



EMPLOYMENT TRIBUNALS

Claimant: Mr H Ayoola

Respondent: Food Standards Agency

Heard at: London Central **On:** 23 July 2020

Before: Employment Judge Khan (sitting alone)

Appearances

For the claimant: Ms G Crew, Counsel

For the respondent: Mr J Duffy, Counsel

JUDGMENT

The claim is struck out because the tribunal does not have jurisdiction to consider it.

REASONS

1. By an ET1 presented on 13 February 2020 the claimant brought a claim of unfair dismissal. The respondent resists this claim.
2. This preliminary hearing was listed to determine the following issue:
 - 2.1 Does the tribunal have jurisdiction to hear the claim in light of the date of its presentation?
3. The claimant accepts that the claim was presented outside the relevant time limit.

The Law

Jurisdiction / time limits

4. The time limit for bringing an unfair dismissal complaint is set out in section 111 of the Employment Rights Act (“ERA”), the relevant provisions of which are as follows:
 - (1) Section 111(2)(a) provides that a tribunal shall not consider such a complaint unless it is presented before the end of three months beginning with the effective date of termination.

- (2) This is subject to section 111(2)(b) which provides that a tribunal may consider a complaint if it is satisfied that it was not reasonably practicable for it to have been presented before the end of the relevant period of three months and if the complaint is presented within such further period as the tribunal considers reasonable.
5. This is a complaint for which the requirement to contact ACAS prior to instituting proceedings applies. Where a claimant has complied with this requirement to contact ACAS and within the relevant time limit, the time limit is extended in accordance with section 207B ERA.
6. It is agreed that the effective date of the claimant's termination was 5 September 2019. This meant that the primary limitation period for bringing the claim expired on 4 December 2019. The claimant notified ACAS on 12 and 15 December 2019. An ACAS early conciliation certificate was issued on 15 January 2020. Because the claimant notified ACAS outside of the primary limitation period the time limit is not extended by these early conciliation dates.
7. The claimant presented his claim on 13 February 2020. In doing so he presented his claim 2 months and 9 days outside of the time limit.
8. In order for the tribunal to have jurisdiction to consider this claim the claimant must show:
 - (1) Firstly, that it had not been practicable for him to have presented his claim by 4 December 2019.
 - (2) If so, secondly, that the additional time between this date i.e. 4 December 2019 and the date when he presented his claim on 13 February 2020 was reasonable.
9. The test of practicability means what could have been done not what would have been reasonable. Reasonably practicable does not mean "reasonable" or "physically possible" but is analagous to "reasonably feasible" (see Palmer and Or v Southend-on-Sea BC 1984 ICR 372, CA).
10. Where there is ignorance as to legal rights this must be reasonable. Where the claimant is aware of the right to bring a claim, ignorance of the relevant time limit will rarely be a reasonable excuse (see Wall's Meat Co Ltd v Khan [1979] ICR 52). This is because it will usually be incumbent on the claimant to undertake prompt enquiries regarding the time limit and the process for making a claim.
11. Debilitating illness will usually only constitute a valid excuse if supported by medical evidence. Nor is stress – as opposed to illness or incapacity – likely to be a sufficient reason.

The Facts

12. I heard evidence from the claimant.
13. I also considered a 52-page bundle of documents prepared by the respondent and an 8-page bundle prepared by the claimant.

14. I also considered the parties' closing submissions.
15. I make the following findings of fact on the balance of probabilities which are relevant to the issue of jurisdiction:
- (1) The claimant was employed from 24 September 2001 until 5 September 2019. He was in the role of Executive Officer from 14 June 2010. He was based in the Incidents and Resilience Unit.
 - (2) On the culmination of a performance review process and a final review meeting on 13 August 2019 the claimant was dismissed with effect on 5 September 2019 upon which he received a payment in lieu of 13 weeks' notice.
 - (3) This review process was paused for almost a year between July 2018 and May 2019 to investigate the claimant's grievance. The claimant was supported by the PCS union throughout the grievance process.
 - (4) The claimant who does not have a prior history of mental health developed stress and anxiety in late 2018. Towards the end of the performance review process, the claimant was assessed by the Haringey IAPT service on 30 July 2019 and offered online cognitive behavioural therapy ("CBT"). This support and intervention ended on / before 18 September 2018. The claimant said that his last session took place that month. At the start of this CBT process the claimant identified stress as his main difficulty. From the questionnaires he completed throughout CBT, the claimant's levels of anxiety and depression reduced from severe to mild / remission range. This meant that at the end of this CBT programme, which was on / around or after the date of the claimant's dismissal, he had been assessed as having mild symptoms.
 - (5) The claimant said that his condition worsened after his dismissal and that he stayed at home for weeks and months; he felt numb, lacked concentration and had difficulties planning. He continued to rely and benefit from his CBT training and the online CBT programme which he had access to. However, in evidence he said that his mental health fluctuated. He had good days and bad days. I do not find that the claimant had been incapacitated for weeks or months at a time. Nor do I find on the evidence that the claimant was significantly cognitively impaired during this period. He was therefore neither debilitated nor incapacitated between his dismissal and the date when the time limit expired.
 - (6) The claimant was aware of his right to bring an unfair dismissal claim although he was not aware that there was a time limit for bringing this claim.
 - (7) He visited the Haringey Law Centre in the first or second week of September 2019 i.e. after his dismissal and before 14 September 2019 in the hope of securing legal representation for an unfair dismissal claim. This was a short appointment of no more than 10 minutes' duration. The claimant was advised to submit an appeal against his dismissal in the first instance and to come back once this had been concluded, if necessary. The claimant did not ask about the time limit or the process for bringing an unfair dismissal claim.
 - (8) The claimant submitted an appeal against dismissal, as advised, on 14 September 2019. This appeal was heard by the respondent on 29 October 2019 when the claimant was accompanied by a PCS representative. The appeal was dismissed on 8 November 2019. The

claimant did not ask his union representative about the time limit or the process for bringing an unfair dismissal claim. Nor did he revert to his union after this appeal outcome to make such enquiries.

- (9) I find that it is likely that this appeal outcome impacted on the claimant's mental health. However, for the avoidance of doubt, on the evidence presented I do not find that this had the effect of debilitating or incapacitating the claimant.
- (10) The claimant attended the Haringey Law Centre again on 4 December 2019 when he was advised to contact ACAS. This was another 10-minute appointment. In his evidence, the claimant agreed that he now knew that it was important to contact ACAS. The claimant acted on this knowledge because he contacted ACAS on the same date when he enquired about the early conciliation process.
- (11) Later the same day, ACAS sent the claimant two links by email: a link to an early conciliation notification form and a second link to an ACAS leaflet which explained the early conciliation process. Although this leaflet was not included in either bundle I find that it is likely that this was the standard ACAS leaflet on early conciliation which included advice on time limits. The claimant did not read this leaflet. In his evidence, the claimant said that he did not access these links and he agreed that on a good day he could have done. I therefore find that had the claimant accessed this link he would have understood that there was a time limit for bringing an unfair dismissal claim as well as the interplay between this time limit and the early conciliation process.
- (12) The claimant waited until 12 December 2019 to notify ACAS. Because he was confused about whether he had done this he completed a second notification on 15 December 2019.
- (13) As already noted, an early conciliation certificate was issued on 15 January 2020 and the claimant presented his claim on 13 February 2020. He then contacted his union for legal support. When his union declined to provide such support because of the late presentation of his claim late he understood for the first time that a time limit applied to this claim.
- (14) The claimant had access to the internet via an iPad throughout this period.

Conclusions

16. The claimant relied on the following two reasons for his late presentation of the claim: (1) his mental health and (2) his ignorance as to the time limit for bringing a claim. Ms Crew, for the claimant, said that these factors were inter-related. Mr Duffy, for the respondent contended that the claimant's ignorance was the sole operative reason.
17. In respect of the claimant's mental health, there was no medical evidence of the claimant having a debilitating illness or that he was incapacitated. At the end of his CBT programme on 18 September 2019 he was assessed as having symptoms in the mild / remission range. The claimant did not provide any medical evidence of any impairment he had after 18 September 2019. He continued to rely on and benefit from his CBT training and the CBT online facility. He agreed that his health fluctuated and he had good as well as bad days. I have not found that the claimant was significantly cognitively impaired during this period or to such an extent that impacted on his ability to present a claim within the time limit. Notably, during the same period the

claimant had been able to attend Haringey Law Centre on two occasions, submit an appeal against his dismissal, obtain union support for the appeal process, attend an appeal hearing and contact ACAS.

18. To the extent that the claimant was ignorant of the time limit for bringing this claim, he had several opportunities for finding out about the time limit. Although he said he was at home for much of the period in question, he visited the Haringey Law Centre twice, in early September 2019 and again on 4 December 2019. He was supported by his union during his appeal on 29 October 2019 (they had also supported him throughout his grievance) which was concluded on 8 November 2019. He did not contact his union again until after he had submitted his claim. The claimant also contacted ACAS on the last day of the limitation period i.e. on 4 December 2019 but did not complete a notification form until 12 December and 15 December 2019 which was outside the time limit. On none of these occasions did the claimant enquire about time limits or the process for bringing a claim. I do not therefore find that this ignorance was reasonably held. It was incumbent on the claimant to make reasonable and timely enquiries about how to enforce his right to bring an unfair dismissal claim.
19. I have considered the interaction between the claimant's health and his ignorance of the time limit. Ms Crew did not contend that this ignorance was caused by the claimant's poor mental health, she contended that his ongoing ignorance was caused by his mental health. I did not accept this contention. I found that the claimant had good days as well as bad days and had he, for example, opened the link to the ACAS leaflet he would have understood that there was a time limit and how this interacted with the early conciliation process. This illustrated that the claimant did not take every reasonable opportunity, including on those good days he had, to find out about how to enforce his legal rights. These were enquiries which the claimant could have made before the time limit expired.
20. For these reasons I find that it was reasonably practicable for the claimant to have presented his claim within the relevant time limit. The claim is struck out because the tribunal does not have jurisdiction to consider it.

Employment Judge Khan

Date 23 July 2020

JUDGMENT & REASONS SENT TO THE PARTIES ON

24 July 2020

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FOR THE TRIBUNAL OFFICE