



THE EMPLOYMENT TRIBUNAL

SITTING AT: LONDON SOUTH

BEFORE: EMPLOYMENT JUDGE K ANDREWS

BETWEEN:

Mr M Kelly

Claimant

and

Coinford Ltd

Respondent

ON: 3 December 2019

Appearances:

For the Claimant: In person

For the Respondent: Mr D Soanes, Solicitor

JUDGMENT

The claim was submitted out of time and is dismissed.

REASONS PROVIDED AT THE REQUEST OF THE CLAIMANT

1. In this matter the claimant complains that he was unfairly dismissed by the respondent. This hearing was listed to determine the preliminary issue of whether his claim was submitted in time and if not, whether time should be extended in his favour.

Evidence

2. The claimant had been ordered to serve a witness statement on the respondent by 5 August 2019 dealing with the time issue. On 28 August he sent a very short email to the respondent referring to that order and setting out general statements of belief that he had complied with timing requirements. The respondent invited him to add any comments but none were forthcoming. At this hearing, I asked questions of the claimant under

oath and in the course of that he referred to additional correspondence that had not previously been disclosed between himself and his union and between his union and ACAS. That correspondence (which was either in hard copy or on the claimant's phone) was either read out or shown to the respondent during the hearing as appropriate. I was also shown an email from ACAS to the respondent on the respondent's HR manager's phone which confirmed that conciliation ended on 12 February 2019 and which I read out to the claimant.

Relevant Law

3. A complaint of unfair dismissal must be submitted before the end of the period of three months beginning with the effective date of termination or within such further period as the Tribunal considers reasonable if it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period (s111(2) of the Employment Rights Act 1996). To facilitate early conciliation by ACAS, that primary time period may be extended by the period from the day after commencement of the process (day A) and issue of the conciliation certificate (day B) OR if time would expire during that period, the time period instead expires one month after day B (section 207B of the 1996 Act).
4. Whether it was reasonably practicable for the claimant to submit the claim in time is a question of fact for the Tribunal to decide having looked at all the surrounding circumstances and considered and evaluated the claimant's reasons. In essence this test requires the claimant to demonstrate that it was not feasible to present the complaint within time (*Palmer v Southend on Sea Borough Council* 1982 ICR 372). An assessment of what further period may be reasonable, requires an objective consideration of the factors causing the delay and what period should reasonably be allowed (*Cullinane v Balfour Beatty* EAT 0537/10).
5. Very often what arises in cases is the correct position to adopt when the claimant is ignorant of the relevant time limit (as is the position in this case). The starting point is to establish whether the claimant was what can be described as reasonably ignorant and that will include a consideration of what reasonable enquires the claimant should have made.

Findings of Fact

6. Having assessed all the evidence, both oral and written, and the submissions made by the parties I find on the balance of probabilities the following to be the relevant facts.
7. The relevant dates are:
 - a. Effective date of termination: 26 October 2018
 - b. Day A: 15 January 2019
 - c. Day B: 12 February 2019
 - d. Submission of ET1: 14 March 2019

8. Accordingly, the time limit expired on 12 March 2019 and the claim was out of time when it was submitted on 14 March 2019.
9. The claimant was dismissed following a disciplinary process during which he was represented by his union. He says that he had his first conversation with the union about possible Tribunal proceedings outside the dismissal meeting and that in that conversation his representative told him that the respondent was 'trying to burn time' but they did not expressly discuss time limits.
10. His union also contacted ACAS on his behalf and liaised with them during the conciliation process. That process concluded on 12 February 2019 with no agreement. Mr Harris, regional officer for the union, wrote to the claimant on 21 February 2019. The claimant accepted that he received that letter on either 22 or 23 February. The letter informed the claimant that the union would not be assisting him any further and advised him of his right to appeal against that decision.
11. The letter also said:

'Please, be aware that your early conciliation certificate was issued on Tuesday 12th of February 2019, meaning that you must submit an ET1 as soon as possible in order to lodge a protective claim and to prevent you falling foul of the statutory limitations, if you wish to continue with your claim with a 3rd party legal adviser.'
12. The claimant did appeal against the union's decision and he tells me that that remains unresolved. He also says that he received conflicting and incomplete advice from the union and that although he asked what the actual deadline was, he was not told. Also, that he was told he would be contacted by a solicitor but he never was.
13. The claimant says that he also asked ACAS more than once about the deadline but they did not give him a date, he spoke to friends (including one who works in HR) and the CAB but they just told him to contact ACAS. He did not do any online research himself as he did not know how or what to look for.
14. Having submitted his claim on 14 March, the claimant also emailed the Tribunal on the same day at 17.24 and said:

'I have hastily submitted my ET1 application as I'm worried about running out of time... if possible I would like an extension of the time allowed to submit it. If I still have more time, can you please let me know when the deadline is to submit it...'

It is apparent from that email that even when he did submit his claim, the claimant was not sure when the deadline was.
15. The claimant also told me that he works long hours and has caring responsibilities for his elderly mother.

Conclusions

16. It is clear that the claimant had trade union representation throughout the disciplinary process continuing into the conciliation process. It is also clear that he was aware of at least the possibility of bringing a Tribunal claim as early as the day of his dismissal meeting and also that, at least in very general terms, he was then aware that time was a potential issue.
17. It is also very clear that the claimant is unhappy with his treatment by his union in a number of respects. Even if he is right that he was given conflicting or incomplete advice, he knew by 23 February 2019 at the latest that he needed to submit his claim form 'as soon as possible'.
18. In those circumstances, even though the claimant had not been expressly told a date by which he must submit claim (and it is a shame that the union did not tell him that), he was expressly on notice not to delay and he was unable to give me any cogent reason for his delay between 23 February and 12 March other than his general statements as to how busy he was and that he was appealing the union's decision not to assist him further.
19. Although I am sympathetic to the claimant, regrettably I cannot find that it was not reasonably practicable for him to submit his claim by 12 March in circumstances where he was able to submit it by 14 March. There was no apparent reason why he could not have done it two days earlier. Therefore it is not appropriate for me to exercise my discretion in the claimant's favour. Accordingly, the claim of unfair dismissal was submitted out of time and is dismissed.

Employment Judge K Andrews
Date: 3 December 2019