



EMPLOYMENT TRIBUNALS

Claimant: Mr M Phillips

Respondent: Continental Landscapes Ltd

REASONS

(requested by the claimant)

1. This was a request for written reasons for the tribunal's Judgment, sent to the parties on 14 December 2019, dismissing all his claims on grounds that they were out of time.
2. By a claim form presented on 29 June 2018, the claimant brought claims of unfair dismissal; age discrimination; notice pay; a redundancy payment and; for other unspecified payments. The claims arose out of the claimant's dismissal for gross misconduct with effect from 22 February 2016. All claim were resisted by the respondent.
3. I heard evidence from the claimant. The respondent did not give evidence but provided a bundle for the hearing. The claimant also provided a bundle but there was a lot of overlap with the respondent's documents.

The Law

4. Section 111(2) of the Employment Rights Act 1996 (ERA) provides that a complaint of unfair dismissal must be presented to the tribunal –
 - a) before the end of 3 months beginning with the effective date of termination,
 - or
 - b) within such other period as the tribunal considers reasonable 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.
5. Section 164 ERA provides that an employee does not have a right to a redundancy payment unless, before the end of 6 months beginning with the relevant date –

- a) The payment has been agreed and paid
 - b) The employee has made a claim for the payment by notice in writing given to the employer
 - c) a question as to the employee's right to, or the amount of, the payment has been referred to an employment tribunal, or
 - d) a complaint relating to his dismissal has been presented to an employment tribunal under section 111.
6. An employee is not deprived of his right to a redundancy payment if.....it appears to the tribunal to be just and equitable that the employee should receive a redundancy payment. (s. 164(2)).
7. Section 123 of the Equality Act 2010 (EqA) provides that a discrimination complaint must be presented after the end of 3 months starting with the act complained of or such other period as the tribunal considers just and equitable.

The issues

8. The claimant presented his claim 2 years and 4 months after his dismissal so by any of the above measures, he is significantly out of time. I therefore had to consider whether there were reasons for me to extend time in respect of any of his claims.

Findings of Fact

9. Following his dismissal, the claimant contacted Anthony Such, his GMB union representative, who then represented him at his appeal against dismissal. The grounds of appeal were that the claimant had been unfairly dismissed because of his age. The appeal was unsuccessful and the claimant was notified of the outcome on or around 10 March 2016.
10. The claimant did not seek advice from the GMB about pursuing a claim as what he was interested in at that time was whether he was going to get his job back. However, he subsequently approached the Bluechip Union about bringing tribunal proceedings. He did not say when this was but says the advice he received was that time had run out as it was over 3 months. That suggests that tribunal time limit had expired by the time of his approach.
11. On 11 July 2016, the claimant visited the Citizen's Advice Bureau in Sheen about a separate matter but did not ask about bringing tribunal proceedings.
12. The claimant also obtained some advice from Which magazine. He does not say when but says they did not advise him to put in a claim.
13. The claimant says that when he went to the job centre around November 2017, he was given the details for Acas. However, it must have been earlier as Acas early conciliation started on 28 September 2017 and closed on 3 October 2017.
14. When asked why he did not present his claim earlier than 29.6.18, he said it was because he was misled and did not have the right information. When asked who he was misled by, the claimant replied: "*Everybody. Nobody listened, all these officials*".

Conclusion

15. It is clear from the claimant's evidence that he considered his dismissal unfair and discriminatory from the outset. Yet despite contacting the GMB, Bluechip Union, CAB and Which magazine, he took no proactive steps to clarify how to present a claim. His contact with the GMB was while the time limit was still running and they would have been the obvious body from whom to seek guidance, but for reasons unexplained, the claimant chose not to. I do not accept the claimant's assertion that he was misled as he has not provided any evidence of this. I am therefore satisfied that it was reasonably practicable for him to present his unfair dismissal and notice pay claim in time.
16. Even if I am wrong, the claimant did not present the claim within a reasonable time after expiry of the time limit. The claim should have been presented by 21 May 2016. However, the claimant did not go to acas until 28 September 2017, more than a year later. Even then, it still took him another 9 months to lodge his claim. No explanation has been provided for this further delay.
17. Turning to the age discrimination and redundancy payment claims, the claimant's explanation does not provide just and equitable reasons for me to exercise my discretion to extend time.
18. In relation to the claim for "Other payments" the time limit for these mirrors that for unfair dismissal and for the same reasons, I find that it was reasonably practicable for them to be presented in time.

Conclusion

19. All claims are dismissed as they were presented out of time.

Employment Judge Balogun
Date: 29.4.20