



EMPLOYMENT TRIBUNALS

Claimant: Mr Z Islam
Respondent: London General Transport Services Limited
Heard at: East London Hearing Centre
On: 29th March 2021
Before: Employment Judge Reid

Representation

Claimant: In person
Respondent: Mr R Bailey, Counsel

JUDGMENT having been sent to the parties on 30th March 2021 and reasons having been requested by the Claimant in accordance with Rule 62(3) of the Rules of Procedure 2013.

REASONS

1. The issue for this hearing was whether the Claimant's claim was presented in time and therefore whether the Tribunal has jurisdiction to hear it.
2. I was provided with written submissions by the Respondent. The Claimant had not provided a witness statement or any documents explaining why his claim was late. I therefore asked him some general questions about what had happened and he was cross-examined on behalf of the Respondent. I heard oral submissions on both sides.
3. The Claimant brings a claim for unfair dismissal for which the time limit is three months subject to an extension for a period of ACAS early conciliation (it was clarified that his claim for his notice period did not proceed as he had been paid his notice in full).
4. The Claimant was dismissed with immediate effect on 1st June 2020.
5. The normal time limit (before any ACAS extension by way of the early conciliation process) was therefore 31st August 2020.
6. The Claimant applied for an early conciliation certificate on 3rd August 2020 and one was issued on 3rd September 2020.

7. The new time limit with the ACAS early conciliation extension was 1st October 2020; this was less than a month after the certificate was issued on 3rd September 2020.
8. The Claimant therefore could extend his time limit by one month from 3rd September 2020 – to 3rd October 2020 because the new time limit with the extension was less than a month from the date the certificate was issued.
9. The new time limit was 3rd October 2020 and the Claimant's claim was presented two days late, on 5th October 2020.
10. The Claimant explained at this hearing for the first time that he had been unwell and self-isolating between the middle and end of September 2020 but has not provided any medical evidence that he was too unwell to submit his claim form in this period and on or before 3rd October 2020; he also referred to ongoing headaches but again on the evidence before me that would not stop the completion of the online claim form.
11. Based on his oral evidence the Claimant was aware of the three month time limit from research on Google – he said that he was not sure exactly how the ACAS extension worked but he had contacted the CAB but had not asked them about time limits or contacted his union for advice. The union had represented him at both his disciplinary and appeal hearings. He had sources of advice if he wanted to check the exact date.
12. If the Claimant had not understood the time limit issue he knew he had taken two months to contact ACAS after he was dismissed so was aware that time was ticking away, meaning there was a greater responsibility on him to check the exact date.

Relevant law

13. The primary time limit for presenting an unfair dismissal claim is three months - s111(2)(a) Employment Rights Act 1996.
14. The time limit is extended by a period of ACAS conciliation – s207B(3) Employment Rights Act 1996.
15. If the extended date is less than a month after the date the certificate is issued the claimant has a month from the date of issue of the certificate – s207B(4) Employment Rights Act 1996.
16. The time limit can be extended if the Tribunal is satisfied that it was not reasonably practicable to bring the claim in time - s111(2)(b) Employment Rights Act 1996. The test is whether it was reasonable to expect a claimant to do that which was possible to have been done.
17. It is for the Claimant to show why his claim should be allowed to be presented outside the time limit.

18. The Claimant clarified that he no longer brought a claim for his notice pay (wrongful dismissal) as that had been paid. The time limit test for that claim is in any event the same as for the unfair dismissal claim – Article 7 Employment Tribunals Extension of Jurisdiction Order 1994.

Reasons

19. The Claimant was aware of the right to bring a claim.
20. The Claimant delayed two months to contact ACAS so was aware the clock was already ticking.
21. Any delays by ACAS in getting back to him are not relevant because he in any event had a month from the issue of the certificate to present the claim.
22. The Claimant was aware of the three month time limit though he may not have been aware precisely how it was calculated. However he had sources of advice available to him; he contacted the CAB but failed to ask the CAB how the date was calculated which he could have done. Alternatively he could have re-contacted ACAS or his union for advice; his ignorance of the exact date was not reasonable.
23. The Claimant had access to the internet, was able to research things and was not so unwell that he could not complete his form online (that claimed illness only being raised at this hearing for the first time and without medical evidence to show any illness affected him to this extent in the relevant period).

Conclusion

24. I therefore conclude that it was reasonably practicable for the Claimant to bring his claim on or before 3rd October 2020.
25. His claim for unfair dismissal is therefore dismissed because the Tribunal cannot hear it because it was brought out of time.
26. He does not proceed with his claim for notice pay and that is also dismissed.

Employment Judge Reid
Date: 14 April 2021