



EMPLOYMENT TRIBUNALS

Claimant: Mr S Rutherford

Respondent: British Broadcasting Corporation

Heard at: Manchester

On: 16 May 2019

Before: Employment Judge Ross

REPRESENTATION:

Claimant: Did not attend

Respondent: Mr G Graham of Counsel

JUDGMENT

The judgment of the Tribunal is that the claimant's claim for unfair dismissal was not presented within time. It was reasonably practicable for the claimant to present his claim within time. Accordingly the Tribunal does not have jurisdiction to hear his claim and it is struck out.

REASONS

1. This was a hearing to determine whether the claimant's claim for unfair dismissal was presented within time, and if not whether it was reasonably practicable for the claimant to present his claim within time. If not, was it presented within such further time as is reasonable (see section 111(2)(a) and (b) Employment Rights Act 1996).

2. At the outset of the hearing the claimant had not attended. A telephone call was made by the clerk to ascertain his whereabouts. He explained he did not believe he needed to attend.

3. I considered the information on the Tribunal file notifying the claimant of the hearing and requiring him to take particular steps, namely to produce a signed witness statement containing his evidence, to be sent to the respondent by 30 April 2019 and to bring two copies of that statement to the Tribunal.
4. I am therefore satisfied that the claimant was aware he needed to attend.
5. Furthermore, I was advised by the respondent that the claimant had not complied with that order.
6. I considered it was consistent with the overriding objective to continue with the hearing in the claimant's absence.
7. I turn to the legal test: was the claim presented within time? It was not.
8. The claimant was employed by the respondent as a QA Analyst from 17 January 2014 to 23 January 2018. Limitation expired on 22 April 2018. The claim was not presented to the Tribunal until 16 January 2019.
9. This is a very lengthy delay. The claimant, from, the language and tone of his emails, is clearly an intelligent man and able to seek advice. I was taken to emails in the bundle which show that the claimant was able to contact ACAS at the time of his resignation (see emails at pages 31 and 32A of the bundle).
10. There is no dispute that there was a lengthy ongoing grievance procedure. That of itself is not necessarily a reason why it is not "reasonably practicable" to present a claim within time. The claimant received a grievance outcome on 25 June 2018. He appealed it on 11 July 2018. The final outcome was given on 19 November 2018. The claimant alludes to stress in his claim form and his emails. However, there was no evidence to suggest that was the reason for the claimant's failure to present his claim before the deadline.
11. I take note of my judicial knowledge that ACAS staff are trained to provide individuals with information about time limits. The claimant contacted ACAS twice: the first time when he resigned (see his email at pages 32 and 32A) and again when he commenced early conciliation on 22 November 2018. The claimant, even if he suffered from stress, was able to engage with the grievance process and with ACAS.
12. Even if I am wrong about that and the claimant's failure to present a claim whilst the internal grievance procedure was ongoing means it was not "reasonably practicable" for the claimant to present his claim within time, I must consider whether he presented the claim within such further time as is reasonable. I find he did not.
13. The claimant commenced early conciliation with ACAS on 27 November 2018 but he did not present his claim until 16 January 2019, almost two months later. There is no explanation for that further delay.
14. Accordingly, having taken all of these factors into account I find it was reasonably practicable for the claimant to present his claim within time. If I am wrong

about that I find he failed to present his claim to the Tribunal within such further time as is reasonable.

15. His claim is dismissed because the Tribunal has no jurisdiction to hear it.

Employment Judge Ross

Date 17 May 2019

JUDGMENT AND REASONS SENT TO THE PARTIES ON

28 May 2019
FOR THE TRIBUNAL OFFICE

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