



EMPLOYMENT TRIBUNALS

Claimant: Mr. P. Edwards

Respondent: Brecon and Radnor Express and Powys County Times Limited
(The) trading as Brecon & Radnor Express

HELD AT: Wrexham **ON:** 16th September 2020

BEFORE: Employment Judge T. Vincent Ryan

REPRESENTATION:

Claimant: Absent; attendance excused; written submission presented
Respondent: Ms S. Matthissen, Solicitor

JUDGMENT

The judgment of the Tribunal is that the claimant presented this claim out of time in circumstances when it was reasonably practicable for him to have presented it in time. The tribunal does not have jurisdiction to hear it. The claim is dismissed.

REASONS

- 1. The Issues:** In circumstances where the claimant's employment with the respondent ended on 27th July 2019, two claims of constructive unfair dismissal were rejected by the tribunal and the claimant presented a 3rd claim, this claim, on 26 March 2020, the issues for the tribunal to decide were whether this claim was presented in time but if not in time then was it reasonably practicable for the claimant to have presented it in time. If it was not reasonably practicable for him to have presented the claim in time then the tribunal would have to decide whether the claimant then presented it within a reasonable further time.
- 2. The Facts:**
 - 2.1.** There has been considerable delay in correspondence from the Employment Tribunal to the claimant. For the avoidance of doubt, I confirm that the judiciary, (in this case the Employment Judges dealing with the matter judicially), is independent of the administrative staff employed by HMCTS and vice versa.

- 2.2. The chronology of events is clearly set out in the minutes of a preliminary hearing that was held on the 21 August 2020 before employment Judge Brace, which the claimant accepts as an accurate summary. I have had the benefit of reading the claimant's written submission and copy correspondence attached to it as well as the respondent's skeleton argument prepared for this hearing. I find that the chronologies prepared by Judge Brace and that set out under the heading "Background" at paragraphs 3 – 13 of the respondent's skeleton argument are accurate.
- 2.3. The claimant's 1st claim of constructive unfair dismissal, presented on 25 June 2019 (160 0929/2019), was rejected on 27 June 2019 because there was no early conciliation certificate; the claimant was notified and guidance was given to him on the requirements of conciliation. The claimant abandoned that rejected claim.
- 2.4. The claimant's 2nd claim of constructive unfair dismissal, presented on 5 August 2019 (160 1361/2019), indicated that the claimant sought to avail of the interim relief exemption from conciliation; he was asked to confirm in writing why he considered he was eligible for this exemption and he replied on 2 September 2019 to the effect that he had misunderstood it, however he felt that he was a whistle-blower. There was no early conciliation certificate. The claimant abandoned that claim.
- 2.5. The claimant's first two claims did not allege either that he was subjected to detriment or dismissed (constructively or otherwise) because of or for a reason related to making a public interest disclosure. The claimant's claim, repeated in his 3rd claim (160 0961/2020), is that he resigned because of extra work required from his department and the pressure of a disciplinary investigation, as he sought to avoid ongoing arguments about whether or not his department should carry out work previously done by colleagues who had been made redundant. The one and only mention of public interest disclosure is in an email from the claimant to the Employment Tribunal dated 2 September 2019 when he sought to explain the absence of an early conciliation certificate having looked into exemptions.
- 2.6. I accept as fact, because the claimant states it in paragraph 2 of his written submission and the matter is not contested by the respondent, that the reason he did not go through the early conciliation procedure was that he did not desire to do so as he saw no grounds on which conciliation would be possible. The claimant also stated in an email dated 20th August in documents submitted by him for this hearing that, having been absent from work with a stress-related illness, that he had "no desire to consider engaging in ACAS early conciliation" as he had "no desire to return to work for the respondent." I accept these as the claimant's reasons for not entering conciliation.
- 2.7. The claimant's 2nd claim was rejected on 9 September 2019 but the claimant was not told immediately, promptly or within a timescale that a conscientious correspondent may have considered reasonable. The rejection was notified on 20th March 2020. The claimant did not seek an outcome within a time

suggestive of him being a conscientious correspondent or an active litigant. In the meantime, in correspondence with the respondent dated 23rd of October 2019 the claimant commented to the respondent that he had assumed the tribunal “wasn’t persevering with it (the 2nd claim)”.

2.8. The primary limitation period for the claimant’s Unfair Dismissal claim expired on 26 October 2019.

2.9. The claimant next queried the situation with the tribunal in an email dated 27 November 2019, some 12 weeks since his previous email query. He did not receive an answer.

2.10. The claimant next queried the situation with the tribunal in an email dated 20 March 2020. He was informed of the previous rejection of his 2nd claim, which rejection decision was made on 9 September 2019. Again, the reason for the rejection was the absence of an early conciliation certificate.

2.11. The claimant promptly entered early conciliation on this occasion on 20 March 2020 and obtained an early conciliation certificate on 26th of March 2020, which was the same date on which he presented his 3rd claim of constructive unfair dismissal (160 0961/2020). Employment Judge Moore made an unless order requiring the claimant to explain the delay in presentation of this claim which, on the face of it, was considerably out of time. The claimant complied with that order. He explained the delay in terms of a failure by the tribunal staff to give him prompt replies to emails and provide updates on progress.

3. The Law:

3.1. S.111 Employment Rights Act 1996 (ERA) provides that whilst a complaint of unfair dismissal may be presented against an employer the tribunal shall not consider a complaint under this section unless it is presented to the tribunal before the end of the period of 3 months beginning with the effective date of termination or within such further period as the tribunal considers reasonable in the case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of 3 months.

3.2. S. 207 B ERA provides for an extension of those time limits to facilitate conciliation before institution of proceedings, it being a requirement that a claimant, unless exempt, obtain an early conciliation certificate from ACAS. The Employment Tribunals (Early Conciliation: Exemptions and Rules of Procedure) Regulations 2014 at Regulation 3 specifies the situations in which a claimant is exempt from early conciliation and these include for our purposes claims of unfair dismissal accompanied by an application under section 128 ERA confirming that the claim is amongst other things a claim of automatic unfair dismissal in relation to public interest disclosures or is in respect of trade union related dismissals.

4. Application of law to facts:

- 4.1. The claimant's claim of unfair dismissal is one of constructive unfair dismissal based upon what he considered to be an imposition of additional work and the stress of a disciplinary investigation following an argument about the burden of work; the claimant has not submitted a claim to the tribunal alleging that he was subjected to detriment or dismissed for any reason related to or because of his having made a public interest disclosure. The constructive unfair dismissal claim is not related to trade union activities or any other exempt category in relation to early conciliation.
- 4.2. The claimant's reason for not entering early conciliation is that he did not want to do so. He had been absent from work with stress. He did not foresee conciliation being successful. He did not wish to be re-engaged or reinstated by the respondent and therefore decided that mediation was pointless. Despite guidance given to him about the rules on conciliation he sought to avoid it until he decided he could no longer, for the purposes of making a claim only.
- 4.3. Upon rejection of his 1st claim in June 2019 he was given guidance and information about the reason for rejection, failure to conciliate, and therefore was aware of the requirements of the applicable rules. Not wishing to conciliate he submitted a new claim erroneously claiming interim relief so as to avoid having to conciliate. On researching the matter further, he raised whistleblowing as an exemption but assumed, in the absence of an early conciliation certificate, that his claim was not going to be processed by the tribunal, or in his words that the tribunal would not persevere with it. Having replied to an enquiry raised by the tribunal by his email 2 September 2019 and having assumed that the claim was not proceeding the claimant waited several months before making any enquiry about it. He did not actively pursue it.
- 4.4. I accept the respondent's submissions on the amount of information and guidance made available to the claimant's both directly by the tribunal and on the website when a claim is being made.
- 4.5. The claimant was not exempt from the requirements of conciliation. He knew, or ought reasonably to have known, that this was the situation. He did not act appropriately for a conscientious litigant until March 2020 when he made an enquiry with clear intent to pursue its outcome and then acted promptly to embark upon the necessary conciliation over the period from 20 March - 26 March 2020; when he had obtained a certificate, he presented the 3rd claim. That claim was properly presented with the details of the early conciliation certificate. It was some 5 months out of time.
- 4.6. The tribunal's delay in its correspondence is both regrettable and from my point of view lamentable, albeit I have made no enquiry as to the reason. The claimant was however made aware in June 2019, well before the expiry of the primary limitation period, what he was required of him; in circumstances where he tried to explain away his failure to conciliate by suggesting a possible exemption it was beholden on him to pursue the matter actively with the tribunal, which I find he did not. He pursued it eventually but not within a reasonable time.

- 4.7. The claimant always had the wherewithal and requisite knowledge to engage in required conciliation and to submit a proper claim before the expiry of the primary limitation period. It was not the tribunal's role to advise him; in fact, he received a letter to that effect. It was not for the tribunal to perfect an imperfect claim. The tribunal staff were not responsible for the claimant's failure to obtain a conciliation certificate and neither did the delay in correspondence impede or mislead the claimant as to the need for one. He was not misled to believe that his claim had been accepted and in fact he correctly assumed that it had not been.
- 4.8. Notwithstanding the tribunal's failure to correspond timeously, it was reasonably practicable for the claimant to have presented his claim properly and in time. He did not.

Employment Judge T.V. Ryan

Date: 16.09.20

JUDGMENT SENT TO THE PARTIES ON 21 September 2020

FOR THE TRIBUNAL OFFICE