



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr M Oddy

v ABM Technical Solutions Limited

Heard at: Watford

On: 28 June 2019

Before: Employment Judge Wyeth

OPEN PRELIMINARY HEARING

Appearances:

For the Claimant:

not in attendance

For the Respondent:

Mr J Chambers (solicitor)

JUDGMENT

1. The correct name of the respondent is ABM Technical Solutions Limited.
2. The claimant's complaints of unfair dismissal, unpaid holiday pay, breach of contract (failure to pay notice) and statutory redundancy pay are out of time. No good reason has been given as to why it was not reasonably practicable for the claim to be presented within time and why it would be reasonable to extend time and, accordingly, time is not extended.
3. The claimant's claim is dismissed in its entirety as all complaints are out of time and the tribunal therefore has no jurisdiction to hear those complaints.

REASONS

4. By way of a claim form issued on 26 November 2018, the claimant brought complaints of unfair dismissal, breach of contract (failure to pay notice), unpaid holiday pay, and a redundancy payment. The claimant has also ticked the box "other payments" at box 8.1 but does not identify any further claims or causes of action in the claim form or the particulars attached.

5. The claimant does not dispute that his employment with the respondent terminated on 6 April 2018. Indeed this is the effective date of termination he specifies in paragraph 5.1 of his claim form. The claimant says his dismissal by reason of redundancy was unfair and that he was unfairly selected for dismissal. The respondent says that his dismissal was by reason of redundancy and was fair in all the circumstances. The respondent also maintains that the claimant was paid all monies due to him at the end of April 2018 including holiday pay, notice pay and a redundancy payment. The respondent has produced evidence in support of that position by way of the claimant's final payslip. On the basis of that evidence, it is not clear why or how the claimant says he has not been paid the sums he is claiming beyond his complaint of unfair dismissal. Furthermore, the claimant has not specified in his particulars of claim why or how such claims arise and does not appear to refer to these complaints at all despite having ticked the relevant boxes on the ET1 form referred to above.
6. The claimant did not commence ACAS Early Conciliation ("EC") until 9 October 2018. According to the EC certificate, notification was received on that date and the certificate was issued by email on 24 October 2018. Save for his complaint seeking a redundancy payment, the latest date by which he should have commenced ACAS EC in respect of his complaints was 5 July 2018. With regard to his claim for a redundancy payment, the claimant should still have commenced ACAS EC by no later than 5 October 2018 notwithstanding the longer limitation period for that particular complaint.
7. His claims have, therefore, been submitted out of time.
8. In accordance with standard procedure, the claim was listed for a closed preliminary hearing for today, 28 June 2019 to enable the claim to be properly case managed. That hearing was converted to an Open Preliminary Hearing for three hours to determine the preliminary issue of whether the claims were out of time such that the tribunal has no jurisdiction to hear them.
9. The hearing today was scheduled to commence at 10am. The claimant sent an email to the tribunal at 9.26am this morning from an email address mark.oddy34@yahoo.com. That is not an email address that the claimant has previously provided to the tribunal. That email was copied to the respondent's solicitor, Mr Chambers. In that email the claimant states:

"I have a preliminary case hearing today, but unfortunately have been confirmed yesterday as having norovirus, and as such cannot attend public places. I am able to supply a GP letter to this affect.

I contacted the Defendants [sic] solicitor yesterday to inform them or [sic] my non-attendance today, but could not get through to the Tribunals [sic] as it was late in the day.

I would respectfully request a new date due to this unavoidable unattendance [sic]. I have a wealth of evidence to prove my case, and but for my recent illness, I believe I would succeed in my application to progress to a tribunal claim.

This is very stressful for me as I am acting as a Litigant in Person, and as such I am unaware of due process? I do not wish to be denied this opportunity caused by my unavoidable attendance down to illness."

10. The hearing this morning did not commence until just after 10.30am because Mr Chambers was held up by being caught on a broken down train on his way down from Chester. Needless to say, the claimant was not in attendance. At the commencement of the hearing, Mr Chambers (who is a solicitor and thus has a professional duty not to mislead this tribunal) informed me that, contrary to what the claimant had asserted in his email to the tribunal this morning, the claimant had not made any contact with him at all the previous day. In fact, according to Mr Chambers, the claimant has not engaged in any communication with Mr Chambers or his firm since this claim was issued despite numerous letters having been sent to the claimant by Mr Chambers on behalf of the respondent. Indeed, Mr Chambers produced a bundle of correspondence warning the claimant of an intention by the respondent to pursue an application for costs against him on the basis that his claim lacked merit and was being unreasonably pursued. Furthermore, the claimant had not engaged with Mr Chambers in any way in relation to the preparation required for today's Open Preliminary Hearing.
11. Aside from the claimant's apparent lack of engagement in the process to date, I was deeply troubled by the misleading statement contained in his email to the tribunal this morning. It has caused me to have genuine doubts about the truth of the claimant's ability to attend any hearing today. These doubts are compounded by the fact that the claimant has produced no medical evidence to support his assertion that he was unfit to attend this hearing. Furthermore, the claimant has made no attempt to explain, even if he was able to attend today's hearing, why it was not reasonably practicable to submit his claim in time or, if it was not reasonably practicable, why it was submitted in a reasonable period of time thereafter. He has also failed to explain why any of his claims (other than that of unfair dismissal) are in any way arguable before this tribunal given the respondent's stated defence (that these have all been paid) and the evidence that has been produced in support of this defence.
12. I considered whether it was appropriate and in the interests of justice to postpone today's hearing due to the claimant's absence. Ultimately, for the reasons stated above and the submissions made by Mr Chambers' submissions, I determined that, on balance, it would not be in the interests of justice to postpone this hearing nor would it be in accordance with the overriding objective. I also had particular regard to the Presidential Guidance – Seeking a Postponement of a Hearing (2013) when reaching this decision.
13. Even if the claimant had been in attendance or had good reason for not attending today, he has provided no evidence or explanation in support of any application to extend time, contrary to the Orders made in the tribunal's correspondence to the parties date 13 December 2018 and clarification provided by EJ Lewis in tribunal correspondence dated 3 February 2019.
14. Despite being ordered to do so well in advance of today's hearing, the claimant has provided no reason or explanation for why it was not reasonably practicable to present his claims in time or why (if it was not reasonably practicable) he presented his claims within a reasonable period

thereafter. He has failed to do so even though he refers in box 15 of his ET1 form to the fact that he has consulted the CAB, ACAS and an employment law solicitor. Accordingly, notwithstanding his absence today, the claimant's claim is dismissed in its entirety as all complaints are out of time.

Employment Judge Wyeth

Signed on: 3 July 2019

Sent to the parties on: .29.07.19.....

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For the Tribunal Office