



THE EMPLOYMENT TRIBUNAL

SITTING AT: Ashford Employment Tribunal

BEFORE: EMPLOYMENT JUDGE MARTIN

BETWEEN: Mr James Parker Claimant
and
Gift universe Management Ltd Respondent

ON: 15 January 2020

APPEARANCES:

For the Claimant: Mr D Parker - Father

For the Respondent: Mr Goldup - Consultant

JUDGMENT

The unanimous judgment of the Tribunal is that: -

1. The Claimant's claims of unfair dismissal, breach of contract, unauthorised deductions from wages and unpaid holiday pay are dismissed as being out of time. It was reasonably practicable for these claims to have been brought in time.
2. The Claimant's claim of disability discrimination was brought out of time, but time is extended to allow this claim to continue on the basis that it is just and equitable to do so.
3. The Claimant subsequently withdrew his claim of disability discrimination and this claim is therefore dismissed.

REASONS

1. By a claim form presented to the Tribunal on 18 September 2018 the Claimant claimed that the Respondent had unfairly dismissed him, not paid holiday pay, not paid notice and had discriminated on the grounds of his protected characteristic of disability. The Respondent denied this claim in its response presented on 12 November 2018.

The issues

2. The issues that the Tribunal had to determine were whether the claims were brought in time and whether time should be extended on the basis that it was just and equitable to do so for the claim of disability discrimination or whether it should be extended on the basis that it was not reasonably practicable for it to have been presented in time for the other claims.
3. Key dates
 - 3.1 The effective date of termination of employment was 24 April 2018
 - 3.2 ACAS early conciliation ran from 29 June 2018 – 29 July 2018
 - 3.3 The Claimant's claim was presented on 19 September 2018.
4. The Tribunal has taken the relevant date for the purpose of this judgment to be the effective date of termination of employment for all the claims even though there are issues as whether previous acts alleged to be discriminatory were in time and whether they formed part of a continuing act ending at the effective date of termination. For the purposes of this judgment the Tribunal has used the same time limit for all claims.
5. I had before me a statement prepared by the Claimant's father who is representing him, and a small bundle of documents. I asked questions of the Claimant to further my understanding about why the claims were presented out of time and allowed Mr Goldup for the Respondent to also ask questions.
6. The Claimant made the following points:
 - 6.1 He wanted to exhaust all internal procedures before starting the Tribunal process and hoped that this would resolve matters.
 - 6.2 He had (via his father) approached ACAS within days of the disciplinary hearing at which he was dismissed on 4 April 2018 for advice. Initially the advice was about how to appeal the process.
 - 6.3 The Claimant thought that the three-month time limit ran from when the appeal process was exhausted (ie 12 June 2018).
 - 6.4 The Claimant's mother was very ill with dementia and he and his father cared for her at home with very little support in terms of caring and

equipment available to them. They spent a substantial amount of time caring for her, and in trying to get support. The Claimant's mother sadly died in July 2018.

- 6.5 The Claimant had depression and stress exacerbates his mental health symptoms.
- 6.6 The Claimant's father who represents him told me that if he had known that time ran from the 4 April 2018 he would have ensured that the claim was presented in time and that had the time ran from the date the appeal process was exhausted it would have been presented in time.
7. The Respondent said that some people involved had left the company.
8. There had been informal internal processes relating to two sets of disciplinary proceedings and a grievance.
9. The effective date of termination is defined at s 97(1) Employment Rights Act. It is an objectively determined statutory construct. The effective date of termination is the actual date of termination of employment, whether or not the employee was dismissed in breach of contract (*Dedman v British Building and Engineering Appliances Ltd* [1974] ICR 53; *Leech v Preston Borough Council* [1985] ICR 192).
10. There are two different tests for me to apply in considering whether to extend time for presentation of the claims.

Unfair dismissal, breach of contract, unauthorised deductions from wages and unpaid holidays

11. The time limit for bringing these claims is three months from the effective date of termination of employment. The test for these claims is whether it was reasonably practicable for the Claimant to have presented his claims in time. *Marks & Spencer Plc v Williams Ryan* [2005] EWCA Civ 470 held that the onus was on the Claimant to take proactive steps to establish what those rights were and to act accordingly. The Claimant did research using the Internet and contacted Acas within days of the effective date of dismissal.
12. The Claimant has said that had he known that the time ran from 4 April 2018 he would have ensured the claim was in time. Ignorance of the law is no defence, and, in any event, I am satisfied that the Claimant had reasonable opportunity to establish when time ran from. I am therefore satisfied that it was reasonably practicable for the unfair dismissal, holiday pay, unauthorised deductions from wages and breach of contract claims to have been presented in time and they are accordingly dismissed for want of jurisdiction.
13. Discrimination
14. Section 123 Equality Act provides for a 3-month limitation period from the date that the act complained of was done. This can be extended if there are just and

- equitable grounds to do so. This gives more discretion to Tribunal's to extend time than the reasonably practicable test discussed above.
15. In *Robertson v Bexley Community Centre t/a Leisure Link* 2003 [IRLR] 434 CA, it was noted that, while Tribunals have a wide discretion to extend time in discrimination cases, it should only be exercised in exceptional circumstances. 'time limits are exercised strictly in employment and industrial cases. When tribunals consider their discretion to consider a claim out of time on just and equitable grounds there is no presumption that they should do so unless they can justify failure to exercise the discretion.'
 16. In *O'Brien v Department for Constitutional Affairs* [2009] IRLR 294, the Court of Appeal held that the burden of proof is on the Claimant to convince the Tribunal that it is just and equitable to extend time. In most cases there are strong reasons for a strict approach to time limits.
 17. Here I was satisfied given the difficult personal circumstances at this time, that it was just and equitable to extend time to allow the discrimination claim to be heard. I considered that although some personnel had left the Respondent's employment that the existence of internal processes for disciplinary and grievance purposes meant that they would not be unduly prejudiced by the short extension of time to present this claim. I fully appreciated that the Claimant's focus would have been on caring for his mother and trying to get as caring support and equipment for her. I do note that in this time the Claimant was able to research on the Internet and to contact ACAS, but also take into account his belief (which I find to be genuine) that time ran from when the appeal process had been exhausted.
 18. Having come to this decision, I explained to the Claimant how his discrimination claim would progress and in the course of this explained what the Claimant would have to show in order to succeed. The Claimant said that the main reason for bringing his claim was the unfair dismissal aspect and that he did not think he could show that the treatment he had was because of his mental health condition or arising from it. I was not prepared to immediately accept a withdrawal of the discrimination claim by the Claimant and gave a 20-minute adjournment for him to be able to discuss it with his father. I had spoken to the Claimant about getting free legal advice and had offered to give him the names of organisations that could give advice without charge. After the adjournment the Claimant confirmed that he wanted to withdraw his discrimination claim. He expressed his unhappiness with my decision, and I gave him information on how to appeal to the Employment Appeal Tribunal and the time limits that applied.

Employment Judge Martin
Date: 15 January 2020

