

EMPLOYMENT TRIBUNALS

Claimant: Mr S Thomas

Respondent: Greenwich Service Solutions Limited

HEARD AT LONDON SOUTH ON 6 January 2020

EMPLOYMENT JUDGE SIDDALL (SITTING ALONE)

Appearances:

Claimant: In person

Respondent: Mr S Keen

JUDGMENT

It is the decision of the tribunal that:

1. The correct name of the Respondent is Greenwich Service Solutions Limited and the tribunal file shall be amended accordingly.
2. The claim for unfair dismissal was brought out of time. It is therefore dismissed.

WRITTEN REASONS

1. At a hearing on 6 January 2020 I found that the claim for unfair dismissal had been made out of time. Following correspondence from the Claimant and the Respondent, I am now providing my reasons for that decision in writing.
2. The Claimant was engaged by the Respondent which is a wholly owned subsidiary of the Royal Borough of Greenwich. The Respondent agency traded under the name 'Gateway Employment'. Throughout his engagement, which started in September 2016, the Claimant was assigned to work as a passenger transport driver for Greenwich Service Plus Limited (also a subsidiary of Royal Borough of Greenwich).
3. The Respondent had also argued that the Claimant could not bring a claim for unfair dismissal as he was a 'worker' and not an employee. It was not

necessary for me to decide this as a preliminary issue as the complaint was found to be out of time in any case. Where I refer to the Claimant being engaged or employed by the Respondent below, these references are intended to be neutral on the question of the Claimant's status.

4. The facts I have found are as follows. Following a complaint about the Claimant's conduct made to the Respondent, he was advised not to attend work as a driver for Greenwich Service Plus Limited on 15 January 2019. That was the last day on which he worked for the Respondent. However that did not end his contract with the Respondent: he had a written contract with them which stated that he could be offered work for different organisations when available.
5. The Claimant was invited to a meeting with the Respondent on 7 February 2019 to discuss what had happened. He was advised that he could be offered any available work in catering, cleaning, security or other areas if no driving work was available for him.
6. On 13 February 2019 the Claimant wrote to the Respondent asking for his P45.
7. The Respondent argues that the date of termination of the Claimant's contract with them was 15 January 2019, the last day he worked. I find that this cannot be correct. Although the assignment to Greenwich Service Plus Limited ended on 15 January, it is clear that his contract with the Respondent continued after that date. This is shown by the fact that he was asked to attend a meeting with them on 7 February at which possible alternative placements were discussed.
8. No steps were taken by the Respondent to terminate the Claimant's contract at that meeting and I find that the contract continued until 13 February 2019. The Claimant brought the relationship to an end on that date by requesting his P45. He had found new work by April 2019.
9. If the relationship ended on 13 February 2019, the three month time limit for starting a claim expired on 12 May 2019.
10. The Claimant started the early conciliation process with ACAS on 17 July 2019. Early conciliation finished on 31 July 2019 but the Claimant did not lodge a claim with the employment tribunal until 29 August 2019.
11. The Claimant confirmed that he was aware that there were time limits. He had taken advice from the CAB a short while after his meeting with the Respondent on 7 February 2019.
12. I asked him why he had delayed in contacting ACAS. He said that in fact he had contacted them in February 2019. He believed he had filled in a form at that time. He was annoyed with them as they indicated that they would not take his case. He states that it was ACAS who contacted him in July. He was pleased as he believed that this meant his case could proceed. He could not offer any explanation as to why the early conciliation certificate indicates that he started the process on 17 July. He offered no clear explanation as to why he delayed a further four weeks after receiving the early conciliation certificate before commencing a claim.
13. Section 111 (2) of the Employment Rights Act 1996 states that a claim shall be brought to the employment tribunal within three months of the effective date of termination of his employment or *'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'. I must therefore decide first of all if it was practicable for the Claimant to have brought his claim within three months (which would mean that he would have to have started the ACAS early conciliation process by 12 May 2019).

14. I am sympathetic to the Claimant. It is clear that like many unrepresented parties he was confused about what had to be done within the time limits, and what was meant by starting a claim. It is not ACAS who decide whether a claim can go ahead; their only duty is to see if an issue can be resolved, and issue a certificate if it cannot.
15. I accept that it is more likely than not that the Claimant contacted ACAS in February, probably for advice, but there is no evidence before me to suggest that he started the early conciliation process before 17 July 2019. By that point he was over two months out of time.
16. The Claimant had sought advice and knew there were time limits. I am satisfied that it was reasonably practicable for him to have lodged a claim with the tribunal in time. He may have been put off by negative advice given to him by ACAS back in February, but that should not have prevented him from putting in a claim had he wanted to proceed.
17. If I am wrong on that and it was not reasonably practicable for him to put in a claim within the three months, I find that he did not submit his claim within a further reasonable period. Having received his early conciliation certificate on 31 July, the Claimant waited for over four weeks before commencing his claim with the tribunal. He provides no good reason for that delay.
18. The Claimant has written to the tribunal since the hearing took place asking why his claim was permitted to proceed if it was out of time. Acceptance of the claim is an administrative process. It is very usual for points relating to time limits to be raised after a claim has been lodged, as here. It is often necessary for a judge to make a decision about when the employment relationship ended, and therefore whether the claim was made within the time limit. That is what happened here. At the hearing I was able to conclude that the contract continued until 13 February 2019. That still meant that the claim was out of time. I can understand why the Claimant assumed that his late claim had been accepted and that it would go ahead and he is naturally disappointed with the outcome. However once a decision had been made at the hearing that the claim was out of time, it cannot proceed any further.

Employment Judge Siddall

Date 5 FEBRUARY 2020.

