



EMPLOYMENT TRIBUNALS

Claimant: Mr Q Buchanan

Respondent: City Facilities Management (UK) Limited

Heard at: Middlesbrough **On:** 4 November, 2019

Before: Employment Judge Nicol

Representation

Claimant: did not appear

Respondent: Mr S O'Connor, solicitor

JUDGMENT

Upon the claimant failing to attend and the Tribunal being satisfied that it was appropriate to proceed in his absence and after hearing the respondent, the judgment of the Tribunal is that the claimant's complaints should be dismissed in their entirety on the basis that

- 1 the complaints were presented outside the prescribed time limit and it is not just and equitable to extend time to the date when they were presented and/or
- 2 the complaints were presented outside the prescribed time limit and it would have been reasonably practicable for them to have been presented before the date on which they were presented and/or
- 3 his claim for a redundancy payment does not have any reasonable prospect of success

and it be noted that the correct name of the respondent is City Facilities Management (UK) Limited

REASONS

1 This case was originally listed for a private preliminary hearing for case management directions to be given and notice for a hearing today was sent to the parties on 11 September, 2019, setting out the start time as 11.30. Subsequently an amended notice was sent to the parties saying that the hearing was to be converted to a public hearing at which it would be decided 'whether this claim was presented outside the time limit and, if so, whether there are grounds upon which the Employment Tribunal may nevertheless consider it' with the starting time given as 10.00. The Tribunal was satisfied that both of these notices had been properly sent to the claimant and/or his representative.

2 Despite starting the hearing later than specified in the notice the claimant failed to attend this hearing or to send in written representations. The Tribunal considered that it was appropriate to proceed in the absence of the claimant.

3 The claimant completed the Form ET1 to show that he intended to claim that he was unfairly dismissed, that he had not received payments in respect of notice, holiday pay and arrears of wages, that he had not received a redundancy payment and that he suffered discrimination on the protected grounds of race and religion. In the text supporting his complaint, he sets out the circumstances of his dismissal but does not make any express or implied reference to allegedly being discriminated against on the ground of race and/or religion.

4 The time limits for presenting complaints to a Tribunal and the extent to which a Tribunal has discretion to extend them is set out in Section 23 (deductions from wages), and Section 111 (unfair dismissal) of the Employment Rights Act, 1966, and Regulation 7 (breach of contract/notice pay) of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order, 1994. In each case the prescribed time is three months or 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.

5 The prescribed period in respect of claims for a redundancy payment is set out in Section 164 of the Employment Rights Act, 1996.

6 Section 123(1) of the Equality Act, 2010, which is relevant to complaints relating to disability, states that

...proceedings on a complaint within Section 120 may not be brought after the end of

(a) the period of three months starting with the date of the act to which the complaint relates or

(b) such other period as the Employment Tribunal thinks just and equitable.

7 The claimant was dismissed by the respondent on 17 April, 2019. He notified ACAS of his complaints on 11 July, 2019, and a certificate was issued by ACAS on 11

July, 2019. The Form ET1 was submitted to the Tribunal on 14 August, 2019. Accordingly, it appeared that the Form ET1 was submitted outside the time limits prescribed by the Employment Rights Act, 1996, (unfair dismissal), the Extension of Jurisdiction (notice pay), the Working Time Regulations (holiday pay) and the Equality Act, 2010 (discrimination on the grounds of race and religion), even after taking into account Section 207B of the Employment Rights Act, 1996 (early conciliation).

8 The claimant has a representative although it is not apparent whether that representative has or claims to have any expertise in respect of matters of this type. However, the claimant had complied with the early conciliation provisions and it is therefore not unreasonable to assume that he was aware of the procedures that apply to commencing proceedings before the Tribunal and that time limits applied to the submission of his complaints.

9 The claimant does not give any indication as to why his complaints were submitted outside the prescribed time limits in the Form ET1 or otherwise.

10 In relation to all of the complaints, except those relating to redundancy and alleged discrimination, the Tribunal must consider whether the complaints were brought within the prescribed period or, if not, whether it was reasonably practicable for the complaints to be brought within that period and, if not, the period in which it would have been reasonably practicable to bring them and whether they were brought within that extended period.

11 The Tribunal finds that the complaints which were subject to these provisions were not brought within the prescribed period. The Tribunal further finds, in the absence of any evidence to the contrary, that it would have been reasonably practicable for these complaints to have been submitted to the Tribunal within the prescribed period. Accordingly, these complaints should be dismissed.

12 With regard to the complaints that the claimant suffered discrimination, the Tribunal must decide whether they were submitted within the prescribed period and, if not, whether it is just and equitable to extend the period for submission to the date on which they were submitted.

13 In respect of these complaints, the only references to them in the Form ET1 are the ticked boxes. The claimant does not state his race or his religion and does not supply any information as to when, how or by whom he suffered any act of discrimination. As already mentioned, it is not unreasonable to assume that the claimant had knowledge of the prescribed time limits. In the absence of any information concerning these complaints and having regard to all of the circumstances, the Tribunal finds that these complaints were not submitted within the prescribed time allowing for the provisions of Section 140B of the Equality Act, 2010 (early conciliation), and it is not just and equitable to extend time to when they were submitted and that they should be dismissed.

14 This only leaves the complaint relating to redundancy, which was submitted within the prescribed period. The claimant does not give any information relating to this or make any allegation such as 'they got rid of me to avoid paying redundancy'. In his ET1, the claimant does refer to a disciplinary hearing that he failed to attend. This is consistent with the respondent's more detailed account in its Form ET3 which sets out

that the claimant was dismissed for disciplinary reasons. In the absence of anything that might lead a Tribunal to believe that this head of complaint had any prospect of success and having regard to the overriding principle set out in Rule 2 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, it is not appropriate to allow this complaint to proceed and it is also dismissed.

15 Having regard to all of the above, the Tribunal finds that all of the current proceedings should be dismissed in their entirety.

Employment Judge Nicol

Date 6 November, 2019

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