



EMPLOYMENT TRIBUNALS

Claimant: Mr Augustine Ogunsola

Respondent: Buckinghamshire Healthcare NHS Trust

OPEN PRELIMINARY HEARING

Heard at: Watford (by CVP)

On: 9 March 2021

Before: Employment Judge Cassel (sitting alone)

Appearances

For the Claimant: In person

For the Respondent: Mr S Sudra, Counsel

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

This has been a remote hearing on the papers which has not been objected 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 during the current pandemic and all issues could be determined in a remote hearing on the papers.

JUDGMENT AT A PRELIMINARY HEARING

The Tribunal has no jurisdiction to hear the complaint of unfair dismissal and it is dismissed.

RESERVED REASONS

Background

- (1) The claimant submitted a claim form claiming unfair dismissal from his employment as a specialty medical registrar with the respondent which was received by the Tribunal on 4 August 2020.

- (2) The claimant had been employed by the respondent from 20 April 2015 and in June 2017 he was suspended from his employment following the initiation of criminal proceedings against him.
- (3) He was invited to a hearing with the respondent's management by letter dated 25 July 2018 and within that letter he was told that he had a right to be accompanied and that a possible outcome of those proceedings was his dismissal.
- (4) He was told that he had a right to be accompanied and in fact attended that hearing with a Mr Conway who is a solicitor instructed in the criminal proceedings by the claimant.
- (5) The claimant was dismissed at that meeting and the effective date of termination of his contract of employment was 9 August 2018. He was told of his right of appeal which he exercised and that appeal was dismissed.
- (6) He subsequently contacted ACAS on 26 June 2020 and on 29 June 2020 an Early Conciliation Certificate was issued. The ET 1 form was received by the tribunal on 4 August 2020. A response was submitted within the appropriate time in which to do so.
- (7) On 12 December 2020 Employment Judge Cowen directed that a preliminary hearing take place to determine whether the tribunal has jurisdiction to hear the complaint as the statutory time limit in which to bring such a complaint has expired.

The Hearing

- (8) The Claimant attended by video link. The Respondent was represented by Mr S Sudra of Counsel, who also appeared by video link.
- (9) The Claimant gave evidence on oath and confirmed that his statement dated 20 February 2021 was true. He confirmed that the criminal conviction against him was the subject of Judicial Review and that the hearing for that review had been scheduled for 21 April 2021. He clarified that it was only after receiving notification that his application for Judicial Review had been granted that he contacted ACAS and subsequently made his claim to the tribunal. He stated that the Crown Prosecution Service did not contest his assertion that the one conviction recorded against him was unlawful and added that it was essentially his having undertaken research that led to his belief that the conviction was unlawful and that in effect the advice that he had had from his solicitors was inadequate.
- (10) He was cross-examined and accepted that he had been accompanied by Mr Conway at the dismissal meeting and that Mr Conway had read the letter of invitation to that meeting and understood that the outcome could be dismissal.
- (11) He accepted that he had exercised his right of appeal and that at the time of his dismissal he knew of the existence of Employment Tribunals but was not aware

of time limits. He gave evidence that his focus was on the criminal proceedings and although he knew that he could make a claim of unfair dismissal to the Employment Tribunal he was “not in the frame of mind to find out about time limits.” He accepted that there was nothing in his statement to show that he had any impairment preventing him from bringing a complaint to the Employment Tribunal and that possibly having made representations to the respondent that he could return to work if he were supervised he could have been in the right state of mind to enquire about the process for bringing a claim in the Employment Tribunal.

- (12) He accepted that he first approached ACAS on 26 June 2020 and that although the Early Conciliation Certificate was issued three days later it was not until 4 August 2020 that he submitted his claim form. He stated that he was not aware of the time limits although he accepted that he personally had undertaken legal research in relation to the Judicial Review.
- (13) I explained to the claimant the meaning of Legal Privilege and that advice sought and given by his legal advisers need not be disclosed and if it was not disclosed there would be no adverse inference against him. However in answer to questions from me he stated that he had received advice from his legal team at the time of his dismissal but was told that he had little chance of success because of the outstanding criminal proceedings. He stated in evidence that was somewhat vague that the advice was received prior to the hearing in the criminal matter of 15 April 2019 and that the advice was provided to him from a solicitor working on his criminal trial. He considered that although the advice came from a solicitor who was instructed he did not wish to disclose the person’s name and considered it as advice from a “friend” rather than in the capacity of a solicitor. No relevant correspondence was produced.

Submissions

- (14) Mr Sudra invited me to dismiss the claim for want of jurisdiction. He reminded me of the statutory provision at section 111 (2) of the Employment Rights Act 1996 and that it was the exception rather than the rule for an extension of time to be granted. He submitted that the onus was on the claimant to show that it was not reasonably practicable to submit his claim within the statutory time limit and there was realistically no evidence to support that. He submitted that the claimant had the intelligence and ability to undertake very detailed investigations into Judicial Review and there was nothing to stop him doing the same in relation to Employment Tribunals. Furthermore he had received advice from his legal team and if that advice was erroneous his remedy lay against his adviser. He knew of the existence of Employment Tribunals and the reality was that he was unsure if he had a good case when he was dismissed but still the onus was on him to make those enquiries and submit his claim form timeously. Even if that were not accepted, there was still no explanation for the delay from 26 April 2019 to 4 August 2020 and it would not be reasonable to extend time for such a long period of time to enable the tribunal to have jurisdiction.
- (15) The Claimant invited me to allow the claim to proceed. He stated that it was important to understand the context of his claim. There had been misleading

criminal allegations against him which was so serious that it might have ended up with his imprisonment or being placed on the Sex Offenders Register for a significant period of time. His solicitors were not completely helpful and it took him time to discover more about Employment Tribunal Proceedings and it was in the interests of justice, as the criminal proceedings against him were unlawful, that he should have the opportunity to show that his dismissal was unfair.

Conclusions

- (16) The Employment Rights Act 1996 at section 111 gives an employee the right to bring a complaint against an employer that he was unfairly dismissed.
- (17) Parliament determined that there should be a time limit in which to bring proceedings and under section 111 (2) we are told that:

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.
- (18) Tribunals are reminded that the starting point must always be the statutory provision and that an extension of time is an exception. I explained to the claimant that the words “shall not” were included for that purpose and I highlighted them in the preceding paragraph. The onus always remains on a claimant to show that it was not reasonably practicable for the complaint to be presented before the end of the period of three months and then acted reasonably speedily thereafter in bringing the complaint.
- (19) Although I accept that the personal sense of injustice that the claimant feels towards the respondent for what he considers the wrongful pursuit of criminal proceedings against him is a genuine one, that is not a matter for this tribunal. What I have to consider is whether there is evidence to show that it was not reasonably practicable for him to bring a complaint within the statutory time limit. The conclusion I reach is that there is no evidence on which such a conclusion can be based. The claimant is an intelligent and well-educated man. In correspondence to the tribunal it is immediately apparent that the claimant has a thorough grasp of tribunal proceedings and the statutory provision relevant in these proceedings. At the time of his dismissal he had the benefit of a solicitor in attendance at the dismissal meeting with whom he discussed the process. He knew of the existence of Employment Tribunal but on his evidence took no steps to acquaint himself as to any statutory time limits.
- (20) He received further advice from a solicitor prior to 15 April 2019. He could give no cogent explanation as to why it was not until 23 June 2020 that he contacted ACAS. It seems to me that the real reason for his change of heart was his

sudden belief that he has an arguable case of unfair dismissal following the apparent flaws in the criminal process.

- (21) It was incumbent on the claimant in the knowledge of the existence of his rights to bring a claim to make reasonable enquiries as to time limits. There really was no impediment preventing him from doing so. I can find no reason to extend time. I was told by Mr Sudra, that even allowing for Early Conciliation the claim was submitted one year nine months out of time.
- (22) That of course is only part of the statutory provision. If I am wrong, and time should have been extended, I do not find that the delay from 26 June 2022 to 4 August 2020 is in a further period that is reasonable to bring such a complaint.
- (23) For these reasons the tribunal has no jurisdiction to hear the complaint of unfair dismissal and in so far as the tribunal has jurisdiction to do so I dismiss the claim.
- (24) At the end of the proceedings today when written reasons were requested by Mr Sudra, mention was made by him of an application for costs. Reference was made to correspondence which was not in the bundle of documents. Should the respondent seek to apply for costs then a written application should be made in the usual way under rule 77 of the Employment Tribunals Rules of Procedure and thereafter I shall make the appropriate orders for the claimant to respond.

Employment Judge Cassel

10 March 2021

Sent to the parties on:

23 March 2021

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For the Tribunal:

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