



EMPLOYMENT TRIBUNALS

Claimant: Mr T Astle

Respondent: Travis Perkins PLC

Heard at: Manchester

On: 14 May 2020

Before: Employment Judge Franey
(sitting alone)

REPRESENTATION:

Claimant: In person

Respondent: Ms L Randall, Head of Employment Legal Services

JUDGMENT

The application for interim relief is dismissed.

REASONS

Introduction

1. The “Code V” in the heading indicates that this was a hearing conducted by way of video conference call (using Skype). I conducted it from a hearing room at the Manchester Employment Tribunal at Alexandra House. Details of the hearing had been published and a contact email address provided for any member of the public who wished to observe the hearing. No-one did.

2. Prior to the hearing both sides had made a three page written submission accompanied by documents. I had read and considered all those documents prior to the hearing.

3. During the hearing Mr Astle informed me that he had attempted to present a claim on Sunday 19 April 2020, and that his claim form had been rejected. We adjourned the hearing for 20 minutes, during which time the Tribunal located its copy of the claim form and it was supplied by email to both parties. We discussed this earlier claim form when the hearing resumed.

4. All references to legislation are to the Employment Rights Act 1996.

The Law

5. An application for interim relief pending determination of the substantive claim is permitted by section 128 only in a limited number of types of claim. That list includes a complaint that a dismissal was automatically unfair because the reason or principal reason was a protected disclosure, contrary to section 103A.

6. The time limit within which an application for interim relief must be made is set out in section 128(2):

“The Tribunal shall not entertain an application for interim relief unless it is presented to the Tribunal before the end of the period of seven days immediately following the effective date of termination (whether before, on, or after that date).”

7. The legislation does not give the Tribunal power to extend this time limit. There is no provision equivalent to the “reasonably practicable” extension which can be given in relation to a substantive unfair dismissal complaint lodged more than three months after the effective date of termination (section 111(2)(b)).

Facts

8. The relevant facts are agreed to be as follows.

Dismissal

9. Following a disciplinary hearing on 17 March 2020, the respondent wrote to the claimant on 9 April 2020 dismissing him for gross misconduct with effect from that date. That was a Thursday, and 10 April was Good Friday. The letter was posted to the claimant on Saturday 11 April 2020. It arrived at his house on Tuesday 14 April 2020, the day after Easter Monday. He had not previously known that the decision to dismiss him had been taken, and communication of this decision therefore amounted to the “effective date of termination” under section 97.

First Claim

10. On Sunday 19 April 2020 the claimant presented a claim to the Employment Tribunal using the online form. In section 2.3 he ticked the box to indicate that he did not have an ACAS early conciliation certificate number. However, he did not tick any of the boxes giving the reason why there was no certificate. In particular he did not tick the box which says:

“My claim consists only of a complaint of unfair dismissal which contains an application for interim relief. (See guidance).”

11. Nowhere else on that form was there any indication that an application for interim relief was being made. Section 8 indicated that there were complaints of unfair dismissal and of disability discrimination, but made no mention of an application for interim relief. Nor did section 9 which sets out what remedy is sought if the claim is successful. Attached to the claim form was a two page document giving a narrative of events, but that too contained no mention of any interim relief application.

12. The claim was rejected by the Tribunal staff because it contained neither an early conciliation certificate nor confirmation that any of the exemptions applied.

Second Claim

13. Having received notification of that rejection the claimant presented a fresh claim on Wednesday 22 April 2020. That claim form was given case number 2403488/2020 and gave rise to this hearing. It differed from the earlier claim form in two significant respects:

- (a) An early conciliation certificate number was included; and
- (b) The additional details in section 8 made it clear that there was an application for interim relief.

14. That application was listed for hearing today.

Decision

15. The earlier claim form presented unsuccessfully on 19 April 2020 does not help the claimant. It did not contain any application for interim relief. It was correctly rejected because it contained neither an early conciliation number nor confirmation that any of the exemptions applied.

16. The second claim did contain an application for interim relief but was presented one day too late. The time limit under section 128 began on the day after the effective date of termination. That was Wednesday 15 April 2020. The period of seven days beginning with that date ended on Tuesday 21 April 2020. The claim was not lodged before the end of that period of seven days.

17. There is no discretion to extend time and therefore the application for interim relief is one which the Tribunal must not entertain. It is dismissed.

18. This decision has no bearing on the substantive merits of the complaints which have been raised; they will be considered further at a case management hearing once the respondent has submitted its response form.

Employment Judge Franey

14 May 2020

JUDGMENT AND REASONS SENT TO THE PARTIES ON

15 May 2020

FOR THE TRIBUNAL OFFICE

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