



EMPLOYMENT TRIBUNALS

Claimant: Dr K Giannopoulos

Respondent: Warrington & Halton Teaching Hospitals NHS Foundation Trust

Heard at: Manchester

On: 10 November 2020

Before: Employment Judge McDonald

REPRESENTATION:

Claimant: In person

Respondent: Mr A Gibson, Solicitor

JUDGMENT

The judgment of the Tribunal is that:

1. The claimant's complaint of unfair dismissal is dismissed on withdrawal.
2. The claimant's complaint that the respondent failed to pay him a redundancy payment is dismissed on withdrawal.
3. The claimant's complaint of breach of contract is dismissed because it was brought out of time.
4. The claimant's complaint of direct race discrimination will proceed to final hearing.

REASONS

1. I conducted a preliminary hearing by CVP video call on 10 November 2020.
2. The claimant's claim was about the termination of his contract to work night shifts for the respondent as a locum doctor for the week 21-27 March 2020. The claimant worked two of those night shifts. On the morning of Monday 23 March 2020 at the end of his second shift he was told he was not required to work the rest of the week. Instead the shifts would be covered by an employee of the respondent working on a bank basis.

3. The claimant brought a Tribunal claim alleging that he had been unfairly dismissed, that he had not been paid redundancy pay, that the termination of his engagement was in breach of contract and that he had suffered direct race discrimination by being treated less favourably because of his Greek nationality.

4. The matters discussed at the preliminary hearing are set out in the Case Management Summary of today's date. This judgment records my reasons for dismissing the claimant's complaints of unfair dismissal, failure to pay redundancy pay and breach of contract. His claim of direct race discrimination will proceed to a final hearing.

The unfair dismissal and redundancy pay complaints

5. With Mr Gibson's consent, I explained to the claimant that an employee requires two years' continuous service before they can claim unfair dismissal or be entitled to a redundancy payment. The claimant accepted he did not have that length of continuous service with the respondent and withdrew the unfair dismissal and redundancy payment complaints. I therefore dismiss those complaints on withdrawal.

The breach of contract and direct race discrimination complaints

6. The claimant's claim form was filed out of time. The incidents complained of happened in the week of 21 March 2020 and the claimant contacted ACAS to begin the early conciliation process on 19 June 2020, within the relevant time limit. However, the early conciliation certificate was issued on 19 July 2020 which meant (by virtue of s.207B(3) of the Employment Rights Act 1996) that the claim form should have been received by the Tribunal by 19 August 2020. In fact it was received on 20 August 2020, a day out of time.

7. At the hearing I therefore had to decide whether the breach of contract complaint and the direct race discrimination complaint should be dismissed because they were received by the Tribunal outside the usual time limit. I decided that the breach of contract complaint should be dismissed but that the race discrimination complaint should not. I gave my reasons for that orally at the hearing and the claimant requested them in writing. They are set out below.

The Law

8. I need to apply two different tests. Where a claim of breach of contract is out of time I need to decide whether it was reasonably practicable for it to be filed in time. The onus is on the claimant to show that it was not reasonably practicable.

9. In terms of the relevant law, it makes it clear that "reasonably practicable" does not mean "reasonable". In the case of **Palmer & Another v Southend-on-Sea Borough Council [1984] ICR 372** the Court of Appeal made it clear that "reasonably practicable" does not mean "reasonable" which would be too favourable to employees, but does not mean "physically possible" which would be too favourable to employers. It means something like "reasonably feasible".

10. When it comes to the discrimination claim, the test is broader. The question is whether it would be just and equitable to allow the claim to proceed out of time. When deciding that I take into account not only the reasons why the claim was filed late but also the relative prejudice to the claimant and the respondent were I to allow the claim to proceed or, alternatively, decide that it should not.

The Evidence

11. I heard evidence from the claimant who was briefly cross examined by Mr Gibson. I then heard submissions from both parties.

12. On the evidence I heard, I am satisfied the claimant was aware of the relevant time limits. I accept that because he was working away from home throughout August he did not have access to all his paperwork in the case. He also made the point that when working away he was working as a locum doctor which is a challenging role and meant that he had a lot to cope with and therefore was, to use his words, "inundated". I find that the claimant did actually file his claim form with the Tribunal when he was working away for home in Wales.

Submissions

13. I heard submissions from Mr Gibson and then from the claimant. In relation to the relative prejudice to the claimant and the respondent, Mr Gibson in his submissions accepted that there was little practical prejudice to the respondent given that the delay in this case was only one day. It is not a case where the claim was filed so late that the evidence might have been affected in terms of its quality because people's memory of events might have faded.

Conclusion

14. Dealing firstly with the breach of contract claim, what I find is that the claimant was aware of the time limit, did have some practical difficulties in filing it on time, but did in the end file the claim from Wales where he was then working. I am not satisfied that the very fact of him being away from home was sufficient to make it not reasonably practicable to file his claim.

15. I have considered whether the nature of the work he did meant that it was not reasonably practicable for him to file his claim, but I find that that would be too generous an interpretation of the legal test. I remind myself that the question is not whether it was reasonable for the claimant to have filed his claim in time but whether it was reasonably practicable for him to do so.

16. My decision when it comes to the breach of contract complaint is that it was reasonably practicable for the claimant to have filed his claim in time. I therefore decide that his claim of breach of contract should be dismissed because it was not filed in time and the relevant extension provisions do not apply.

17. When it comes to the race discrimination claim, as I have said the test is broader. Mr Simpson did accept that there was no practical prejudice to the respondent, but that does not automatically mean that I should allow the claim to proceed. Time limits are there for a reason. In this case, however, I do accept that

the lack of prejudice to the respondent and the fact that the claimant would otherwise be denied his right to bring a claim mean that it is just and equitable for me to allow the claim to proceed even though it was filed outside the time limit.

18. My decision in relation to the race discrimination claim therefore is that it should be allowed to proceed on the just and equitable basis even though filed out of time. I went on to set the final hearing date for that complaint and to make direction for preparation for that hearing. Those are set out in the Case Management Summary of today's date.

Employment Judge McDonald

Date: 11 November 2020

JUDGMENT AND REASONS SENT TO THE PARTIES ON
20 November 2020

FOR THE TRIBUNAL OFFICE

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