



EMPLOYMENT TRIBUNALS

Claimant: Mr. G. Shortland

Respondent: Royal Mail

Heard at: London South Croydon **On:** 21 August 2019

Before: Employment Judge Sage

Representation

Claimant: In person

Respondent: Mr. Kemp Trainee Solicitor

JUDGMENT

The Claimant's claim for unfair dismissal was presented outside of the time limits set down in Section 111 Employment Rights Act 1996 and is dismissed.

REASONS

The reasons were requested by the Claimant.

1. By a claim form presented on 27 February 2019, the Claimant claimed unfair dismissal. The claim form showed that the Claimant had been employed for 18 years as a Delivery Office Manager and was dismissed for gross misconduct on 30 October 2018. He stated that the procedure followed was fundamentally flawed in a number of respects and he was dismissed by the Royal Mail to avoid paying him a redundancy payment.
2. The Respondent's response was that the claim was presented out of time as he entered into early conciliation on 2 January 2019, and a certificate was presented the same day, they state the last date on which the Claimant could present his claim was on 2 February 2019. However, he did not present his claim until 27 February. The Respondent stated that the tribunal did not therefore have jurisdiction to hear the claim as it was out of time. The Respondent went on to defend the claim for unfair dismissal, stating that it was fair and within the band of reasonable responses.
3. Neither party produced any documents at the hearing and there were no witness statements or bundles.

The Issues.

4. At the start of the hearing, the issues were identified under section 111 of the Employment Rights Act to be as follows:
 - a. Did the Claimant present the claim within the primary limitation period?
 - b. If not, was it reasonably practicable to present his claim within that time?
 - c. If it were not reasonably practicable to present the claim in time was it presented within such further period as was reasonable.
5. The date of termination was 30 October 2018, therefore, the primary limitation period without the ACAS extension ended on 29 January 2019. The Claimant contacted ACAS on 2 January 2019, and conciliation lasted for one day, time was therefore extended until **2 February 2019**.
6. The **Respondent's** brief submissions were oral and stated that the Claimant contacted ACAS on 2 January had an extension until 2 February but failed to present his claim until 27th of February 2019. The Claimant had access to the Internet at all times and could have found out details about tribunal time limits. It was stated that the Claimant also had the assistance of the CWU representative Miss Rodriguez throughout the disciplinary process and CWU would have been aware of the time limits. It is the Respondent's position that the claim is 25 days out of time and there is no reason as to why this is the case.
7. The **Claimant's** oral submissions were that he was too ill at the time to take legal action. He had suffered swollen glands had glandular fever at Christmas time and was suffering from anxiety and depression although he had not brought the medical records with him. He confirmed to the tribunal that he was not a member of the CWU but was a member of Unite the union. He told the tribunal that he had never presented a claimed to the employment tribunal before and did not realise that he could put a claim in by himself. He confirmed that he spoke to ACAS on 2 January and he misunderstood the time limits. He told the Tribunal that when he contacted ACAS they told him that early conciliation would stop the clock for a month and he therefore presumed that he had a further 27 days to present a claim after one month had expired, which took him up to 1 March 2019. He also said that Unite had given him the wrong information. He stated that he had evidence of how he tried to sort it out with his trade union and how they were uncooperative.
8. The Claimant stated that on 20 February 2019 he sent an email to the South East Divisional Secretary for Unite, which was addressed to his work colleague, to chase Mr Steve Rowlett for legal support. He added at the end of his submissions that between the dates of the 2 January 2019 and the 20 February 2019 there were at least 7 emails to his union where he was chasing for an update, if they had told him at the start that they were not prepared to support him, he would have contacted ACAS earlier. He was only aware he was not getting help then.

9. The Claimant added that after phone calls on the 25th and 26 February, it became apparent that he was “on his own” and then did everything in his power and spoke someone in the tribunal office, then submitted his claim on the 27 February. He confirmed that he had provided the clerk with a copy of his mobile phone records which confirmed the date that he telephoned ACAS.
10. The Claimant indicated to the Tribunal that he was claiming discrimination as well as unfair dismissal.

The Law

Employment Rights Act 1996

111 Complaints to employment tribunal

- (1) A complaint may be presented to an [employment tribunal] against an employer by any person that he was unfairly dismissed by the employer.
- (2) [Subject to the following provisions of this section], an [employment tribunal] shall not consider a complaint under this section unless it is presented to the tribunal—
 - (a) before the end of the period of three months beginning with the effective date of termination, 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 complaint to be presented before the end of that period of three months.

Decision

11. The first issue to be dealt with is whether this is a claim for unfair dismissal alone or whether there is also a claim for discrimination as the time limits for the two types of claims are different. The Claimant maintained during his submissions that he was claiming discrimination and as he was a litigant in person when he completed the form and at this hearing, I spent some time considering whether the claim could on a common-sense reading be taken as a claim for discrimination.
12. It was noted that the claim form did not indicate that he was claiming discrimination. He had not ticked the box to indicate he was claiming discrimination, he only ticked the box for unfair dismissal. He also did not indicate on what grounds he was claiming discrimination. Looking at the wording of the ET1, it referred to what the Claimant described as an inherently flawed disciplinary process, where those who complained about him and gave evidence against him were given promotion. He referred to others being handed out less draconian sanctions for more serious offences, this was in relation to the unfairness of the outcome. The Claimant also stated he was dismissed by Royal Mail to avoid paying him a redundancy payment, this again was only in relation to an unfair dismissal claim. The claim form therefore reflected in the narrative in box 8 and in the boxes that he ticked, that his only claim was unfair dismissal and not discrimination. That being the case the relevant law in relation to time limits is under Section 111 Employment Rights Act 1996 which is set out above.

13. The law states that an Employment Tribunal shall not consider a complaint unless it is presented within three months of the effective date of termination. These time limits are applied strictly. The effective date of termination was agreed to be the 30 October 2018, the time limit expired on 29 January 2019. As the Claimant entered into early conciliation during the primary limitation period, he gained an extension for the time he was in early conciliation, plus one month. As he was in conciliation for one day the clock was stopped for that day and then he had a further month to present his claim, which expired on the 2 February 2019.
14. The Claimant explained that he was unable to present his claim before 2 February number of reasons. Firstly, that over Christmas he had been unwell and that he had been given the wrong advice by ACAS as to the effect of early conciliation and that his union had failed to get back to him, despite chasing.
15. The tribunal accepts that it must have been distressing to have been dismissed and it is also accepted that the Claimant was unwell over the Christmas period and for a period of time he may not have been well enough to present his claim. However there was no evidence to suggest that for the entire period from the date of termination to the 2 February, it was not feasible for him to complete the claim form and send it in to the tribunal.
16. Although the Claimant stated he was given the wrong advice by ACAS about the clock stopping this was something that he had misinterpreted. The Claimant had wrongly assumed that he would be granted a one month extension for conciliation, even though this lasted for one day only. This assumption was incorrect, and he should have checked his facts on the Internet, especially in the light of his submission that this was the first time that he had pursued a claim. The Tribunal noted that there are a number of web sites providing advice on how to present a claim in Tribunal including the Government website that give advice on early conciliation and their effects on time limits. The Claimant had access to the internet at all times and it was noted that in his oral submissions he read out an extract from a website providing clarification on time limits.
17. There was no evidence before the tribunal to suggest that during the primary time limitation period from 30th of October to 2 February, it was not reasonably practicable for the Claimant present his claim for unfair dismissal.
18. Even if I am wrong and it was not reasonably practicable for the Claimant to present his claim in time, I will go on to consider whether he presented his claim within such further period as was reasonable. I conclude that a reasonable further period would have been two or three days at the most. The Claimant dealt with this period in his submissions, stating that he had sent at least seven emails to his union chasing them up and blamed their failure to respond for his failure to present his claim in time. However, it was the Claimant's responsibility to ensure he complied with time limits and at the time he had the assistance of his work place representative Ms Rodriguez and could have contacted other agencies such as Citizens Advice or Local Law Centres or he could have conducted an internet search on how to put in a claim and in respect of time limits.

19. There was no evidence that from the 2 February to the 27 February that the Claimant was suffering from any impediment that prevented him pursuing this matter. There was no evidence of ill-health or incapacity that made it impossible or more difficult to discover the process for submitting his claim and presenting it.
20. There was no evidence that he took all reasonable steps from the 2 February to the 27 February to find out his rights and pursue the claim in an expeditious manner. I conclude therefore that the Claimant did not present his claim within such further period as was reasonable by delaying a further 25 days after the expiry of the primary time limitation period on 2 February.
21. The Claimant's claim is out of time and is dismissed.

Employment Judge **Sage**

Date: 21 August 2019