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EMPLOYMENT TRIBUNALS

Claimant		***Respondents***
Mr D Anguelov	**AND**	London School of Economics Students Union

OPEN PRELIMINARY HEARING

Heard at: London Central **On**:

Before: Employment Judge Goodman

Representation
For the Claimant: Mr C. Anguelov, Claimant's son
For the Respondent: Mr. N. Caiden, counsel

Judgement having been given on 3 August 2020 and written reasons having been requested under rule 62(2):

REASONS

1. This is an unfair dismissal claim, presented on 26 January 2020. The Respondent replied, inter alia complaining first that the claim was presented out of time, and secondly that the Claimant was not their employee but an independent contractor.
2. Employment Judge Snelson identified these issues for preliminary hearing today, in place of the original two day hearing on the merits.
3. The Claimant has returned from Bulgaria for this hearing and has been represented by his son. I did not take live evidence today, but I have read the claim form and the response, and the witness statements of the Claimant, his son Chris Anguelov, the Respondents' Sarah Chaudry-Grant, and the Respondent's Mr E Tan who was the former club captain until March 2019. Most of this evidence relates to the issue of whether the Claimant was an employee.
4. At the start of this hearing, after identifying the issues and after discussion, it was agreed that I would hear the time point first on the assumption firstly that the Claimant was in fact an employee, and secondly that he had the continuity of employment to bring an unfair dismissal claim, and to earn the full statutory right of notice. If the time point was lost even with those

assumptions, the claim would fail. If the time point was won on that basis, I would then hear and decide today the Respondent's argument that Claimant was not employed, or that he did not have continuity of service. If the Claimant succeeded on these, there would be a further hearing of the merits -what was the reason for dismissal, and whether a proper process was followed to make it fair.

Factual Summary

5. Having read the witness statements and the bundle of documents this is the factual summary of what happened
6. The Claimant first worked for the Students Union Tennis Club under a fixed term contract from 1 October 2012 and following expiry thereafter he worked on a succession of fixed terms contracts.
7. The last contract is dated 29 September 2019 (although it was signed a little earlier). It begins with the proviso that it "shall continue until 29 March 2020". LSE has a three term year, but the tennis club only played and engaged in matches for the first two terms of ten weeks each. The third term was given over to study and examinations and a tennis coach was not required.
8. The contract provides that the Claimant was free to work for others, but that was subject to a conflict of interest clause whereby he had to get permission if there was perceived to be a conflict of interest. His job was to coach LSE tennis club players, and to be available on match days to support the team. He could choose when to work but if he wanted to cancel an arranged time he must give at least 24 hours' notice, and if this happened repeatedly the contract could be ended. He was also called in at the start of the year to help select the squad for that year's play.
9. The club is run by a student committee which is elected annually on the date of the March club annual dinner. The Claimant invoiced for his hours, in practice about ten hours a week. He did coaching on Friday and Sunday evenings; match day was a Wednesday. If there was an away match he was reimbursed his travel expenses.
10. His 2018/2019 duties were all completed by the end of March, save one coaching session on 4 April 2020, for which there is an invoice but I do not know the reason. The hourly rate was set at the start of the year, and could be annually reviewed.
11. Clause 13 deals with termination, and states in 13.1 that for employment could be terminated without notice and without payment in lieu for listed reasons including inability to perform his duties, going bankrupt, criminal conviction, negligence, incompetence or bringing the club in to disrepute for example. Clause 13.2 provided that it may be terminated at any time without penalty by either party giving notice to the other.
12. The committee changed in March 2019. The Claimant was not told by the new committee what the position was for September, but he understood from members of the old committee, to whom he spoke in or about March, that it was not envisaged to be a problem.
13. However, on 8 July 2019 the Claimant received an email from the new captain, James Canning, saying that his contract would not be renewed in the coming year, it had ended in March 2019. They thanked him for his services. On 16 July 2019 Mr Canning provided a more detailed explanation of why they had decided not to renew his contract. That led to

a collective letter of support for the Claimant being signed by eighty-one of his ninety-four former players in his support, and thirty-five of them took time to write detailed testimonials supportive of his ability.

14. That said, this approach – which the claimant called an appeal - was not successful. On 13 August the students past and present were told that the position was unchanged, and on that date the Claimant consulted a firm of solicitors about his position.
15. On 18 September the Claimant's solicitors wrote a letter to the Respondent complaining of his summary unfair dismissal. They were invited to negotiate, otherwise there would be a resort to litigation. The Claimant was in touch with his solicitors by phone and email; sometimes with difficulty because the solicitor was busy. The Claimant himself was in Bulgaria from July to September, and asked if he needed to come back to start proceedings, but was reassured.
16. Then on 15 November 2019 the Claimant was told by his solicitors that there was a time limit for Employment Tribunal proceedings, but without being told was it was or what action to take. On 27 November 2019 he was told that the time limit could be one that had expired on 25 November 2019. The Claimant then abandoned the solicitors, and went to ACAS himself that day to start the early conciliation process. He obtained a conciliation certificate which expired on 27 December 2019. Just under one month later, on 26 January 2020, he presented a claim to the Employment Tribunal completed by his son. In answer to the standard question on ET1: "if your employment has ended, when did it end/", he replied 8 July 2019.

Relevant Law

17. Unfair dismissal is a claim provided by statute, not common law. The requirements for bringing a claim are currently set out in the Employment Rights Act 1996.
18. Section 111 provides that the claim must be presented within three months of the effective date of termination unless it was not reasonably practicable to do so, provided that it was bought within a reasonable period thereafter.
19. Section 97 of the Act sets out what is meant by effective date of termination. It says this means that "(1)(a) where the employment is terminated with notice, when the notice expires" and "(1) (b) when it was terminated without notice without notice it is the date on which the termination takes effect".
20. Section 86 provides that employees have minimum rights to notice if the contact is silent on the point, or if the contract provides for less than the minimum statutory right. The length of statutory notice correlates with length of service.
21. Section 97(2) of the clause that deals with effective date of termination says that if notice is not given, then (in effect) it only expires at the end of the notice that *ought* to have been given, but only for the purposes of section 108, which deals with the qualifying period for unfair dismissal, section 119, on calculation of the basic award which is related to service, and Section 227 on the maximum week's pay. The effect therefore is that an unscrupulous employer could not deprive a Claimant of the right to bring an unfair dismissal claim by cutting short his qualifying period by

dismissing without statutory notice, or reduce his basic award in this way. But the section says nothing about the effect of short notice on Section 111, and it is clear that Section 111 means that even if the employee was entitled to notice, but not given it, the effective of date of termination is when he was told he was terminated, not when he ought to have been told had he been given proper notice. His three months runs from the effective date of termination regardless of what notice ought to have been given.

Discussion and Conclusions

Effective Date of Termination

22. The first issue is what is the effective date of termination of the Claimant for the purpose of Section 111.
23. The Respondent argues, based on the contract date and the written agreement, that this was the 24 March 2019, when his term came to an end. If not, the Respondent says that it will agree with the date given by the Claimant on the claim form, that is 8 July 2019, the date when he was told that he was not going to be given a contract for the coming academic year.
24. The Claimant argues that his contract extended to 29 September 2019, the date he was due to get a new contract, which he was being told on 8 July was not being the case. That cannot be right. Even if he had a reasonable expectation of renewal, or there was a customary arrangement whereby the contract continued over the unpaid break, he was clearly told on 8 July that the contract was at an end. It was not suggested that this was a period of notice. He had no duties in that period, he was not being paid, and he was not expected to be available.
25. The Employment Tribunal holds that the 8 July 2019 is the earliest possible date of termination, but if that is wrong, and termination was 24 March, it would hold that it was not reasonably practicable to present a claim before then if the Claimant did not in fact know that his term was not to be renewed. It is artificial to suggest that he should bring proceedings contingently, taking three months from 24 March, if over several years, he had always had a renewal.
26. The question therefore is whether it is later than 8 July 2019. The Claimant argues that he was entitled to notice as if he had been continuously employed from the beginning and on that basis he would be entitled, he says, to seven weeks' notice (although given that his first contract started on 1 October 2012, according to the Respondent's witness Ms Chaudry Grant, he would have in fact only have six complete years, and so six weeks' notice; the claimant has not disputed the evidence of the date of the first contract). If it is six weeks, then if he had been given notice on 8 July it would have expired 19 August and he had until 19 November in which to go to ACAS for early conciliation. Only if he had had seven complete years' service, and only if he *was* given notice on 8 July, could his claim be in time. There is no evidence of either.
27. On 25 November he contacted ACAS for early conciliation. There are additional statutory provisions freezing the running of time between the date of contacting ACAS and the issue of a certificate, following which a claimant has at least another month.
28. It is clear from reading Section 97 that the section only adds a notice period for certain purposes, and working out or extending the effective

date of termination under Section 111 is not one of them. The Tribunal concludes that the Claimant's three months for presenting an unfair dismissal claim ran from 8 July 2019, when it was made clear to him that his contract was not to be renewed, and when there was in no way any suggestion of notice being given. In any case it was clear to him in mid-August, when the students' letter was responded to, that his appeal had been unsuccessful, and the respondent remained of the view that his contract had ended in March.as he then went to solicitors concluding that the appeal was going no further.

29. I deal with the Claimant's argument that he carried out duties under contract after 24 March, so indicating that in fact it ran into September. He relies on the fact that he did coaching at the beginning of April, for which he was paid. The reason for that is not explained, and in the absence of explanation it most likely it related to duties required in the spring term but postponed for some reason; it cannot found an argument that his contract ended not on 24 March, when it said it did, but on 29 September. At best it argues a variation of the end date to 4 April, which does not assist him.
30. He also refers to planning for the coming season. This comes from the students' letters, as it is not in the Claimant's witness statement, and is first relied on in the letter written by the claimant's son after the claim form had been sent in, when the time issue was identified. I simply note that there is no evidence before the tribunal of whether or when the Claimant carried out planning for the year to come, but if he did, it was not something for which he was remunerated as he was paid by the hour and only for coaching and attending matches.
31. I conclude that the Claimant's contract was ended at the latest on 8 July 2019, when he was told that there was no renewal. He ought to have gone to ACAS by 7 October at the latest to get an early conciliation certificate and stop time running. Most certificates last a month (as the later certificate did). Then he would have had another month to present a claim. The latest date to present a claim in time would be 7 December, assuming the maximum in each case. His claim on 26 January was out of time.

Reasonable Practicability

32. The second issue is whether it was not reasonably practicable to have presented in time (the wording of section 111) and the Claimant here relies on the fact that he went to consult a solicitor, and relied on the solicitor for advice about such matters, even though he was wrong or forgot to tell him about the time limit. This point has been well tested in the case law. In **Wall's Meat v Khan 1978 IRLR 499,** a decision of the Court of Appeal, what was reasonably practicable was analysed in terms of what mental or physical factors would *prevent* a Claimant from bringing his claim in time. One of those mental factors could be not knowing what the time limit was. The question of what happened if he was misadvised had been considered earlier in **Dedman v British Building and Engineering Appliances 1974 ICR 53,** when it was held that if he had consulted a skilled advisor, and he or they made a wrong calculation, the issue was whether he or they - that is, the Claimant or the advisors - were not at fault, and whether that meant that there was just cause or excuse to bring a claim late. **Dedman** gave some latitude to employees, but is the

original decision on what happens if the skilled advisor gets it wrong. In **Marks and Spencer v Williams Ryan 2005 ICR 1293** there was a review of the authorities, and it was clarified that a skilled advisor was covered by the **Dedman** principle.

33. The Claimant has drawn the Tribunals attention to the more recent decision of **DHL v Fazackerley UK EAT 0019 2018** where the Claimant shortly after being dismissed had rung the ACAS helpline and had been told not about early conciliation procedure, or about a three-month time limit, but that he ought to exhaust the appeal procedure. He did, the appeal was delayed, and did not conclude until his three-month time limit had expired, with the result that he was late to early conciliation and brought his claim out of time. The Employment Tribunal held that in the light of these factors, it was not reasonably practicable for him to have brought a claim in time, as he relied on ACAS, and the EAT declined to intervene on the basis that the Employment Tribunal had found the facts and had exercised discretion, and on these facts it could not be said that they were wrong.
34. The Claimant has also submitted that I should take into account the fact that without going to an Employment Tribunal hearing he is deprived on redress for the damage done to his reputation by the fact that other people in the tennis world conclude that there must have been a disreputable reason why his contract was not renewed, which is to his detriment and damages his reputation. He says it is not about the money. He is probably right on this, because even if he was entitled to notice, it was without value as he would not have been paid during that period because of the invoicing arrangement, and no invoiceable duties would have been required after March 2019. On this point, I note that the test for allowing late claims under the Employment Rights Act is much stricter than the test under the Equality Act, which is about what is just and equitable where the merits of the case and its value could be a factor to weigh in the balance when deciding what is just and equitable. Here the Tribunal can only take account of what is reasonably practicable, meaning what stopped the Claimant bringing a claim in time, not the harm done by not being able to bring a claim.
35. Looking at the particular factors of this case, the Claimant knew *within* his three-month time limit that his appeal had not succeeded, and on that ground it can be distinguished from **Fazackerley** where the Claimant was unfortunately deprived of his opportunity to bring a claim in time by the ACAS error of telling him to wait for the appeal procedure to conclude first. Here the Claimant was relying on his solicitor, who knew or ought to have known, and arguably ought to have thought about and advised both that there was a time limit in Employment Tribunals, and given him some advice about when this time might expire. It does not appear that the solicitor addressed the question of any time limit until November, and even then did not immediately tell the Claimant when it was, and it is a result of that error that the Claimant has not been able to bring a claim in time. It is difficult to distinguish this case on the facts from **Dedman** or **Wall's Meat,** or indeed many of the other cases on skilled advisors whether on solicitors or otherwise. There is no reason, other than the error of the skilled advisor, why the Claimant did not present a claim. There was no

misrepresentation by the Respondent, which had communicated the decision clearly and promptly, both to the claimant and later to his supporters.

36. I conclude that although the desire to explore settlement as an alternative to litigation, if that was the reason for not bringing proceedings, even though they were threatened, was a laudable one, it is not one which will save the Claimant from the fact that it was reasonably practicable to present a claim in time and that he did not do so. As he may be aware from the earlier case law, he may have a cause of action against his solicitor, but from against the Respondent, his claim fails at the first hurdle.

Employment Judge Goodman

Dated: 18th August 2020

Sent to the parties on:

19th August 2020

For the Tribunal Office - Olu