



THE EMPLOYMENT TRIBUNAL

SITTING AT: ASHFORD

BEFORE: EMPLOYMENT JUDGE P HILDEBRAND (sitting alone)

BETWEEN:

Claimant

MR L T WADHAMS

AND

Respondent

TOLGATE COFFEE LIMITED

ON: Wednesday, 4 March 2020

APPEARANCES:

For the Claimant: Did Not Attend

For the Respondent: Mrs M Wilson and Mr P Corr (Directors)

PRELIMINARY HEARING JUDGMENT

The Judgment of the Employment Tribunal is that:-

The Claimant's claims were presented to the Tribunal outside the relevant statutory period and they are therefore dismissed. The reasons for that conclusion are as follows.

REASONS

1. There was a preliminary hearing dealing with case management in this case on the 1 July 2019. It is a case in which the Claimant, who has hydrocephalus and who the Respondent accepts falls within the statutory definition of disabled, brought claims of disability discrimination, breach of

contract, for holiday pay due and unlawful deduction of wages. There was also a claim of unfair dismissal which was withdrawn on the preliminary hearing and in respect of which a dismissal judgment has been signed.

2. Employment Judge Corrigan signed the case management order following that hearing on the 16 July 2019 and it was promulgated on 4 September 2019. In her order, Employment Judge Corrigan listed the case for a preliminary hearing in relation to time of presentation of the claim, which appeared to be out of time, and made directions for the exchange of witness statements and for provision of a bundle of documents for use at the preliminary hearing. She also ordered that the Claimant should by the 19 August 2019 supply further particulars of the claim and by the 16 September 2019 should supply a schedule of loss. She attempted in her order to set out some of the issues to be determined in this case but it is fair to say that with limited material from the Claimant in the form of a very short manuscript paragraph in the claim form, there was little material for the Tribunal to identify to be determined and indeed, little for the Respondent to respond to in this case which was at that point by no means clear to them.
3. The preliminary hearing on the question of jurisdiction was listed for 6 November 2019. The Claimant's mother, who represents him, notified the Tribunal on the 9 October 2019 that the Claimant was unwell and had been admitted to hospital following complications as a result of a surgical procedure in August 2019. The preliminary hearing scheduled for the 6 November 2019 was postponed and on the 19 November 2019 notification was given to the parties that the hearing had been listed for today, 4 March 2020 in Croydon. Both parties were duly notified. On the 3 March 2020, the day before this hearing, the Employment Tribunal in Croydon attempted to notify both parties that there had been a change of venue and that the case would be listed for determination in Ashford. Contact was made with the Respondent but the clerk could not obtain an answer on the number given for the Claimant's mother.
4. When time came for the hearing in Ashford the Claimant was not present or represented. I asked for enquiries to be made which established the Claimant had not attended in Croydon and was not present in Ashford. I asked for a telephone call to be made to the numbers for the Claimant on the file. I asked the clerk to email the Claimant's mother to indicate the hearing was about to begin, and I waited 15 minutes after the email to see if there was a response. Nothing was received.
5. I then convened the hearing and heard from the Respondent. The Respondent made a submission. This was that the Claimant had clearly failed to engage with the Tribunal process. No further particulars of the claim had been received in accordance with the order, nor any schedule of loss, nor had the Claimant complied with the preparatory steps necessary for the preliminary hearing. He had not produced a witness statement and had not produced a bundle for use at the hearing.

6. The salient facts are in my judgment as follows. The Claimant's employment was clearly brought to an end by the Respondent by an email of 28 September 2018 which expressly stated that his employment was brought officially to an end. It appeared that the Claimant had not worked for at least a month prior to that time. At the end of August the Claimant had failed to attend a scheduled shift for a training assessment. He had changed his telephone number and was slow to notify the Respondent of this. The Claimant's mother responded immediately to the email of the 28 September 2018 to query some aspects of it and there is therefore no doubt that it was received by the Claimant and his mother on the 28 September 2018. The Claimant contacted ACAS, a necessary pre-requisite for the presentation of a Tribunal claim, on the 4 December 2018, that is therefore 'Day A' and the Claimant obtained a certificate showing that conciliation was concluded also on the 4 December 2018 and that is therefore 'Day B' for these purposes.
7. Accordingly, the primary time limit expired for these proceedings on 27 December 2018. Since the ACAS conciliation concluded within one month of Day B, the time expired for the presentation of the claim one month after Day B, that is the 3 January 2019. The claim was presented in this case on the 1 March 2019, that is approximately two months out of time.
8. Turning to the law which is applicable in this case, the relevant time limits are found in the Equality Act 2010, section 123, which provides for the time to be extended on just and equitable grounds if the Tribunal considers it appropriate against the background of a three month time limit extended by ACAS conciliation by section 140B of the same act. This provides at sub-section 4 if the time limit set by section 123(1)(A) would, if not extended by this sub-section, expire during the period beginning with Day A and ending one month after Day B, the time limit expires at the end of that period.
9. Accordingly, the Claimant has the benefit of a one-month extension from Day B to the 3 January. Similar extension provisions apply to the other time limits in this case but in those cases, the time limit is in the format of an extension only being available if it was not reasonably practicable for the claim to be presented within the three-month period and it is presented within such further period as the Tribunal considers reasonable. The relevant time limits are found in section 23 of the Employment Rights Act 1996 in respect of the unlawful deduction of wages claim, regulation 30 of the Working Time Regulations 1998 in respect of the holiday pay claim and article 7 of the Employment Tribunal Extension of Jurisdiction Order 1994 in respect of the breach of contract claim.
10. The Claimant has accordingly failed to present the claim in time in respect of all of these jurisdictions.
11. Normally on an application of this type, one has material from the Claimant

indicating when the Claimant became aware of the time limit, how the Claimant reacted to the time limit, the diligence in which the claim has been presented once the Claimant became aware of the fact that time had expired and the knowledge which the Claimant had acquired of the process or was reasonably expected to have acquired during the process.

12. I have no material from the Claimant whatsoever in this respect save one fact, namely that he contacted ACAS and engaged in conciliation on the 4 December 2018. I consider it reasonable to assume that in contact with the ACAS conciliator, the Claimant would have had, if he had not received any other opportunity to do so, a chance at that point to obtain information about Employment Tribunal time limits applying to the claim that he wished to present which would have been in time had he presented it at that date. If he was not given the information he would have had a means to enquire how he could acquire that information elsewhere.
13. The Claimant has not given any information as to what steps he took after that contact with ACAS when he became aware of the time limits and how long it took him to present the claim once he became aware of the time limit.
14. Accordingly, I have no basis on which to exercise a discretion under the just and equitable provisions of the Equality Act 2010 to extend time for the presentation of the claim.
15. I further have no factual basis for suggesting that it was not reasonably practicable for the claim to be presented in time. I appreciate that the Claimant has been unwell during some of the period leading up to this hearing, from the fact that his mother wrote seeking a postponement of the hearing listed in November because he had been admitted to hospital in October.
16. I have also heard from the Respondents that they have seen the Claimant in the vicinity of the premises where he had worked and that he appeared to be recovered at the time just before Christmas when they saw him.
17. As a result of these deficiencies on the part of the Claimant, if indeed there is some basis upon which an extension could be granted in this case, it is not available to me.
18. The finding must therefore be in this case that the Tribunal lacks jurisdiction to hear the claims that the Claimant has presented and they are all out of time and in respect of their respective statutory provisions, there is no basis upon which an extension of time could be granted.
19. The claim is accordingly dismissed.

Case Number: 2301238/2019

Employment Judge Hildebrand

Date: 12 March 2020