



EMPLOYMENT TRIBUNALS

Claimant: Mr R Smith
Respondent: Beacon Multi Academy Trust
Heard at: East London Hearing Centre
On: Wednesday 2 September 2020 (by Cloud Video Platform)
Before: Employment Judge Russell

Representation
Claimant: Did not attend and was not represented
Respondent: Ms H Tattersall (solicitor)

JUDGMENT

The judgment of the Tribunal is that:-

1. The claim was presented out of time. It was reasonable practicable to have presented it within time.
2. The claim is dismissed.

REASONS

1 On 30 October 2019, the Claimant was given notice of the termination of his employment with the Respondent academy by reason of redundancy. That notice expired on 30 April 2019, which is the effective date of termination from which the time to present a claim begins. The Claimant started ACAS Early Conciliation on 27 June 2019 and the ACAS EC certificate was issued on 4 July 2019. The period of time spent in early conciliation was 7 days.

2 The Claimant presented his claim form on 19 August 2019 complaining of unfair dismissal. Section 111 of the Employment Rights Act 1996 provides that a tribunal shall not consider a claim of unfair dismissal unless it is presented to the tribunal within three months of the effective date of termination or such further period as the tribunal shall consider reasonable where it is satisfied that it was not reasonably practicable to submit the claim within time. That three-month time period is extended by operation of the ACAS

Early Conciliation scheme so long as entered within the primary time limit.

3 In deciding whether it was not reasonable practicable for the claim to be presented, the tribunal must consider whether there is just cause for not presenting the claim. The words “reasonably practicable” do not require the tribunal to be satisfied that presentation was not physically possible, in the sense of a physical or mental bar, but should be read as being more a question of whether presentation within time was reasonably feasible, see **Palmer & Saunders v Southend-On-Sea Borough Council** [1984] IRLR 119. Establishing that it was not reasonably practicable to have presented the claim within time and in seeking an extension of time, the burden lies upon the Claimant to adduce the appropriate evidence.

4 In this case, the Respondent pleaded in their Response that the Tribunal did not have jurisdiction to hear the claim as it was presented out of time. The Tribunal directed that there would be a Preliminary Hearing to decide the preliminary issue.

5 The Preliminary Hearing was listed for 20 February 2020. It was postponed on the application of the Claimant due to a family bereavement. The Claimant made a further application to postpone the re-listed Preliminary Hearing on 23 March 2020. The hearing was converted to a telephone hearing due to restrictions caused by the Covid-19 pandemic. The hearing was not effective as Counsel for the Respondent could not be contacted by the Tribunal, the Claimant was unable to attend as he is a teacher required to remain in school as part of the provision for vulnerable children and the quality of his wife’s telephone line was very poor. I directed that the Preliminary Hearing would be relisted for two hours once the Covid-19 situation became more clear.

6 By a Notice of Preliminary Hearing sent on 18 June 2020, the parties were informed that the Preliminary Hearing would take place today. The Notice advised the parties to refer to the Tribunal’s letter dated 3 December 2019, in which the Claimant was informed that if he wanted to argue that it was not reasonably practicable to present his claim in time, he should prepare a short witness statement explaining why and present any medical evidence in support. It is possible that the Claimant did not receive the letter dated 3 December 2019 as there was a typographical error in the email address to which it was sent, however, he did not request a copy following receipt of the Notice of Preliminary Hearing.

7 In advance of the hearing the Respondent’s solicitors contacted the Claimant and indeed the Tribunal on a number of occasions noting that they had not received any evidence from the Claimant in support of any argument for an extension of time. The Respondent’s solicitor repeated in her email sent on 10 August 2018 the requirement that the Claimant must prepare a short witness statement if he wanted to argue that it was not reasonably practicable to present his claim in time.

8 By a letter sent on 28 August 2020, I informed the parties that the Preliminary Hearing would be conducted by cloud-video platform (CVP) and directed that, unless provided to the Respondent by 4.00pm on 1 September 2020, the Claimant would not be allowed to rely upon any evidence of the Preliminary Hearing without leave of the Judge. I am satisfied that that email was sent to the correct address for the Claimant.

9 The Claimant has not prepared a witness statement or provided any evidence relevant to the preliminary issue in respect of time. Instead, at 10.47pm on 1 September 2020, the Claimant emailed the Tribunal in the following terms:

“Unfortunately due to unforeseen circumstances I am not able to attend the virtual meeting. My wife has been dealing with the case but due to personal reasons is also indisposed. As a result I am requesting a postponement of the hearing until a later date.

I appreciate that is late notice and also appreciate that even if I was not present or represented it would go ahead as scheduled if the postponement is not granted.

In lieu of this I have attached documents which I would like considered in the case to ensure that I have representation in terms of documents.

Attached are:

- 1. Redundancy booklet with notes in margins.**
- 2. Copy of the business case.**
- 3. Copy of letter sent to me by email destined for another member of staff.**
- 4. Letter detailing the key points**
- 5. Advert on tes for teacher of SEND in BCS posted on 26th April, 4 days before date of redundancy.”**

10 The Respondent objected to the postponement. At 11.15am the parties were informed of my decision to refuse the application for a postponement. The letter sent on my behalf gives my reasons: the Claimant refers only generally to his personal circumstances and wife’s indisposition but provided no details or evidence to show that he could not attend a hearing by video conference and further delay in deciding the preliminary issue was not in the interests of justice. The Claimant was informed that if he did not attend the hearing, it would proceed in his absence.

11 The hearing was due to start at 2.00pm. Neither the Claimant or his wife was present. I decided to wait until 2.10pm and checked with the clerks whether any response had been received to the refusal of the postponement. There was no further message from the Claimant on the Tribunal file and by 2.10pm he had still not attended. Having regard to the reasons given in my letter refusing the postponement and the express warning that it would proceed in his absence if he did not attend, I decided that in all of the circumstances of the case it was in the interests of justice and in accordance with the overriding objective that the hearing should continue.

12 Having regard to the chronology as set out at the outset of these reasons, the effective date of termination was 30 April 2019. The primary time limit would expire on 29 July 2019. The Claimant contacted ACAS within that primary time limit and the certificate was issued 4 July 2019. As the primary time limit would otherwise expire within the period of one month from the end of the ACAS conciliation period, section 207B(4) of the Employment Rights Act 1996 applies to extend time to the end of that one month period, in other words on 4 August 2019. Ms Tattersall calculated time slightly differently, adding the seven days of ACAS conciliation to the end of the primary time limit and gave the slightly more generous limitation date of 5 August 2019.

13 The claim was not presented until 19 August 2019, some two weeks after time expired and there is no explanation provided by the Claimant as to why there was such a delay. I have considered the contents of the claim form and the documents attached to

the Claimant's email requesting a postponement. The Claimant has mentioned mental health issues and having found out about advertisement of several roles which may have been suitable alternative employment. Both are potentially relevant to the practicability of presenting the claim in time. Despite the instruction as early as 3 December 2019 and the more recent reminders, the Claimant has not adduced any evidence to show that his health meant that it was not reasonably practicable to present the claim by 5 August 2019 or why he was two weeks' out of time. The documents attached to the email sent on 1 September 2020 largely address the merits of the unfair dismissal claim, (for example procedural breaches such as refusal of re-training, incorrect information and non-involvement of the headmaster). The advertisement of a role in Times Educational Supplement was posted on 26 April 2019 (as the Claimant notes, this was four days before redundancy). There is no evidence to suggest that the Claimant only became aware of it later or, if he did, when.

14 The burden of proof is on the Claimant, he has been given a fair opportunity to provide an explanation for delay both in providing a witness statement, providing medical evidence and attending a hearing. He has not done so. For all of these reasons, I am satisfied that the claim was presented out of time and that the Claimant has not shown that it was not reasonably practicable to have presented it within time. The claim is dismissed in its entirety.

Employment Judge Russell
Date: 17 September 2020