



EMPLOYMENT TRIBUNALS

Claimant: Mr M Martins

Respondent: Mitie Security Limited

Heard at: London Central

On: 11 December 2019

Before Judge: Mrs A Isaacson

Representation

Claimant: In person

Respondent: Mr B Gray, Counsel

JUDGMENT

The Judgment of the Tribunal is as follows:

- 1. The claimant's unfair dismissal and discrimination claims were outside the primary limitation periods. However, the Tribunal finds that in relation to the unfair dismissal claim it was not reasonably practicable for the claimant to present his claim in time and that he presented his claim in a reasonable period thereafter in the circumstances.**
- 2. It is just and equitable to extend time to allow the claimant's disability discrimination claims to proceed.**

REASONS

The law

- 1. The time limit for presenting a claim for unfair dismissal is 3 months from the effective date of termination ("EDT") as set out in section 111(1)**

Employment Rights Act 1996 (“ERA”). The Tribunal is able to consider complaints presented out of time only if it is satisfied (1) that it was not reasonably practicable for a complaint to be presented before the end of the relevant 3 months period, and (2) if so, that it was presented within such further period as it considers reasonable. The burden lies on the claimant at both stages of the test.

2. It is a question of fact in each case whether it was reasonably practicable to present a claim in time. There may be various relevant factors including the claimant’s knowledge of the facts giving rise to their claim and their knowledge of their rights to claim and the enforcement of those rights.
3. Mere ignorance of the time limit for bringing a claim for unfair dismissal does not of itself amount to reasonable impracticability, especially where the employee is aware of their right to bring a claim. The question is, was the claimant’s ignorance reasonable?
4. Where an employee has knowledge of their right to claim unfair dismissal there is an obligation on them to seek information or advice about enforcement of those rights.
5. A claimant’s illness maybe relevant to the question of reasonable practicability and a Tribunal is prepared to exercise leniency in such situations but the Tribunal still needs to decide whether it was reasonably practicable for the claimant to have presented his claim in time.
6. The existence of an ongoing internal appeal is not by itself sufficient to justify a finding of fact that it was not reasonably practicable to present a complaint in time to the Tribunal.
7. Claimants are expected to make applications as quickly as possible once the obstacle that has prevented them making their claims in time has been removed. The length of time that will be permitted will depend on the circumstances, which includes the actual knowledge which the claimant had as to their rights and what knowledge they should have had if they had acted reasonably in all the circumstances throughout the period of the delay.
8. Section 123 of the Equality Act 2010 (“EqA”) provides that a claim may not be brought after the end of 3 months starting with the date of the act to which the complaint relates, or such other period as the Employment Tribunal thinks just and equitable.
9. The Tribunal has wide discretion in determining whether or not it is just and equitable to extend time and it is a wider discretion then for unfair dismissal. It should consider everything that it thinks is relevant. However, time limits should be strictly applied and the exercise of the discretion is the exception rather than the rule. There is no presumption that the Tribunal should exercise its discretion.
10. The Tribunal is not legally required to but may consider the check list set out in section 33 of the Limitation Act 1980 in considering whether to exercise its discretion:

- a) the length and reason for the delay;
- b) the extent to which the cogency of the evidence is likely to be affected by the delay;
- c) the extent to which the party sued had cooperated with any requests for information;
- d) the promptness which the claimant acted once he knew the facts giving rise to the cause of action; and
- e) the steps taken by the claimant to obtain appropriate professional advice once he knew of the possibility of taking action.

11. The Tribunal will consider whether a fair trial is still possible and which party will suffer the most injustice if a late claim is allowed.

The facts

12. The claimant presented a chronology of events and some medical evidence and gave evidence under oath. Most of the facts were undisputed. The claimant became unwell around 10 October 2018. The claimant was taken to hospital on the 22 October and again on the 28 October 2018 when he was admitted. He was transferred to a Priory Hospital in Bristol at the end of October until 29 December 2018 when he was transferred to another Priory Hospital, Ticehurst House. He was discharged on 7 March 2019.

13. The facts are disputed between the parties for the period March to the end of May 2019. The claimant believed that the respondent was stringing him along. Eventually the claimant went to the CAB on the 1 June 2019 and had an appointment with a legal advisor on the 10 June 2019. The claimant was advised that his claim was out of time but that a Judge would hear his case because of the circumstances. The claimant was advised to quickly contact ACAS. The claimant started early conciliation on the 12 June 2019 and a certificate was issued on the 13 June 2019. The Tribunal accepts the evidence of the Claimant that he was told by ACAS, incorrectly, that he had until 12 July 2019 to present his claim form. The claimant presented his claim on the 10 July 2019.

Submissions

14. The Tribunal had the benefit of a skeleton argument from the respondent's counsel and oral submissions from both parties. The respondent conceded that it was not reasonably practicable for the claimant's claim to be presented in time but argued he unreasonably delayed presenting his claim after he had been advised by a solicitor on the 10 June 2019.

Conclusion

15. The tribunal finds that it was not reasonably practicable for the claimant to present his claim form in time as he was in hospital until the 7 March 2019 and then thought that his employer would resolve matters until the end of May. He then acted swiftly in seeking legal advice and contacting ACAS. Unfortunately, the claimant was wrongly advised by ACAS that he had

until 12 July 2019 to present his claim. It was reasonable for him to believe that advice as a month's extension would have applied if he had contacted ACAS near the end of the primary limitation period.

16. Looking at all the circumstances the claimant acted reasonably in presenting his claim before the 12 July and just one month after he first got legal advice.
17. It is just and equitable to extend time in all the circumstances. The claimant was unable to present the claim in time. He acted reasonably once he sought legal advice. He was misled about the time limit by ACAS. Therefore, there is a reasonable explanation from the claimant for the delay in presenting his claim form. The Tribunal does not find that the respondent is unreasonably prejudiced by the delay. It is still possible to have a fair hearing. Memories would not have been significantly affected in that period.
18. Therefore, the Tribunal finds it was not reasonably practicable to present the claim form in time and that the claimant presented the claim within a reasonable period thereafter. It is just and equitable to extend time in all the circumstances.

Employment Judge A Isaacson

Date 11 December 2019

JUDGMENT & REASONS SENT TO THE PARTIES ON

12 December 2019

FOR THE TRIBUNAL OFFICE