



EMPLOYMENT TRIBUNALS

Claimant: Mr M Blackburn

Respondent: Concentrix CVG Intelligent Contact Ltd

Heard at: Liverpool **On:** 6 November 2020

Before: Employment Judge Horne

Representatives

For the claimant: Mr G Graham, counsel

For the respondent: Mr T Russell, solicitor

Judgment was announced orally at the preliminary hearing and, also at the hearing, the respondent made an oral request for written reasons. Accordingly the following reasons are provided.

REASONS

Introduction

1. Readers of these reasons may wonder why the heading is marked “Code V”. All this means is that the hearing took place on a remote video platform. The parties consented to a video hearing and cooperated well to make it work.

The preliminary issues

2. By a claim form presented on 28 June 2020, the claimant raised a single complaint of unfair constructive dismissal, contrary to section 94 of the Employment Rights Act 1996.
3. In a letter dated 9 October 2020, the tribunal informed the parties that there would be a preliminary hearing in public for purpose of determining the following issues:
“Whether the claim was entered in time; if not, whether it was reasonably practicable for the complaint to be entered in time; and whether it has been entered in such further period as the tribunal considers reasonable.”
4. In a complaint of unfair dismissal, the time limit is three months beginning with the effective date of termination. At the start of the hearing, we discussed what the effective date of termination was. Everyone agreed about when and how the

employment contract had come to an end. The claimant ended his employment by sending an e-mail on 6 March 2020 in which he resigned with immediate effect. Although the respondent did not accept the claimant's resignation until a later date, the respondent's acceptance or otherwise would have no effect on the actual termination of the contract. In those circumstances, the parties agreed that the effective date of termination was 6 March 2020. This meant that the last day for presenting the claim was 5 June 2020.

5. I therefore had to decide:

5.1. Whether or not it was reasonably practicable for the claimant to present his claim on or before 5 June 2020; and

5.2. If not, whether or not the claim was presented within such further period as I considered reasonable.

Evidence

6. I read a 41-page bundle which the claimant had prepared. The respondent had also prepared a bundle, but Mr Russell helpfully agreed that it would be sufficient for me to work from the claimant's bundle.

7. I heard oral evidence from the claimant, who confirmed the truth of his written statement and answered questions. This is a convenient moment for me to pay tribute to the way in which Mr Russell questioned the claimant. His polite, sensitive and focused manner enabled him to test the claimant's evidence effectively without causing unnecessary upset.

8. Before reaching my judgment I also considered Mr Russell's helpful written submissions.

Facts

9. The claimant was employed by the respondent as an Account Manager.

10. The claimant is the only child of a couple who, until April 2020, lived together in Carlisle. For about 10 years, the claimant's father had been living with vascular dementia. His mother, who was 80 years old, had become his father's round-the-clock carer. Before he became ill, the claimant's father had managed the family finances. The claimant's mother was unused to managing their financial affairs. When it was no longer possible for his father to look after the finances, the claimant obtained a power of attorney for both his parents.

11. In early 2020, the claimant regularly visited his parents and did what he could to help care for his father. For each visit he would drive 100 miles from his home in Manchester and 100 miles back.

12. Between 4 December 2019 and 27 February 2020 the claimant pursued an internal grievance and appeal against the respondent. He was able to engage with the grievance process despite his father's illness.

13. The claimant resigned in an e-mail which he sent on 6 March 2020. By that time, he had taken some professional advice about how to submit an internal grievance, but had not sought or obtained any advice about how to present a claim to an employment tribunal. He had done some elementary research online. From his internet searches he was aware of employment tribunals and the statutory time limit for bringing claims. He knew of the requirement to notify ACAS of his prospective claim. He did not find anything

14. Throughout the three-month period following his resignation, the claimant laboured under a slight misapprehension of what he would need to include in his claim form when presenting his claim. He believed, mistakenly, he would need to set out everything that happened at work that formed part of his reasons for resigning. In fact, he could have afforded to be more economical with his wording than that. The main points would have been sufficient. The claimant was not alone in making this mistake. In my experience, it is a point of tribunal practice that goes unheeded by many experienced employment lawyers. As a result of this misunderstanding, the claimant believed that the process of presenting a claim would be more onerous and time-consuming than it actually was.
15. Following his resignation, the claimant's immediate priority was to secure paid work to maintain an income for himself and his family. Within little or no time of resigning, the claimant found another job as a delivery driver. His new employer was an existing acquaintance who worked next door to his wife's office. The claimant worked as hard as he could. I accept his evidence that initially he worked up to 60 or possibly 70 hours a week.
16. In March 2020, the claimant's father's health took a turn for the worse. The claimant visited as often as he could. Each visit necessitated a round trip of approximately 200 miles which the claimant did by car. From late March 2020, his visits were made more complicated by the fact that his parents were "shielding" from the coronavirus.
17. During this time, the claimant pushed aside all thoughts of his employment dispute with the respondent, comforting himself that he still had several weeks in which to present his claim.
18. On 17 April 2020, his father was admitted to hospital and his health declined even more sharply. He did not eat and he rapidly lost weight. The claimant's mother took the decline in her partner's health very badly. The claimant described it as a "breakdown". She went from being his sole carer to being unable to see him at all. The claimant continued to visit whenever he could and spent an increasing amount of time trying to comfort his mother. At the same time he struggled to come to terms with the fact that his father was dying. He found the experience "incredibly difficult". Thoughts of his claim against the respondent did not enter his mind.
19. Sadly, but inevitably, on 15 May 2020, the claimant's father died. The claimant travelled up to Carlisle and stayed for a time with his mother. Beside dealing with his own grief and that of his mother, he had to make all the funeral arrangements as his mother was unable to do so. He took sole charge of the estate, transferring bills into his mother's name and ensuring that they were paid. There were no friends or family to help him. The emotional and administrative fallout of his father's death was his overwhelming priority for the next few weeks.
20. On 17 or 18 June 2020, it suddenly dawned on the claimant that he had forgotten all about his claim to the tribunal. The realisation came as a shock to him. He was upset and angry with himself. In tears, he told his wife that he thought he had let his family down. He immediately set about gathering together documents to help him complete his claim. He notified ACAS on 18 June 2020 and was issued with a certificate on 23 June 2020.
21. The same day as he obtained his ACAS certificate, he received a telephone call from his mother to say that she was struggling. He packed his documents into a

bag and went to stay with her in Carlisle. He was still at his mother's house when he presented his online claim to the tribunal on 28 June 2020. By this time, although his mother still needed care, it was not as time-consuming or emotionally difficult as it was during the deterioration in his father's health or in the immediate aftermath of her death.

22. The claim form itself contained relatively little detail. It was accompanied by a two-page timeline. Embedded within that timeline was a number of pdf documents such as his resignation letter and grievance. It is unclear whether or not the embedded documents were uploaded to the tribunal's website in readable form.

Relevant law

23. Section 111(1) of ERA confers jurisdiction on employment tribunals to consider complaints of unfair dismissal.

24. Section 111(2) of ERA provides

- (1) 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.

Reasonably practicable

25. The burden of showing that timely presentation was not reasonably practicable is on the claimant: *Porter v. Bainbridge* [1978] ICR 943.

26. "Reasonably practicable" means "reasonably feasible". It is not sufficient for a claimant to show that they acted reasonably. The claimant does not, however, have to show that presenting the claim on time was a physical impossibility: *Palmer and Saunders v. Southend-on-Sea BC* [1984] ICR 372.

27. In *Beasley v National Grid Electricity Transmissions* UKEAT/0626/06/DM, Silber J set out (at para. 16) three critical factors in determining whether it was reasonably practicable for a claimant to bring his claim for unfair dismissal within the prescribed three month period: "(a) the state of the Claimant's knowledge relating to the right to make a claim for unfair dismissal and the need to bring this claim for unfair dismissal with[in] three months of the effective date of his dismissal; (b) the steps taken by the Claimant to ensure that he did bring this claim within that period; and (c) any impediments which prevented the Claimant from bringing this claim within this period."

Such further period as the tribunal considers reasonable

28. In *Cullinane v Balfour Beatty Engineering Services Ltd* UKEAT/0537/10), Underhill J stated (at para 16) that the question of whether a further period is reasonable is not the same as asking whether the claimant acted reasonably, 'still less is it equivalent to the question whether it would be just and equitable to extend time'; instead it requires 'an objective consideration of the factors causing the delay and what period should reasonably be allowed in those circumstances for proceedings to be instituted', having regard to the 'strong public interest' in claims being brought promptly, and against a background where the primary time limit is three months.

29. The respondent submits that, in determining the reasonableness or otherwise of a further period of time, the merits of the claim may also be a relevant consideration. In support of this proposition, the respondent cites *Rathakrishnan v Pizza Express (Restaurants) Ltd* [2016] ICR 283, EAT. This case concerned a late complaint of disability discrimination, where the time limit could be extended on “just and equitable” grounds. If I were to rely on this case when considering the test in section 111 of ERA, I would be falling into precisely the trap against which Underhill J warned in *Cullinane*. Nevertheless, I do consider that there may be an appropriate case in which the merits of an unfair dismissal might be relevant to whether or not it was presented within a reasonable period. Where a complaint is hopeless, it is arguable that it would not be reasonable to present such a complaint at any time.

Submissions

30. It is not necessary for me to rehearse all Mr Russell’s submissions. Most of them were put in writing. The parties can refer to that document should the need arise.
31. One exchange is, however, worth noting. During the course of oral submissions, Mr Russell argued that, when considering reasonable practicability, it is not enough for the claimant to show that it was reasonable for him to prioritise his work and family over his claim. It is not even enough for him to prove that it was not reasonably feasible for him to prioritise his claim over his work and family. This is because the claimant was not faced with a binary choice. He did not have to devote himself exclusively to either his work and family or to his tribunal claim. It is possible to work long hours and look after one’s family in difficult circumstances, and still find the time and energy to go through the relatively simple procedures involved in presenting a claim.
32. After giving Mr Russell’s submissions some thought, I decided that I did not need to hear from Mr Graham.

Conclusions

Not reasonably practicable

33. Mr Russell’s submissions had some force, and gave me pause for thought about how to apply the test of reasonable practicability to the facts of this case. The claimant must show that it was not reasonably feasible to have presented his claim within the time limit. Where a claimant makes a decision to prioritise more pressing concerns over the timely presentation of his claim, he will usually have to take the consequences. This is because, as Mr Russell correctly observed, the choice is seldom binary. In most cases, it will be reasonably feasible to address family and work difficulties and still find some time within the three months to present a claim. The time limit can only be extended where, for the whole of the three month period, the claimant’s other priorities were so overwhelming that he needed to give them absolute priority, and that it was not reasonably feasible to give any attention to his claim.
34. Such cases are likely to be rare, but I am satisfied that this is one of them. Between 6 March and 5 June 2020 there was never a time when it was reasonably feasible for the claimant to give any real thought to presenting his claim. His work and caring responsibilities were all-consuming. He could not reasonably have been expected to work fewer hours – he was trying to replace an Account Manager’s earnings by working as a delivery driver, and would have had to work all

the hours he could. He could not have been reasonably expected to visit his parents less frequently whilst his father was dying or recently deceased. Nor could he reasonably have done anything to progress his claim whilst trying to care for them. The fact that he was staying at his mother's house when he ultimately submitted his claim does not mean that it was reasonably feasible for him to have done so earlier. By 28 June 2020, it had been six weeks since his father's death and, as I have found, his caring responsibilities were not so overwhelming as they had been previously.

35. In deciding that it was not reasonably feasible for the claimant to present his claim by 5 June 2020, I took into account the claimant's belief that he would have to put a lot of work into preparing his claim form and assembling relevant documents. It was even less practicable for him to think about presenting his claim when (so he thought) he would have to write down everything that had caused him to resign and embed the relevant documents. The reality was that he could have prepared his claim form with less time and effort, and fewer documents, than he thought he would need. I am persuaded, however, that it was not reasonably practicable for the claimant to have discovered that refreshing truth. The option of a concise summary is not obvious from the claim form and the need for voluminous detail is a misapprehension shared by many experienced practitioners.
36. Even if that conclusion is wrong, and the claimant ought to have realised that presentation of a claim would be quick and easy, I would still have found that it was not reasonably practicable to present the claim within the time limit. The extent of his work and care for his parents meant that it was not reasonably feasible for him to give any attention to his claim before 5 June 2020.

Further reasonable period

37. I must therefore proceed to consider the second stage of the statutory escape clause.
38. The delay between the expiry of the limitation period and the date of actual presentation was 23 days. The first few days are explained by the claimant putting his claim out of his mind whilst he attended to his mother and his father's estate. By this time it was still only three weeks after father's death. Five days are accounted for by early conciliation. During the final five days of the period, the claimant was caring for his mother.
39. Even taking account of the strong public interest in prompt presentation of claims, I consider the further period of 23 days to be reasonable. It is, in my view, satisfactorily explained. The delay unlikely to have resulted in any significant deterioration in the quality of the evidence or to have caused any real disadvantage to the respondent in trying to defend the claim. Much of the evidence and thought processes will have been captured during the internal grievance process.
40. At Mr Russell's invitation I have considered the merits of the claim. It has yet to be clarified and it is hard to tell whether or not it is likely to succeed or fail. The only specific weakness highlighted in Mr Russell's oral submissions was that the claimant appeared to have gained new employment straight after leaving the respondent. This was, he argued, a fact which pointed away from the claimant having resigned in response to a breach of contract. In my view it is premature to reach such a conclusion. It is at least arguable that an Account Manager would not

choose to become a delivery driver unless something had gone seriously wrong at work.

Outcome

41. For the reasons I have given, I have the statutory power to extend the time limit and allow the complaint of unfair dismissal to proceed. I do so now.

Employment Judge Horne

2 December 2020

ORDER SENT TO THE PARTIES ON

16 February 2021

FOR THE TRIBUNAL OFFICE