



EMPLOYMENT TRIBUNALS

Claimant: Mr. R Parker

Respondent: Ockbrook & Borrowash Parish Council

Heard at: Nottingham **On:** 26th November 2019

Before: Employment Judge Heap (sitting alone)

Representation

Claimant: In person

Respondent: Mrs. Z Lukic – Legal Executive

JUDGMENT having been sent to the parties on 26 November 2019 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

BACKGROUND & THE ISSUES

1. By way of background, today was due to have been the full hearing of a claim for unfair dismissal submitted by Mr. Ronald Parker (hereinafter referred to as "The Claimant") against his now former employer Ockbrook & Borrowash Parish Council (hereinafter referred to as "The Respondent"). That full merits hearing was, however, converted to this Preliminary hearing by Employment Judge Britton so as to consider whether the claim should be permitted to proceed to a full merits hearing on the basis that it appeared to have been presented outside the appropriate statutory time limit provided for by Section 111 Employment Rights Act 1996 and therefore the question arose as to whether the claim should be struck out for want of jurisdiction.

2. Relevant to the question of time limits is the effective date of termination of the Claimant's employment. There is some dispute between the parties as to that effective date of termination. The ET1 Claim Form states that date to be 19th March 2019 although, as I shall come to below, the Claimant was not able to specify in his evidence why he had selected that particular date as being the date that he said that his employment with the Respondent had come to an end. The Respondent in their ET3 Response and today via Mrs. Lukic have confirmed that their position is that the effective date of termination of employment was 22nd February 2019. By and large, it matters not who is right and who is wrong about that as in either case, even taking the Claimant's date as being the effective date of termination, the Claim Form would still have been presented out of time. It is simply a question of how late the presentation of the claim was.

THE HEARING

3. I heard evidence from the Claimant during the course of the hearing today. He had submitted, in accordance with Orders made by Employment Judge Britton, a witness statement and I have also been provided with a bundle of documents running to 99 pages. I have considered all of that evidence, including the Claimant's witness evidence, before taking a decision in respect of the issues to be determined at this Preliminary hearing.

4. Having heard evidence from the Claimant I would observe that I found him to be both a forthcoming and candid witness and I had no issue with the credibility of any of the evidence which he gave to me today.

THE LAW

5. Before turning to my findings of fact and conclusions, it is necessary to say a little about the law to be applied in these circumstances.

6. The time limit for presentation of an Employment Tribunal claim for unfair dismissal is contained within Section 111 Employment Rights Act 1996 which provides as follows:

"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."

7. In short terms, any complaint of unfair dismissal must be presented on an ET1 Claim Form within three months less one day of the effective date of termination.

8. There is an extension to that time limit contained within the legislation for early conciliation to take place via ACAS. That is provided for under the provisions of Section 207B Employment Rights Act 1996. In very simple terms, the effect of that early conciliation period is to "stop the clock" for the period that the parties have spent engaged in early conciliation via ACAS and that period will not count towards the time limit for presenting the Claim Form.

9. Those times limits are strict time limits and if a complaint is not brought within the relevant period then this has an effect on the jurisdiction of the Employment Tribunal to entertain the substantive claim.

10. There are, however, circumstances in which an Employment Tribunal can hear a claim which has been presented outside of the appropriate statutory time limit. In the case of unfair dismissal, the Tribunal would need to be satisfied that it was “not reasonably practicable” (or to put it another way not reasonable feasible) for the Claim Form to have been presented within time and thereafter that it was presented within a reasonable period after that time limit expired.

11. There is therefore a two stage test and firstly a Claimant must show that it was not reasonably practicable to present the claim in time and secondly, if he or she succeeds in doing that, the Employment Tribunal must be satisfied that the time within which the claim was in fact presented was itself reasonable.

12. In terms of reasonable practicability, an Employment Tribunal will look to see whether there was something physically or mentally impeding a Claimant from having presented the Claim Form within the relevant statutory time limit. A medical condition can, in principle, present sufficient impediment so as to render it not reasonably practicable to present the Claim Form in time, although the focus of the analysis as to that impact should be upon the later stages approaching the deadline to submit the claim.

13. The burden is upon a Claimant to satisfy the Tribunal in respect of those matters and as touched upon above it requires a Claimant to show that there was some physical or mental impediment preventing him or her from putting the claim in on time.

FINDINGS OF FACT

14. I turn then to my findings of fact based on the evidence that I have seen and heard today. I confine those findings to the question of jurisdiction to consider the claim, not whether the Claimant’s unfair dismissal complaint is well founded.

15. The Claimant’s employment with the Respondent came to an end following receipt of a dismissal letter following an earlier disciplinary process. That dismissal letter features at page 70 of the hearing bundle and it can be seen that the letter was sent to the Claimant on 20th February 2019. Page 73 of the letter set out that the effective date of termination of employment was said to be 22nd February 2019. That was presumably to allow time for the Claimant to have the reasonable opportunity to receive and read the letter given that it was sent to him by post¹.

16. The Claimant candidly accepts that he received the dismissal letter. He cannot be sure of the precise date on which he did so but it must have been before 25th February 2019 when he wrote a detailed appeal letter in response. That appeal letter begins at page 75 of the hearing bundle.

17. An appeal process thereafter followed and on 19th March 2019 the Respondent wrote to the Claimant with the appeal outcome. That was to uphold the decision to dismiss him. Although the Claimant was not able to confirm this in evidence, I find it likely that the 19th March 2019 date which is set out by the Claimant in his ET1 Claim Form as being the date that his employment ended came from the date of the appeal letter.

¹ Something that would accord with the decision in **Gisda Cyf v Barratt [2010] IRLR 1073**.

18. I do not have a copy of the Claimant's contract of employment or the Respondent's disciplinary and appeals policy. The Claimant confirmed in his evidence he has never seen the latter policy and so could not provide any details as to what it said. Mrs. Lukic attempted to do so on the basis that I understand that she had drafted that document, but of course she appeared as representative rather than as a witness and she did not have a copy of the policy available at the hearing. Although not unheard of, it is nevertheless rare for a disciplinary policy to keep an employment relationship alive pending appeal and I do not suppose that the Respondent's policy was such as to do so in this case.

19. I therefore find the effective date of termination, as set out in the original dismissal letter and having given the Claimant the opportunity to receive and read it, to be 22nd February 2019.

20. However, even if it was the case that the Claimant's employment did not come to an end until he received his appeal outcome and therefore even if the effective date of termination was 19th March 2019 as the Claimant had originally submitted, as I have already observed the claim still have been presented out of time. I have not, therefore, stood the matter down to obtain a copy of the disciplinary and appeals procedure as that would not have materially altered matters in all events.

21. On 25th March 2019 the Claimant wrote to the Respondent indicating that he would be claiming unfair dismissal (see page 84 of the hearing bundle). The Claimant subsequently contacted ACAS and initiated early conciliation on 24th April 2019. He was issued with an ACAS early conciliation certificate on 27th May 2019. The Claimant of course needed that certificate before he was able to present an Employment Tribunal claim. That certificate had the effect of "stopping the clock" on the time for the Claimant to present the ET1 Claim Form to the Employment Tribunal. The period of conciliation was 30 days and does not count towards the 3 months less one day time limit. That meant that the Claimant's ET1 Claim Form had to be presented – that is physically received by the Employment Tribunal - by no later than 27th June 2019. It is common ground, however, that the Claim Form was not presented until 23rd July 2019. There is no question, therefore, that it was presented outside of the appropriate statutory time limit contained within Section 111 Employment Rights Act 1996.

22. The Claimant relies both in the witness statement which he produced in accordance with the Orders of Employment Judge Britton and by way of his own confirmation today, on ill health as being the reason for presenting the ET1 Claim Form late. The Claimant accepted in his evidence that although ACAS gave him no advice on the question of time limits and he found them to be generally somewhat unhelpful, his own internet research at the time and at home still led him know and understand that there was a 3 month time limit to present a claim but that could be extended, in his words, because of "this or that" which is no doubt a reference to the early conciliation process. The Claimant was of course aware of his right to claim unfair dismissal – having earlier signified his intention to do so to the Respondent – and of the relevant time limit for presenting such a claim.

23. I should observe that I have no doubt that the Claimant does suffer from ill health and that that can be a barrier to some things. He has had three heart attacks, the first of which was on 1st May 2018, and two later episodes although he could recall specifically in his evidence the dates of the second and third episodes. With all three heart attacks the Claimant was hospitalised for a period

of two weeks or so upon admission. The Claimant is a disabled blue badge holder and his writing and mobility have been impaired by his medical conditions. He visits the hospital regularly and has physiotherapy. I have no doubt of any of that.

24. However, what I do need to determine is whether the Claimant's state of health prevented him from presenting his ET1 Claim Form by 27th June 2019. Ultimately and after careful consideration, I cannot conclude that it did. I say that on the basis that firstly I cannot be sure when the Claimant's last two heart attacks took place so as to see whether he was hospitalised and incapacitated to that degree at the material time when the Claim Form was due to be presented. As I shall come to, I do not have any medical evidence in relation to those issues.

25. Secondly, on 25th February 2019 when the Claimant had had certainly one if not subsequent heart attacks and was experiencing the effects of the same, he was able to write an impressively detailed appeal letter running to some 5½ pages. He had also returned to work, as I understand it, after suffering his first heart attack.

26. Thirdly, on 25th March 2019 the Claimant was aware of his right to claim unfair dismissal and signified his intention to the Respondent to do so. He was also able to initiate early conciliation via ACAS and also enter into a dialogue with ACAS thereafter, with that early conciliation taking place between 27th April and 27th May 2019. There was nothing at that time impeding him from dealing with those matters and that, I am satisfied, would have also extended to preparing presenting a Claim Form.

27. Fourthly and perhaps most importantly, the Claimant was able to attend and participate in meetings and work for Newton Solney Parish Council. Amongst other times that he did work for that Parish Council, he attended meetings which took place on 8th March 2019, 12th April 2019, 10th May 2019, 14th June 2019 and 12th July 2019. The penultimate meeting was only days before the deadline to submit the ET1 Claim Form and clearly at those stages between March and June 2019, there was nothing that physically impeded him from participating in Parish Council business. I conclude similarly that there was nothing that impeded him from preparing and presenting his ET1 Claim Form during that same period.

28. Whilst I accept the Claimant's evidence that those meetings did not involve much by way of travel; that he found them cathartic and that the local Councillors of that particular Parish Council provided assistance to him by, for example, the delivery of the relevant papers to his home address, the work nevertheless did involve about three hours per week and included forwarding e-mails about courses to Councillors, submitting online funding applications, obtaining and advising on quotations, keeping up to date and advising on relevant legislation and legislative changes and typing up minutes of meetings from an audio recording. The Claimant could do all that at times between 8th March 2019 and 12th July 2019 which is the date of the last meeting that I have, and so I cannot find that it was not reasonably practicable for him to have presented his ET1 Claim Form in time on or before 27th June 2019. ET1 Claim Forms can be submitted electronically, as was the case with the funding applications which were submitted on behalf of the Parish Council by the Claimant, and the detail typed out in the ET1 Claim Form that was submitted is of a lesser length than some of the minutes of meetings that the Claimant has prepared for the Parish Council and which feature in the bundle before me.

29. As such and absent any medical evidence to show that the Claimant was incapacitated on or around 27th June 2019, as it is clear that he was undertaking tasks which were not dissimilar to the efforts needed to present the Claim Form at all material times leading up to the limitation date, I am not satisfied that there was anything that physically impeded the Claimant from presenting the claim on time whether by reason of ill health or otherwise.

CONCLUSIONS

30. This brings me to my conclusions in respect of the issue of whether the Employment Tribunal has jurisdiction to entertain the Claimant's claim of unfair dismissal.

31. In view of the foregoing findings of fact and that I have no supporting medical evidence to suggest that during the period up to 27th June 2019 the Claimant was incapacitated, I can reach no conclusion that he was impeded from completing his ET1 Claim Form by reason of ill health and submitting it within the statutory time limit provided for by Section 111 Employment Rights Act 1996. The Claimant has not satisfied me on that point and therefore it was reasonably practicable for the Claim Form to be presented in time.

32. It follows that the Tribunal has no jurisdiction to consider the claim substantively and the only course open to me is to strike it out under the provisions of Rule 37 Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013.

33. I appreciate that this will come as a significant disappointment to the Claimant who understandably feels strongly about the termination of his employment with the Respondent and the circumstances in which that employment came to an end. However, that is the only course open to me on the facts as I have found them to be and applying the relevant law.

Employment Judge Heap

22nd January 2020

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE

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