



EMPLOYMENT TRIBUNALS

BETWEEN

CLAIMANT

V

RESPONDENT

Mr J Baxter

Southbank Management Co Ltd

Heard at: London South Employment Tribunal

On: 23 March 2020

Before: Employment Judge Hyams-Parish

Representation:

For the Claimant:

In person

For the First Respondent:

Ms H Wheatley (HR Consultant)

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 28 June 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. This hearing was conducted remotely using Skype. A face to face hearing was not possible due to Presidential guidance that, in line with recommendations from the Government on social distancing, all "in person" hearings should be cancelled until further notice. At the beginning of the hearing, I explained that if the case were to proceed using Skype, I would reach a determination in the same way as I would at a face to face hearing. I asked each party if they consented to the hearing being conducted using Skype and both parties confirmed that they did.
5. There was no document bundle or witness statements prepared for the hearing, but I was referred to certain documents which I found on the Tribunal file.
6. 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 took approximately one and a half hours to consider my decision. When we reconvened, I asked the Claimant some further questions and then took a further thirty minutes to consider the Claimant's answers to my additional questions.

Relevant law

7. 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.

Analysis, conclusions and associated findings of fact

8. The Claimant commenced employment with the Respondent on 20 September 2009. It is accepted that the Claimant was summarily dismissed

on 9 March 2019.

9. Applying the standard three-month limitation period, a claim form would need to be presented at the Employment Tribunal by 8 June 2019. This primary limitation period is then extended by the length of the ACAS Early Conciliation (“EC”) period, which effectively stops the limitation clock whilst conciliation is on-going. In this case the EC period commenced on 15 April 2019 and ended on 25 April 2019. As the EC period was 10 days, when added to the primary limitation period, the new deadline for bringing the unfair dismissal claim is 18 June 2019. As the claim form was submitted on 28 June 2019, it was 10 days late.
10. The Claimant appealed against his dismissal which was heard on 29 March 2019. At both the disciplinary and appeal hearings, the Claimant was accompanied by a friend, Mr Bowler, who is an experienced Trade Union Representative for the RMT.
11. Following the disciplinary hearing, the Claimant was advised by Mr Bowler that, in his opinion, he had a good claim of unfair dismissal.
12. The Claimant discussed with Mr Bowler the bringing of a claim of unfair dismissal in the Employment Tribunal and also discussed the three-month time limit for bringing such a claim.
13. Mr Bowler started the early conciliation process on behalf of the Claimant, which as I have said above, commenced on 15 April 2019.
14. I find that the Claimant knew, and discussed with Mr Bowler, that the three-month limitation period for bringing an unfair dismissal claim ran from the dismissal. In reaching this conclusion, I took into account an email from the Claimant to the Tribunal dated 15 January 2020, in which he explained that he contacted Mr Bowler in June 2019 “*because he was concerned that he was approaching the end of that three months period*”.
15. The Claimant then contacted ACAS and this conversation led him to start a second EC period on 19 June 2019, ending on 27 June 2019. I am not sure why the EC period was so long when it would have been clear to the Claimant, by that stage, that the primary limitation period had already expired.
16. During this hearing, I have been given conflicting and contradictory accounts of events by the Claimant to explain the delay in submitting his claim form. Firstly, he said that he thought the three-month time limit began to run when the EC period was over. Secondly, he suggested that when Mr Bowler contacted ACAS in April 2019, he thought that was his claim form being submitted then.
17. I did not find either of those explanations to be credible. Firstly, the information supplied by ACAS made it clear that the EC process was quite

separate to the Employment Tribunal claim process. At the very least, if the Claimant had taken time to read the information he received from ACAS, it should have caused him to question any mistaken belief that they were one and the same thing, as he suggested. Secondly, some simple internet research would have provided the Claimant with information about the EC process and its effect on time limits for submitting a claim form. The Claimant had access to a computer and the internet, and come June 2019, the Claimant, with the assistance of his wife, did not appear to have had any difficulty in submitting a Tribunal claim form on-line.

18. I find that the reason why the Claimant submitted his claim late was because he left matters in the hands of Mr Bowler. In early May 2019, the Claimant was informed by Mr Bowler that he had been diagnosed with a serious illness. At that point, the Claimant knew that Mr Bowler was very unlikely to have been in a position to continue offering his assistance. Yet despite this, the Claimant did not take steps which I consider it was perfectly possible and reasonable for him to take, namely, to take matters into his own hands and submit the claim form himself. The Claimant said that this was because he believed the claim form had already been submitted; but as I have said above, I do not accept this to be credible. For whatever reason, I find that the Claimant did not choose to act until June 2019, when he contacted Mr Bowler, and then ACAS.
19. Having considered all of the evidence, I am satisfied that it was reasonably practicable for the Claimant to present his claim form within the three-month limit. For these reasons, I find that the Tribunal does not have jurisdiction to hear his unfair dismissal claim, which is therefore dismissed.

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Employment Judge Hyams-Parish
23 March 2020