



EMPLOYMENT TRIBUNALS

Claimant: Mr F Vieira de Azevedo

Respondent: Lumeon Limited

Heard at: Croydon

On: 13/11/2019

Before: Employment Judge Wright

Representation

Claimant: In person

Respondent: Mr T Russell - solicitor

JUDGMENT

The Judgment of the Tribunal is that the Tribunal does not have jurisdiction to hear the claimant's claims as they were presented out of time.

REASONS

1. The claim was listed for an open/public preliminary hearing to determine whether or not the Tribunal has jurisdiction to hear the claim – had it been presented out-of-time for the purposes of s.111 Employment Rights Act 1996 (ERA) and s. 123 Equality Act 2010 (EQA)?
2. The Tribunal fully appreciates the claimant is aggrieved by the matters which he has referred to in his ET1 and the statement he presented for this hearing, which deal with amongst other things: his job title; remuneration; lack of appraisal(s) etc. It was expressly stated that those issues would not be addressed at the hearing.

3. Oral judgment was given at the conclusion of the hearing and the claimant requested written reasons further to Rule 62(3) of Schedule 1 of the Employment Tribunals (Constitution of Rules of Procedure) Regulations 2013.
4. The claimant was employed by the respondent on 26/1/2016 and his employment terminated on 9/10/2018. He engaged in Acas early conciliation on 21/11/2018 and the certificate was issued on 5/12/2018. The claimant presented his ET1 claim form to the Tribunal on 23/1/2019. The Tribunal finds the ET1 was presented one day out-of-time and that it should have been received on 22/1/2019.
5. The claimant stated that the form was only presented hours or even minutes late. It was explained to him that the Tribunal has no record of the time when it was received. If it was presented electronically, the date it was received was recorded as 23/1/2019.
6. The claimant has been on notice of the respondent taking issue with the time limit since it presented the ET3 on 2/4/2019 and further to the Tribunal's correspondence of 12/4/2019.
7. If it was not reasonably practicable for the claimant to bring his claim within the primary time limit, then the consideration is whether or not he brought it within in such further period as was reasonable?
8. In the papers the claimant presented for this hearing, he included a letter in which he claims to have made a protected disclosure dated 26/9/2018. He has also ticked box 10¹ on the ET1 form. Under s. 111 ERA the same principles (whether or not the claim is out-of-time and should discretion be exercised) would apply to any protected disclosure claim as well as any unfair dismissal claim. The Tribunal does not at this stage accept the claimant has presented a protected disclosure claim. In accordance with the overriding objective however and putting the claimant's case as he sets it out at its highest, consideration on the time point also applies to any protected disclosure claim.
9. Section 111 of the ERA provides:

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.

¹ Information to regulators in protected disclosure cases.

(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.

[Emphasis added]

10. 'Reasonably practical' has been held to mean 'reasonably feasible' (Asda Stores Ltd v Kauser EAT 0165/07). It is well established that a claimant's ignorance does not mean it is not reasonably practicable and indeed; the claimant does not contend for this. The claimant was suspended on (he says) 12/6/2018 and therefore, he had known for some six months before the time limit expired that potentially he may be bringing a claim in the Tribunal. In addition, he appears to have had issues for some years, more or less from the start of his employment. He had raised what he says is a protected disclosure on 26/9/2018, which again indicates, he had some knowledge of legal processes (even if only in 'lay-man's' terms).

11. The claimant had had benefit of legal advice from a solicitor who was head of the employment team and the letter terminating his employment was sent to his solicitor at his request on 9/10/2018 and acknowledged on 10/10/2018. He engaged in Acas early conciliation. The internal process was concluded by 6/11/2018. There was no other explanation advanced by the claimant for the late presentation of this claim, other than: the process was stressful; he had a family to support; and he needed to find another job. Those circumstances apply to nearly every other claimant, a large percentage of whom have never had any representation and have not had the benefit of legal advice; and they are able to present their claims within the time limit. That is not enough to persuade the Tribunal to exercise its discretion.

12. For those reasons, the Tribunal finds that it was reasonably practicable for the claimant to present his claim within the time limit and he did not do so.

13. For a claim presented under the EQA, s. 123:

Time limits

(1) Subject to sections 140A and 140B proceedings on a complaint within section 120 may not be brought after the end of—

- (a) the period of 3 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.

[Emphasis added]

- 14. Looking at the provision for extending time under the EQA, s.123, the test is more forgiving and is whether if it was presented out-of-time, it was presented within such other periods as the Tribunal considers is just and equitable.
- 15. Again, the Tribunal puts the claimant's claim at its highest for these purposes and expressly does not make any finding as to what claims under the EQA the claimant has presented. In the papers the claimant handed up for this hearing², he referenced an incident between him and Alex Cooper on 16/3/2018 which he says amounts to bullying and harassment on the protected characteristic of race. This event is well out of time.
- 16. It may be that the claimant wishes to argue that it was an ongoing act, which ended with his dismissal on 9/10/2018, but even so, it is still out of time.
- 17. The claimant references other criticisms of his English language ability, however that does not appear to be an ongoing act and accordingly, took place sometime before his dismissal and is therefore out of time.
- 18. There is no automatic right to an extension of time or for discretion to be exercised and there is no presumption the Tribunal will do so. As said by Mr Russell, the burden is on claimant to persuade the Tribunal to exercise its discretion in his favour. Allowing an extension of time is the exception rather than the rule.
- 19. Whilst it may appear that there may be little prejudice to the respondent in respect of a one-day delay in presenting the claim, that is not the accurate position in this case. The allegations of discrimination for what the claimant appears to contend have been pleaded, occurred much earlier in 2018 and therefore the prejudice to the respondent is greater as the events are more historic.
- 20. The time limits in the Tribunal are purposely short and there are reasons for that. The allegations need to be brought to the attention of the respondent quickly; before memories fade, personnel move on and before too much time has passed from the events in question. The time limits in the civil courts are much longer, however that is deliberate. Furthermore, those short time limits, in the ET, have been in place and unaltered for over 50 years.

² If the claimant had been successful and wished to pursue an allegation which is not set out in the ET1, then would have had to be the subject of an application to amend.

21. As Mr Russell submitted, it is clear the claimant did know of the time limit, however he did not comply with it.
22. The claimant should not rely upon the Tribunal exercising his discretion in his favour, if he fails to comply with the time limit.
23. Allegations of unlawful discrimination have serious consequences. The Tribunal has not received a satisfactory explanation for the claimant's failure to present his claim in time. The claimant relies upon the same explanation of: stress; loss of his job; needing to find another job; and to provide for his family.
24. That is weighed against the fact that the claimant appears to have raised claims of bullying and harassment much earlier in 2018, he had the benefit of legal advice, the internal process completed on 6/11/2018, he engaged in Acas early conciliation and despite of all of the distractions, he had over three months from the date of dismissal and over two-and-a-half months from the appeal outcome, yet did not present his claim in time and missed the deadline. There are no exceptional circumstances advanced by the claimant. For those reasons, the Tribunal has not been persuaded that it is just and equitable to extend the time limit and declines to do so.
25. The Tribunal therefore, declines to exercise its discretion to extend the time limit and therefore finds the claim form was not presented within time and therefore the claim was not presented within the time limit as prescribed in s.111 ERA and it was reasonably practicable to do so. Under the EQA it was not presented within the time limit as prescribed in s.123 and it was not brought within a further period that it is just and equitable to allow him to present his claim.
26. As a result of those findings, the Tribunal has no jurisdiction to hear the claimant's claims.

Employment Judge Wright

Date: 15th November 2019

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided

unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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