



EMPLOYMENT TRIBUNALS

Claimant: Mr M Ingham

Respondent: Craven College

HELD AT: Leeds

ON:

6 June 2019

BEFORE: Employment Judge Shulman

REPRESENTATION:

Claimant: In person

Respondent: Miss H Tattersall, Solicitor

JUDGMENT

1. The Claimant's claim for unfair dismissal is out of time and time will not be extended and the claim therefore is dismissed.
2. The full hearing date of 13 and 14 August 2019 is hereby vacated.

REASONS

1. Issues

This is an application for an extension of time for the Claimant's unfair dismissal claim on the grounds that it would be reasonably practicable to do so. The hearing was ordered by Employment Judge Little on 20 March 2019, when the Claimant was also ordered to prepare a witness statement setting out "in full the reasons why he did not present his claim in time", amongst other things.

2. The law

The Tribunal has to have regard to the following:-

- 2.1. Section 111(2)(b) of the Employment Rights Act 1996 requires a Tribunal to consider a complaint presented before the end of the period of three months beginning with the effective date of termination 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 the period of three months.
- 2.2. What is reasonably practicable is a question of fact and thus for the Tribunal to decide. As Shaw LJ put it in **Wall's Meat Co Limited v Khan** [1979] ICR 52 CA "the test is empirical and involves no legal concept. Practical common sense is the key note ..."
- 2.3. The onus of proving the matters in question rests on the Claimant. That imposes upon the Claimant a duty to show precisely why it was that he did not present his complaint in time. See **Porter v Bainbridge Limited** [1978] ICR 943 CA.

3. Facts

The Tribunal having carefully reviewed all the evidence (both oral and documentary) before it finds the following facts proved on the balance of probabilities:

- 3.1. The Claimant now has just one claim, namely, for unfair dismissal.
- 3.2. The parties agreed with the Tribunal the following dates:
 - Effective date of termination – 31 August 2018.
 - Expiry of the three month period pursuant to section 111(2)(a) Employment Rights Act 1996 – 30 November 2018.
 - Date of receipt of ACAS of the early conciliation notification – 22 October 2018.
 - Date of issue by ACAS of the early conciliation certificate – 20 November 2018.
 - Last date for issuing proceedings taking into account early conciliation – 29 December 2018.
 - Claim actually presented – 23 January 2019.
- 3.3. In his statement the Claimant gives the reasons as to why he was out of time. He says that he encountered difficulties in meeting the time limit because:
 - (a) On 30 October 2018 his youngest son, Fraser, was rushed into hospital with a severe chest complaint. Fraser was discharged by 4 November 2018 although he was naturally unwell for some time thereafter.
 - (b) The Claimant's youngest daughter, Nancy, has Down Syndrome. Aspects of her condition which are severe are sleep apnoea and immune deficiency and they cause chronic sleep disruption for Nancy, Mrs Ingham and the Claimant. Without belittling the situation with Fraser, the position with Nancy is obviously more difficult.

- 3.4. Mr Ingham works full-time but he can gain flexibility for time off as he is a supply teacher.
- 3.5. Mrs Ingham does not work and is full-time at home.
- 3.6. Mr Ingham accepts that his medical condition to which he refers in his witness statement although unpleasant would not prevent him from filling in an application to an Employment Tribunal.
- 3.7. As far as the Claimant's knowledge of the time limits is concerned the Tribunal is satisfied that the Claimant was aware of the time limits. He admitted himself that he went on the Gov.Uk website. During the hearing I showed him that at the beginning it said in bold that "you usually have to make a claim to the Tribunal within three months of your employment ending .." The Claimant was vague as to whether he read this particular part of the website, but he was not vague about being told that discrimination was subject to a three month time limit by ACAS.
- 3.8. Somehow during the hearing the Tribunal became side tracked by new evidence introduced by the Claimant, which was not in his witness statement, namely, that his original claim of redundancy, being subject to a six month time limit, governed the original discrimination claim as to time (despite that being subject to a three month time limit) and the re-labelled unfair dismissal claim (also subject to a three month time limit) so that the discrimination claim at least was subject to a six month time limit because it was governed by the now struck out redundancy claim.
- 3.9. The Claimant could not say why he had not introduced this argument into his witness statement. Nor indeed why he did not mention or perhaps ask Employment Judge Little about it.
- 3.10. The Claimant does not know where he got the idea of a six month time limit for unfair dismissal from.
- 3.11. Apart of course for caring for Nancy in the relevant period (excluding Fraser's hospitalisation which was obviously also significant) the Claimant provides no explanation for a failure to issue proceedings apart from belief that unfair dismissal is subject to a six month time limit and not a three month time limit.

4. Determination of the issues

In the absence of factual or legal submissions of the parties the Tribunal finds:

- 4.1. The onus is on the Claimant to show that time should be extended. Even if the Tribunal had not been side tracked by the six month point there was no real timetable available which properly explained why he lodged his claim late.
- 4.2. Whilst the Tribunal understands the Claimant's family problems the Claimant has not discharged the onus upon him to show that time should be extended and therefore his claim for unfair dismissal is dismissed.

4.3. Accordingly the dates set for a full hearing are hereby vacated.

Employment Judge Shulman
Date_6 June 2019