



EMPLOYMENT TRIBUNALS

BETWEEN

CLAIMANT

V

RESPONDENT

Mr S Griffith

Canon UK Ltd

Heard at: London South Employment Tribunal On: 26 February 2020

Before: Employment Judge Hyams-Parish (Sitting alone)

Representation:

For the Claimant: In person

For the First Respondent: Ms A Vance (HR Business Partner)

JUDGMENT ON PRELIMINARY ISSUE

It is my judgment that it was reasonably practicable for the Claimant to bring his unfair dismissal claim within the applicable time limits. As the Claimant failed to do so, the Tribunal does not have jurisdiction to hear the claim, which is therefore dismissed.

REASONS

Claim

1. By a claim form presented to the Tribunal on 31 October 2019, the Claimant brings a claim of unfair dismissal.
2. The Respondent resists the claim and avers, in any event, that the Tribunal does not have jurisdiction to hear it because it was brought outside the three-month time limit.

3. The purpose of this preliminary hearing was to decide whether it was reasonably practicable for the Claimant to bring his claim within the applicable time limit, and if not, whether he brought it within such further period as was reasonable.

Hearing

4. There was no document bundle or witness statements prepared for the hearing, but I was referred to certain documents in the possession of the parties during the hearing.
5. The Claimant gave evidence under oath and was questioned by the Respondent's Representative, and by me. After the evidence and closing submissions by the parties, I retired to consider my decision. My decision was given to the parties at the hearing and I gave oral reasons. These written reasons are provided at the request of the Claimant.

Relevant law

6. The time limits for bringing a complaint of unfair dismissal in the Employment Tribunal is provided by s.111 of the Employment Rights Act 1996 which says as follows: -

(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. What is reasonably practicable is a question of fact and thus a matter for the Tribunal to decide. The onus of proving that presentation in time was not reasonably practicable rests on the Claimant. That imposes a duty upon the Claimant to show precisely why it was that he did not present his complaint within the applicable time limits. Accordingly, if the Claimant fails to argue that it was not reasonably practicable to present the claim in time, the Tribunal will find that it was reasonably practicable.

Analysis, conclusions and associated findings of fact

8. The Claimant commenced employment with the Respondent on 2 January 2012. In his claim form, the Claimant said that his employment terminated

on 27 June 2019. The Respondent in its Response said it was 31 May 2019. Having looked at documents shown to me during the hearing, I find that the Claimant's employment did indeed end on 31 May 2019. The Claimant's calculation included a period of notice, yet it was clear that he was paid in lieu of notice and the Claimant's termination took effect on 31 May 2019.

9. Applying the standard three-month limitation period, a claim form would need to be presented at the Employment Tribunal by 30 August 2019. Provided that the ACAS Early Conciliation ("EC") period is started before the primary limitation period ends, the period within which to submit a claim can be extended by the number of days in the EC period, as the EC period effectively stops the limitation clock whilst conciliation is on-going. In this case, however, there is no extension because the EC period started after the primary limitation period had ended. The deadline for presenting the unfair dismissal claim in the Employment Tribunal remains 30 August 2019. As the claim was presented on 31 October 2019, it was two months out of time.
10. The Claimant appealed his dismissal and he received the outcome on or about 24 July 2019. From that point the Claimant had exhausted the internal procedures for challenging his dismissal. He then contacted ACAS. The Claimant was unclear when he contacted ACAS, but I find that it was in August, albeit he did not start the ACAS EC process at that point. The Claimant accepts that he would have been told by ACAS that there was a three-month time limit for submitting a claim in the Employment Tribunal. In addition, I find that even before then, the Claimant was well able to make enquiries himself, by doing some simple internet research, to find out the time limits which applied to unfair dismissal claims. He did not do this because he was hopeful that his appeal would be successful. I do not find that to be an excuse which is sufficient to persuade me that it was not reasonably practicable for him to bring his claim in time. It clearly was reasonably practicable, but the Claimant chose not to look into because he preferred to concentrate on his appeal in the hope that it would be successful.
11. In the latter part of his evidence when the Claimant was questioned why he did not act when told by ACAS about the three-month time limit, he said that he did not deal with submitting the claim because he was juggling the demands of being a parent and dealing with his appeal. He also said that his father had become ill and that he was caring for him, albeit there was no evidence provided to me about this, apart from what the Claimant told me.
12. I accept that the daily demands of life, particularly when one is caring for children and parents, can be difficult. However, having considered the evidence from the Claimant very carefully, I consider that despite the above demands, it was reasonably practicable for the Claimant to bring a claim within the required time limit. I find that up to the end of July, the Claimant's focus was his appeal and that was his priority. Even after the appeal

outcome was sent to the Claimant and he was told of the time limit by ACAS, he did not prioritise bringing a claim when it was reasonably practicable for him to have done so. I note that he left it some considerable time (I consider two months to be considerable) before presenting his claim to the Employment Tribunal.

13. For the above reasons, I am satisfied that it was reasonably practicable for the Claimant to have presented his claim form within the three-month time limit. I therefore find that the Tribunal does not have jurisdiction to hear his unfair dismissal claim, which is therefore dismissed.
14. Even if I had found that it was not reasonably practicable for the Claimant to have submitted his claim on or before 30 August 2019, I do not believe that he then submitted it within such further period as is reasonable because I do not believe a further delay of 2 months was reasonable in all the circumstances.

**Employment Judge Hyams-Parish
24 March 2020**