



EMPLOYMENT TRIBUNALS

Claimant
Mr K Khelifi

v

Respondent
Asda Stores Limited

PRELIMINARY HEARING

Heard at: Watford in public

On: 3 May 2019

Before: Employment Judge R Lewis

Appearances:

For the Claimant: No attendance or representation

For the Respondents: Mr J Wallace, Counsel

JUDGMENT

1. The tribunal has no jurisdiction to hear this claim which is struck out.

REASONS

1. These reasons are given in the interests of justice, due to the absence of the claimant.
2. The tribunal file shows the following procedural history: -
 - 2.1 It appears common ground that after a number of years employment by the respondent the claimant was dismissed, and that the effective date of termination was 26 September 2017.
 - 2.2 Day A was 18 October and Day B was 13 November.
 - 2.3 On 31 January 2018, the claimant's then solicitors, Messrs Law Dale presented a claim form which was accepted at the Leeds Employment Tribunal on that day.
 - 2.4 The claim form was almost entirely blank, and it is at best arguable as to whether it was, as presented, in a form which could sensibly be responded to. It ticked boxes for notice pay and arrears of pay, and for disability discrimination.

- 2.5 It appears to have been accompanied by an application for remission of fees, although fees had been abolished some months previously.
- 2.6 The tribunal file does not show how or when the claim was transferred to Watford, or served.
- 2.7 On 10 April 2018, Messrs Law Dale emailed the tribunal at Watford a second copy of the ET1, to which was attached a document headed "Claim details".
- 2.8 The second ET1 and the details differed from the first, in that in the second the unfair dismissal box was ticked, and the attached details set out a claim for unfair dismissal, but were silent on a claim for disability discrimination.
- 2.9 On 21 June, Messrs Pinsent Masons, on behalf of the respondent, returned grounds of resistance and form ET3, which had been left mostly blank between boxes 2.4 and 5.4 inclusive.
- 2.10 On 13 August, Messrs Law Dale withdrew. Their notification of this to the tribunal was not compliant with Rule 92.
- 2.11 A preliminary hearing had been listed for 20 August, in accordance with the usual practice in a claim of discrimination. In circumstances not clear from the file, that hearing did not proceed.
- 2.12 A preliminary hearing was relisted for 20 November. That was done by letter of 3 October, mistakenly sent by the tribunal to the claimant's former solicitors.
- 2.13 On about 9 October, Messrs Law Dale reminded the tribunal that the claimant had withdrawn their instructions.
- 2.14 On 10 October, the tribunal wrote to the claimant, correctly addressed to the home address on the ET1, to give him notice of the preliminary hearing which was then listed for 20 November.
- 2.15 On 25 October, the respondent changed solicitors.
- 2.16 The 20 November hearing did not proceed, due to resource issues in the tribunal.
- 2.17 The tribunal sent letters dated 29 November 2018 and 12 January 2019 to the claimant at the correct home address and to the respondent at the new solicitors' address to give notice of postponement of the November hearing and listing of this hearing.
- 2.18 At the start of this hearing and at my request, a tribunal clerk telephoned the claimant on the mobile number which was on form ET1 and left the message that the hearing was due to start. The claimant did not attend.

3. The matter before me was relatively straightforward and I proceeded in accordance with Rule 47. It was common ground, confirmed by the claimant's then solicitors, that his employment ended on 26 September 2017.
4. The original primary limitation date was 25 December 2017.
5. Early conciliation lasted 26 days. That extended limitation to 20 January 2018. The claim was presented on 31 January 2018.
6. The claim presented on 31 January was out of time. The claims for notice pay and arrears could be accepted out of time if it was shown by the claimant that it had not been reasonably practicable for the claim to have been presented within time. There was no such material. I noted that the claim had been presented by solicitors.
7. The claim for disability discrimination (which was ticked on the January ET1), could be accepted out of time if it was shown by the claimant that it was just and equitable to extend time to do so. There was no material before the tribunal in support of that contention.
8. The claim presented on 31 January 2018 is therefore struck out.
9. Mr Wallace asked me to deal with the document received on 10 April 2018.
10. The tribunal file shows a question having been raised as to whether it was a second ET1. I find that it was not, because it was purportedly presented by being emailed direct to the tribunal, and therefore not presented in accordance with the Presidential Guidance.
11. As it was not a fresh ET1, it could be considered an application to amend the original ET1, by introduction of a claim of unfair dismissal. As I have struck out the January ET1, the logic of my ruling is that there was, in April, nothing to amend, and therefore any application to introduce a claim of unfair dismissal by amendment must fail.
12. If I were wrong about that, I would refuse any application to amend on its merits. It has been made significantly out of time, during a period throughout which the claimant was professionally represented, and without any submission or explanation as to lateness. The introduction of a claim of unfair dismissal, purportedly in April, would have been a significant amendment to the almost entirely blank ET1 of January 2018. If therefore I had jurisdiction to consider the April document as an application to amend the January ET1, the application would have been refused on its merits.

7/5/2019

Employment Judge R Lewis

Sent to the parties on:28/5/2019

For the Tribunal:

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