



EMPLOYMENT TRIBUNALS

Claimant

Mr T Herbert

v

Respondent

William Hill Organisation Limited

Heard at: Norwich (by CVP)

On: 13 January 2021

Before: Employment Judge Postle

Appearances

For the Claimant: In person.

For the Respondent: Mr Williams, Counsel.

COVID-19 Statement on behalf of Sir Keith Lindblom, Senior President of Tribunals.

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was by Cloud Video Platform (V). A face to face hearing was not held because it was not practicable and no-one requested the same and all issues could be determined in a remote hearing.

JUDGMENT ON AN OPEN PRELIMINARY HEARING

The Tribunal has no jurisdiction to hear the claimant's claim of unfair dismissal it being reasonably practicable for him to have issued the claim within a three month period plus any addition for early conciliation.

REASONS

1. This was an open preliminary hearing to determine whether it was reasonably practicable for the claimant to have issued his claim within three months from the effective date of termination.

2. Giving the claimant the benefit of doubt although the disciplinary hearing took place on the 19 February 2018 the claimant says he was not made aware of his dismissal at the very latest until 1 April 2018. That would mean allowing for any extension of time under the early conciliation procedure, the date for filing the claim subject to any ACAS conciliation would then be the 30 June 2018.
3. Although the claimant went to ACAS on 19 July 2018 and the certificate was granted also on 19 July 2018. The claimant filed the claim on 12 October 2018 substantially out of time.
4. In this tribunal we have had the benefit of a bundle of documents consisting of 96 pages. The claimant prepared a witness statement with a number of exhibits attached to it. In support of his case there was a witness statement from Mr Tosin Famusudo.
5. The claimant by letter appealed the decision to dismiss on 4 April. In that letter the claimant makes reference to the ACAS Code of Practice and admits he had Googled unfair dismissal/ACAS. It is also true at the time the claimant had a law degree and was studying a masters. In the letter of appeal the claimant makes reference to various reasons why the disciplinary hearing was flawed. The claimant accepts he had looked into the issues of unfair dismissal and indeed Googled case law regarding/unfair dismissal and the late presentation of claims.
6. The claimant was invited to an appeal hearing for the 29 April and the claimant was unable to attend that meeting as he was on a university master's trip at the time. The appeal hearing was re-arranged for the 7 June at which the claimant argued his case as to why the disciplinary hearing was flawed.
7. The outcome of the appeal hearing was conveyed to the claimant by letter of 17 July 2018 (pages 87-88). At that point the claimant clearly knew he would not be re-instated or be going back to the respondent.
8. On 19 July the claimant emailed the respondent confirming he was disappointed with the decision, that conciliation would not be applicable and "As a result I've lodged a claim to the Employment Tribunal. HR will hear from the Employment Tribunals very shortly." (page 95). For reasons best known to the claimant and notwithstanding this and approaching ACAS on 17 July he then delays filing a claim at the Employment Tribunal until 12 October 2018.
9. On the claimant's own admission, on his evidence before the Tribunal this morning he accepts he knew there was a three month time limit in which to issue a claim.

10. The claimant says the reason he did not issue the claim was because that he was not of sound mind to present a claim, 'it was all very stressful at the time'. The claimant has notably produced no medical evidence. Furthermore, the claimant during this period held down two jobs, one as a project manager. At the same time the claimant was concluding the studying of his masters.
11. To conclude the claimant said that with hindsight it is fair to say I should have issued during the three months but I was upset and angry.

The Law

12. S.111 of the Employment Rights Act 1996 – Complaints to Employment Tribunal, subsection 2 states 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.”
13. The above provision is of course subject to any extension of time allowed by early conciliation.
14. When a claimant tries to excuse late presentation of his claim form on the ground that it was not reasonably practicable to present the claim in time three general rules will apply:-
 - Section 111(2)(b) shall be given a liberal construction in favour of the employee.
 - What is reasonably practicable is the question of fact. An appeal against a Tribunal's decision will not be successful unless the Tribunal has mis-directed itself in law or has reached a conclusion that no reasonable Tribunal could have reached.
 - The onus of proving it was not reasonably practicable to present a claim in time rests entirely with the claimant. That will impose a duty upon him to show precisely why it was he did not present his complaint in time.

The Tribunal's conclusions

15. It is clear and not in dispute the claim was presented on 12 October 2018, giving the claimant the benefit of the doubt the actual knowledge of his dismissal at the latest was 1 April 2018, therefore the time for presenting a complaint to the Employment Tribunal at the latest would have been the 30 June 2018 subject to any extension for early conciliation. It is common ground that ACAS conciliation commenced on 19 July 2018 and concluded also on 19 July 2018.
16. The claimant has a law degree and on his own admission he knew there was a three month time limit, he had researched it and was therefore fully aware of his rights to bring a claim and the time limit in which to bring such a claim.
17. The claimant has tried to excuse late presentation on the grounds that he was not in a sound mind at the time to present a claim. This is set against a background that he attends an appeal hearing, argues his case well and upon receipt of the outcome of the appeal confirms to the respondent that he had lodged an Employment Tribunal claim and that they would be hearing from the Employment Tribunal fairly shortly. At the same time immediately after the outcome of the appeal the claimant had entered into early conciliation and concluded early conciliation and to use his words "it was not going to be applicable" (any conciliation).
18. Furthermore, the claimant has produced no evidence of being unable to deal with affairs by way of medical evidence or a GP report and this is set against the background that the claimant during this period was completing his masters and holding down two jobs, one being a project manager.
19. In those circumstances the Tribunal concludes that it clearly is and was reasonably practicable for the claimant to have issued in time and the claimant has patently failed to satisfy the Tribunal precisely why he did not present his claim in time. The claim of unfair dismissal is therefore dismissed.

Employment Judge Postle
Date: ...26/1/21.....
Sent to the parties on:
.....
For the Tribunal Office