismissed for gross misconduct on 5 April 2016. The claimant today confirmed that he accepted the effective date of termination of his employment as being 5 April 2016.
- 4 When the claim form was first presented, the Employment Tribunal by notice dated 13 April 2018 arranged a final hearing date of Friday, 3 August with a time estimate of one day. When the response was presented, the respondent pleaded that the effective date of termination of the claimant's employment was 5 April 2016 and that the claim form was not presented until 23 February 2018, "almost two years later". As a result of that pleading, Employment Judge Buchanan postponed the final hearing for 3 August and substituted a public preliminary hearing for consideration of whether the Employment Tribunal has jurisdiction to hear the claim of unfair dismissal, which appears to be out of time.
- 5 On 18 June 2018 Employment Judge Buchanan also made case management orders for the conduct of the preliminary hearing on 3 August. Those included orders for disclosure of documents and for the provision of witness evidence. Paragraph 3 of Judge Buchanan's orders states:-

"Witness evidence relevant to any of the issues to be determined at the public preliminary hearing will be in statement form and be exchanged between the parties by 4:00pm on 16 July 2018".

The claimant has not disclosed any witness evidence to the respondent. The claimant has not sent a witness statement to the Employment Tribunal. The claimant did not bring any such witness statement with him today. When asked by me why he had not done so, the claimant explained that he did not consider himself to be a "witness" and because he was not bringing any "witnesses" then it was not necessary for him to prepare a statement. Mr Leon confirmed that the respondent had written to the claimant seeking his witness statement and had also telephoned him on 31 July, to be told that the claimant would give oral evidence at the hearing.

- 6 I was satisfied that it would be possible for Mr Leon and myself to deal with any evidence given by the claimant today in that the claimant would have to explain why he had not presented his claim form within the relevant time limit and how that meant it was not reasonably practicable for him to have done so and if necessary thereafter to persuade the Tribunal that the claim form had been presented within a reasonable period of time once the time limit had expired.

- 7 The claimant gave evidence under oath. He confirmed that he had been dismissed on 5 April 2016 and that his appeal against dismissal had also been dismissed. The claimant confirmed that he contacted ACAS by telephone shortly thereafter with a view to commencing Employment Tribunal proceedings alleging unfair dismissal. The claimant's evidence was that he was told by ACAS that there was a fee to be paid to enable him to issue Tribunal proceedings. The claimant's evidence to me was that he was told by ACAS that he had to pay a fee of £1,300 "up front" plus a further £100 later, making a total of £1,400. The claimant at that stage decided that he was unable to afford the fee of £1,400 and therefore took no further action.
- 8 The claimant's evidence was that sometime in early February 2018 he was in the company of a friend in Fishburn Working Mens Club and mentioned to the friend that he had at one time considered bringing a claim of unfair dismissal against his former employer, but had decided not to do so because of the fee then payable. The claimant's friend then informed the claimant that the requirement to pay a fee to present a claim to the Employment Tribunal had been abolished. The claimant then contacted ACAS on 6 February 2018 and received the ACAS early conciliation certificate on 16 February 2018 and presented his claim form on 23 February 2018.
- 9 The claimant confirmed under oath that when he was dismissed by the respondent he could not claim any state benefits because he was still owed arrears of wages and unpaid holiday pay by the respondent and also because he had been dismissed for gross misconduct. The claimant borrowed money to purchase a van and set up his own business as a courier. That business continues to date. At the time of his dismissal the claimant was earning £1,700 net per month. He then had no capital or savings whatsoever. He had a credit card with a limit of £750 and would at that stage have been able to pay £250 towards the Employment Tribunal fees.
- 10 The claimant confirmed that he had previously purchased a house and had acquired the services of a solicitor to do so. He was aware of the names and locations of solicitors in Sedgfield and Ferryhill near to where he lives in Fishburn, County Durham. He was also aware of the existence and location of a Citizens Advice Bureau in Newton Aycliffe.
- 11 The claimant further confirmed under oath that he has a television and a radio in his van. He stated that he does not purchase a newspaper. The claimant stated that he was not aware of the Supreme Court decision which abolished Employment Tribunal fees until he was told about it by his friend in Fishburn Working Mens Club in early February 2018.
- 12 The Tribunal found it highly unlikely that the claimant would have been told by ACAS that he would have to pay £1,300 "up front" to present his claim, followed by a further £100 later. The fee regime in respect of an unfair dismissal claim required the claimant to pay £250 to present the claim and a further £950 prior to the main hearing. On the basis that fees had been discussed, the Tribunal found it more likely that the claimant would have been told exactly what sums were payable and when.

- 13 The Tribunal nevertheless accepted the claimant's evidence that the reason why he did not present the claim to the Employment Tribunal was because of the prohibitive fee which was then payable. At the very least, it was a substantial cause of the claimant deciding not to proceed with a claim to the Employment Tribunal. The Tribunal found it reasonable for this particular claimant to believe it to be a sufficient factor to dissuade him from issuing at all, let alone in time.
- 14 The claimant's evidence to the Tribunal was that he did not learn about the abolition of the fees regime until early February 2018 when he was told by a colleague in the local working mens club. The question which the Tribunal had to ask itself in these circumstances was whether the claimant ought to have known about the abolition of the Employment Tribunal fees any time before then. The Tribunal was satisfied that the Supreme Court Judgement in **R (on the application of Unison) v Lord Chancellor [2017 UKSC51]** was handed down on 26 July 2017. The Tribunal found that to be the date when the decision was published. It was not necessarily the date when the decision was "publicised" to the extent that ordinary members of the public ought to have been aware of it. The Tribunal was satisfied that the decision of the Supreme Court was widely publicised in both local and national press, on national television and on national local radio. The Tribunal found that anyone who had any kind of interest in Employment Tribunal proceedings was highly likely to have been made aware of the decision and its effect, during the immediate aftermath of the decision itself in July 2017. The Tribunal found it unlikely that the claimant would have been unaware of the decision.
- 15 Having found that it was not reasonably practicable for the claimant to have presented his claim within the original three months' time limit, the Tribunal then had to consider whether it was presented within a reasonable period of time thereafter. On the basis that the Supreme Court decision in **Unison** was widely publicised by 1 August 2017, that would then give the claimant three months from then (until 31 October 2017) in which to present his claim. That deadline might well have been extended by a further month to enable ACAS early consideration to take place. That would effectively give the claimant until 30 November 2017 in which to present his claim. The Tribunal found that the period up to and including 30 November 2017 would have been a reasonable period of time within which the claimant could and should have presented his claim form to the Employment Tribunal.
- 16 The claimant did not do so. The claim was not presented until 23 February 2018, almost a further three months thereafter. The Tribunal was not satisfied that the claim form was presented within a reasonable period of time after the original time limit had expired.
- 17 For those reasons, the claim is out of time and the Employment Tribunal does not have jurisdiction to hear the claimant's complaint of unfair dismissal, which is dismissed.

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EMPLOYMENT JUDGE JOHNSON

JUDGMENT SIGNED BY EMPLOYMENT  
JUDGE ON 29 August 2018

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