



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr P T Roberts

v

Kilmeena Limited

Heard at: Leeds

On: 12 July 2019

Before: Regional Employment Judge Robertson (sitting alone)

Representation

Claimant In person

Respondent Miss H Baynes, solicitor

WRITTEN REASONS

1. On 15 April 2019 the claimant, Mr Roberts, presented this claim to the Tribunal. He complained that the respondent, Kilmeena Limited, had unfairly dismissed him and had breached his contract of employment in respect of his notice period.
2. On 12 July 2019 I conducted a Preliminary Hearing in the case. I concluded that:
 - a. The claimant had not presented his complaints of unfair dismissal and breach of contract to the Tribunal within the periods set out in section 111(2) of the Employment Rights Act 1996 and article 7 of the Employment Tribunals Extension of Jurisdiction (England & Wales) Order 1994.
 - b. The Tribunal therefore could not consider the complaints which were dismissed.
3. Put simply, I dismissed the claimant's complaints because he had presented them to the Tribunal out of time.
4. By letter dated 16 July 2019 the claimant requested written reasons for my decision. These are the written reasons.
5. The claimant appeared in person at the Preliminary Hearing. He gave sworn evidence. The respondent was represented by Miss H Baynes, solicitor. She did not call any evidence. Neither party asked me to consider any documents.
6. Section 111(2) of the Employment Rights Act 1996 provides that an employment tribunal shall not consider a complaint of unfair dismissal unless it

is presented to the tribunal (a) before the end of the period of three months beginning with the effective date of termination of employment, or (b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the claim to be presented before the end of that period of three months.

7. The time limit for presenting a complaint of breach of contract under article 7 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 is effectively the same and I do not need to set out the terms of article 7.
8. The extension of the time limit under section 111(2A) of the 1996 Act and article 8B of the 1994 Order for early conciliation purposes does not assist the claimant because he did not commence early conciliation until 8 April 2019, by which date the primary time limit had already expired.
9. The relevant facts are as follows. The claimant was dismissed by the respondent without notice on 22 October 2018. The primary time limit for presenting his claim to the Tribunal therefore expired on 21 January 2019. He attempted to present his claim on 10 April 2019 but it was rejected by the Tribunal under rule 12(1)(e) of the Employment Tribunals Rules of Procedure 2013 because the names of the respondent on the ACAS Early Conciliation Certificate and in the claim form were different. He corrected that defect on 15 April 2019 which under rule 13(4) became the date of presentation of the claim. This was almost three months after the expiry of the primary time limit.
10. The respondent is a management consultancy. Its sole shareholder and Director was the claimant's partner, Ms Meehan. It was she who dismissed the claimant on 22 October 2018, following the ending of their relationship, as well as requiring him to leave the home they and their young son shared.
11. The claimant had several issues arising from the separation which required his attention. He had to search for new employment. There were difficulties in the access arrangements to his son. On being required to leave the family home, he was effectively homeless, and although he moved into his elderly mother's home, which she rented from him, he had make alternative accommodation arrangements for his mother, so he could occupy the property she rented from him and provide bedroom accommodation for his son. This required him to negotiate with the council, bid for property and eventually move his mother to her new home, all of which took from November 2018 to February 2019. He continued to have caring responsibilities for his mother, who has dementia. After she moved to council accommodation in February 2019, he had to undertake repairs to her former property. He was under considerable pressure and he told me "*I don't know how I would have had time to do it [present a Tribunal claim], I had so many things to do.*"
12. The claimant saw solicitors on three occasions and consulted the CAB but this was about his situation generally, particularly access to his son, and he did not seek any detailed advice about an employment claim. He knew that there would be a time limit for going to Tribunal – as he said to me "*There's a time limit for everything*", but he did not research what it was. He was surprised when he discovered how short the time limit was.
13. On 22 March 2019, on the advice of a friend, the claimant spoke to ACAS about a claim, and they advised him of the time limit. He knew then that the claim was out of time, but when he explained the problems he had had, the ACAS officer

seemed to accept them. He did not approach ACAS for early conciliation until 8 April 2019; that ended on 9 April 2019 and he attempted to present the claim the following day. In evidence, he was unable to explain the delay between 22 March 2019 and 8 April 2019.

14. The claimant also told me he was fearful of presenting a claim because he thought Ms Meehan would deny him access to his son (which he told me had indeed happened after she became aware of the claim). He said Ms Meehan had been difficult about access when they had had earlier misunderstandings. I was not convinced this was a major factor in the delay; he did present the claim in April 2019 when the risk remained, and I find that the reason for the delay was that the claimant had other priorities occupying him, and he did not look into what was required to pursue a claim until he spoke to ACAS on 22 March 2019 on the advice of a friend and until then, was unaware of the time limit.
15. The claimant submitted that it had not been reasonably practicable to present the claim earlier. He had had a lot of more pressing priorities to attend to. He said the claim should be allowed to proceed.
16. Miss Baynes contended that the claimant's other priorities did not make it not reasonably practicable to present the claim in time. He was able to attend to other priorities and consult solicitors and the CAB. He simply did not look into the time limit to make a Tribunal claim. Even after the expiry of the time limit, another three months elapsed and once he knew about the time limit, there was more unexplained delay from 22 March 2019 to 8 April 2019. The claim, she said, was out of time and should be dismissed.
17. My conclusions are as follows. It is not in dispute that the claimant presented his complaints outside the primary three-month time limit. The date of termination of his employment was 22 October 2018 so that period expired on 21 January 2019. The claim was presented on 15 April 2019, almost three months out of time.
18. The issue then is whether the claimant can rely on the "not reasonably practicable" escape clause. That requires me to decide (1) whether it was not reasonably
19. practicable to have presented the complaints within the three-month period and (2) if so, did the claimant present the complaints within a reasonable period thereafter.
20. Reasonable practicability is a question of fact and practical common sense: *Wall's Meat Company v Khan* 1979 ICR 52. Reasonable practicability means more than reasonable but less than possible: *Palmer v Southend-on-Sea Borough Council* 1984 ICR 372.
21. I find that it was reasonably practicable to have presented the claim within the three-month time limit. I accept that the claimant had pressing matters to attend to following the events in October 2018, but he was able to attend to them and to seek advice from solicitors and the CAB. He could similarly have addressed his employment situation, and the fact that he did not do so and concentrated on his other priorities did not render it not reasonably practicable to have made his claim to the Tribunal in time. I accept that he did not know what the time limit was, and so did not realise there was any urgency, until ACAS told him on 22 March 2019, by which time it had already expired, but he knew there would be a time limit, and he did not make what would have been a very straightforward

enquiry to identify what it was. His ignorance of the time limit was not reasonable when he could easily have made enquiries to find out what it was.

22. That is sufficient to dispose of the claim, as the question of whether the claimant presented the claim within a reasonable time after the three-month time limit only arises if, contrary to my conclusion, it was not reasonably practicable to have presented it within that time. But for completeness, I find that the claimant did not present the claim within a reasonable time after the expiry of the three-month period. From mid-January to mid-April, the position was unchanged; he still did not investigate the possibility of a Tribunal claim or enquire as to the time limit. That was even when the pressure on him had reduced once, in mid-February 2019, he had resolved the issue of his mother's accommodation. And there is a further problem for him: even when he discovered the time limit from ACAS on 22 March 2019, and would have been expected to get on with the claim, he failed to act promptly; there was a wholly unexplained and unreasonable further delay of 17 days until he contacted ACAS for early conciliation on 8 April 2019 and a total of 24 days until he finally presented the claim on 15 April 2019.
23. The result of this is that the claimant did not present his complaints to the Tribunal within the primary three-month time limit, when it was reasonably practicable for him to do so; nor did he present them within a reasonable time thereafter. The complaints are out of time, the Tribunal cannot consider them, and I therefore dismiss them.

Regional Employment Judge Robertson

Date: 23 July 2019

Sent to the parties on:

23 July 2019