



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr N Crew

and

Aegis the Union

Heard at: Reading

On: 8 October 2020

Before: Employment Judge Vowles (sitting alone)

Appearances

For the Claimant: In person

For the Respondent: Mr B Linn, General Secretary

The Judgment was sent to the parties on 6 November 2020. On 6 November 2020 the Respondent requested written reasons which are now provided below.

REASONS

1. On 9 January 2020 the Claimant presented a claim for unfair dismissal to the Tribunal. He had in support of that claim an ACAS Early Conciliation Certificate showing that the matter was referred to ACAS on 3 January 2020 and the Early Conciliation Certificate was issued on that same date.
2. On 30 January 2020 the Respondent presented a response and resisted the claim. The Respondent said that the claim had been presented out of time. As a result of that an Employment Judge ordered that this preliminary hearing should take place to consider the following matter - whether the Tribunal has jurisdiction to consider the claim having regard to the time for presentation of the claim. The Notice of Hearing was dated 8 March 2020.
3. Today I have heard evidence on oath from the Claimant, Mr Crew, and I have also heard submissions from Mr Linn on behalf of the Respondent. I have also considered the ET1 claim form and the ET3 response form.
4. S.111(2) of the Employment Rights Act 1996 reads as follows:

(2) Subject to the following provisions of this section an employment Tribunal shall not consider a complaint under this section unless it is presented to the Tribunal (a) before the end of the period of three months beginning with the effective date of termination or (b) within such further period as the Tribunal considers reasonable in a case where it is

satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

5. The Claimant accepts that his effective date of termination of employment was 31 December 2018 and therefore the three month period from that date expired on 30 March 2019. His claim form was presented on 9 January 2020 so the claim was just over nine months late. The Claimant accepts that the claim was presented outside the three month time limit.
6. The Claimant said in his evidence that he completed a version of his ET1 claim form and presented it to ACAS on 29 January 2019. He said that he contacted ACAS by telephone and that ACAS told him that he had to complete internal processes first with the union before he could present a claim to the Tribunal. He said it was all over the telephone, he had nothing in writing. He did not do any further research regarding the matter other than with ACAS. He said it was the ACAS Helpline that he spoke to. He said that he was aware because of his employment with a trade union that when his employment ended there was a time limit of three months from the date of termination of his employment to bring a claim to the Tribunal. He said that he lodged a complaint with the Respondent on 1 March 2019 and he got the outcome of the appeal regarding that complaint on 8 May 2019 or thereabouts. He then contacted ACAS again and ACAS told him to either go to court or to the certification officer regarding non-compliance with legislation regarding election of trade union officials. He said he raised a complaint with the certification officer on 13 May 2019 and the decision was dated 17 December 2019. He said that he again contacted ACAS on 3 January 2020 and they issued the Early Conciliation Certificate on that same date. He presented the claim to the Tribunal on 9 January 2020.
7. Where a claim of unfair dismissal is presented out of time the Tribunal has no jurisdiction to consider that claim unless the Claimant can show that it was not reasonably practicable to present the claim in time (section 111(2) above). In the case of Palmer & Sanders v Southend on Sea Borough Council [1984] the court said that “reasonably practicable” means was it reasonably feasible to present the complaint to the Tribunal within the relevant three months.
8. I find that the Claimant knew of the three months’ time limit at the time his employment ended. He accepted that he knew. He was, after all, a senior trade union official. He then properly contacted ACAS.
9. I do not accept that he was advised by ACAS that he could not present a claim to the Tribunal until he had completed internal processes with the Respondent. He has nothing in writing. He said it was all done over the telephone. The Claimant knew, and ACAS knows, that completion of internal processes or an appeal do not extend the time limit or excuse a late claim.
10. The Claimant said he made no further enquiries regarding time limits.
11. The Claimant knew of the time limits at the date of termination on 31 December 2018 there was nothing to prevent him from presenting a claim within the three months.

12. There is nothing here shown to the Tribunal in his claim form or in his evidence before me today which shows that it was not reasonably feasible or not reasonably practicable for the Claimant to present the claim in time. I find that it was reasonably feasible for him to do so. I can find no grounds to extend time under the not reasonably practicable test.
13. The Tribunal therefore has no jurisdiction to consider the claim of unfair dismissal under s.111 of the Employment Rights Act 1996.
14. The claim is dismissed.
15. My decision will be put in writing in the form of a judgment and sent to both parties in the next couple of weeks because there is a backlog in promulgation of judgments.

I confirm that these are my Reasons in the case of Mr N Crew v Aegis the Union case no. 3300208/2020 and that I have dated and signed by electronic signature.

Employment Judge Vowles

Date: 6 January 2021

Sent to the parties on:

25.01.2021

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J Moossavi

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For the Tribunals Office