



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr Barrie Thornton

**Respondent:** Unity Education Trust

## OPEN PRELIMINARY HEARING

**Heard at:** Bury St Edmunds (by CVP)

**On:** 19 March 2021

**Before:** Employment Judge Cassel (sitting alone)

### Appearances

For the Claimant: In person

For the Respondent: Mr A Brett, Solicitor

### 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 complaints of unfair dismissal and disability discrimination and they are dismissed.

## RESERVED REASONS

### Background

- (1) The claimant submitted a claim form claiming unfair dismissal and disability discrimination from his employment as an instructor with the respondent. The claim form was received by the Tribunal on 13 March 2020.

- (2) The claimant was employed by the respondent from 18 November 2013. In July 2019 he was suspended from his employment following the initiation of internal proceedings against him after allegations were made of inappropriate behaviour and as a potential safeguarding risk by both internal and external staff partners.
- (3) He was invited to a disciplinary hearing with the respondent's management by letter and that meeting was scheduled to take place on 6 November 2019.
- (4) On 5 November 2019 he submitted a letter of resignation. That letter was produced at page 78 of the bundle of documents I was provided with today. The letter was in terms that he resigned forthwith and on the face of it that resignation took effect on 5 November 2019. In any event, the following day the disciplinary hearing proceeded in his absence and a decision to dismiss him summarily was also reached. The claimant did not appeal the decision and there were no ongoing matters between the parties.
- (5) In the claim form that was submitted he has given the date of the termination of his employment as 12 December 2019. On any view that cannot be right and at its latest the effective date of termination was 6 November 2019.
- (6) The Early Conciliation Certificate issued by ACAS shows receipt of the complaint on 6 March 2020 and the issue of the certificate on 11 March 2020.
- (7) On 18 October 2020 Employment Judge Ord directed that there be a preliminary hearing to consider whether the tribunal has jurisdiction to hear the complaints which on the face of it had been submitted out of time.

### **The Hearing**

- (8) The Claimant attended by video link. The Respondent was represented by Mr A Brett, who also appeared by video link. I explained to the claimant the effect of the Overriding Objective provided for in the Rules of Procedure and the fact that as he was representing himself, the tribunal had a duty, among other things, to ensure so far as possible that the parties are on an equal footing.
- (9) The Claimant gave evidence on oath and confirmed that his undated statement was true. He stated that between 24 August and 18 December 2019 he was homeless, that he had no fixed abode, was living out of a van or sleeping rough and when he could afford it, he stayed in bed and breakfast accommodation. He explained that this had affected his mental health but that on 18 December 2019 he had found accommodation through a friend and lived there for nine months until October 2020. He stated that he needed time to reflect and adjust, that he had been receiving medication and counselling but had in fact had part-time work from January to March 2020 working for a charity. His role was to promote the charity and it was based in Great Yarmouth.
- (10) 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 taken against him. However in answer to questions from me he stated that he had received advice from an

employment lawyer, who was a solicitor, in July 2019, before he resigned. He had also spoken to a solicitor referred through CAB in December 2019 from whom he learned about Employment Tribunals. This advice was given the month following his resignation. He was advised to contact ACAS and asked the respondent for his personnel file which he received. In January or February he spoke to an ACAS representative and briefly discussed Employment Tribunal Proceedings. He did not recall much of the conversation but accepted that he went on the ACAS website a week or so later to understand more about tribunal proceedings. He believed that sleeping rough and the consequent ill-health were the reasons for his delay in submitting a claim form.

- (11) In answer to questions in cross examination he accepted that he had taken advice from his union, the GMB, in July 2019 and that he was reasonably good at using the Internet and accessing information. He also accepted that he had a smart phone although a smaller phone for the last two years or so. He agreed that he went to the day centre at a local church, that there are facilities there and that the staff who were present could have helped him to get online.

### **Submissions**

- (12) Mr Brett invited me to dismiss the claims 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 form 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 Employment Tribunals. Furthermore he had received advice from a number of lawyers and had discussed Employment Tribunal Procedure with them. 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.
- (13) He also submitted that in considering the discrimination claim it should be noted that it was "not the strongest claim" as his dismissal involved breaches of safeguarding and there was nothing to suggest that it was linked to what the claimant has described as his disability. It could best be summarised as a claim of unfair dismissal at a time when, at its highest, the claimant had a disability. The claimant suggested that it was his homelessness and consequent ill-health that led to the delay in the submission of the claim form. His homelessness ended on 18 December 2019. The claim form was submitted three months later during which time the claimant had settled accommodation and moreover he was able to work for three months. It seems that that job was a responsible one and involved considerable application on the part of the claimant and although there is medical evidence to show that he suffers from stress, anxiety, features of depression, and post-traumatic stress disorder that did not act as a barrier to the three months of work that he undertook nor in taking advice.

- (14) The Claimant invited me to allow the claims to proceed. He submitted that the homelessness had led to various difficulties including suicidal thoughts. He could have spoken to friends but he wanted to deal with things on his own. With his mental ill health everything takes time. Although he had spoken to ACAS and other advisers he needed time to think matters through. He accepted that his case of dismissal involved safeguarding issues but it was a tough time in his life and he needed all his mental energy to concentrate on such basic matters as food and where to sleep.

## Conclusions

- (15) 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.
- (16) 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.
- (17) Tribunals are reminded that the starting point must always be the statutory provision and that an extension of time is an exception. 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.
- (18) Section 123 of the Equality Act 2010 deals with time limits. Under that section we are told that
- (1) proceedings on a complaint within section 120 may not be brought after the end of-
- (a) the period of three months starting with the date of the act which the complaint relates, or
  - (b) such other period as the employment tribunal thinks just and equitable.
- (19) Although I accept that the personal sense of injustice that the claimant may feel towards the respondent for what he considers the wrongful pursuit of proceedings against him is a genuine one, that is not a matter for this tribunal. In the bundle at page 29 is a photocopy of a DBS certificate. It is clearly unfavourable to the claimant and lists a number of concerns on the part of the respondent about his behaviour with a 15 year old boy. That behaviour did not lead to criminal proceedings but the certificate, so the claimant explained, led to

the loss of his alternative employment, which I understood to be the work in Great Yarmouth. 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. He had taken advice from a number of individuals. He knew of the existence of Employment Tribunals and accessed the ACAS website for information. In his submission he suggested that it was his homelessness that was part of the reason for the delay. That homelessness ended on 18 December 2019. I accept that he has been diagnosed as having several mental impairments. In a report from 15 February 2021 by Dr Gopaul, the author writes that his difficulties were first diagnosed in June 2019. Those difficulties did not prevent him from seeking advice on a number of occasions, from finding gainful employment or making those enquiries that he made about Employment Tribunals. He was also able to work effectively and consistently for the respondent although towards the end of his employment, based on his witness statement, he was signed off as being unfit for work. He was able to find alternative work that he described in his evidence as being work that he was able to do.

- (20) 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.
- (21) 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 the time at which he spoke to the ACAS representative which appears to have been the trigger for him to seek Early Conciliation, from January/February to 6 March 2020 as a reasonable further period in which to take the appropriate action.
- (22) 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.
- (23) I next consider the complaint under the Equality Act 2010 and whether time should be extended to give jurisdiction to the tribunal. There are a number of matters I must consider. In addition to the reasons that I give in the preceding paragraphs, which deal with the reasons for delay and the length of delay and other aspects of the evidence today, I have to address the balance of hardship: whether the prejudice to the respondent outweighs any prejudice to the claimant. The subject matter of the complaints is approaching two years old. I accept the submission that memories will have faded and to allow the proceedings to continue will put the respondent at a substantial disadvantage in taking witness statements from witnesses a considerable period of time after the events.
- (24) The claimant's employment ended on 5 November 2019 or thereabouts. There was no appeal by the claimant and information requested of the respondent was supplied promptly. There were no ongoing matters. In evidence today the

claimant stated that he knew about the existence of Employment Tribunals in December 2019 at which time he was in settled accommodation. The claimant explained that the reasons for his delay were based in his having to “sleep rough.” That of course ended on 18 December. He remained employed for several months thereafter and the only explanation that he gave for the delay was that his mind was “very slow because of the medication I was taking.” However he gave no explanation as to why suddenly in March 2020 he decided to approach ACAS for the Early Conciliation Certificate which was issued on 11 March 2020 and was able to submit a lengthy claim form two days thereafter, although apparently experiencing the same mental impairments throughout.

- (25) I also have had the opportunity of referring to those documents in the bundle to which reference was made by Mr Brett. There is considerable merit in his submission that the series of acts of which the claimant complains is principally in relation to safeguarding issues and has little to do with any disability that he may have. Although undoubtedly I have not been provided with all relevant evidence, from what I have seen the claim brought by the claimant is a weak one, and it is unlikely to succeed. I note, in part Mr Brett’s submission incorporated an evaluation of the weakness of the claim. I explained to the claimant the role of submission in tribunal proceedings and that he could comment on the submissions made. I have recorded at paragraph 14 his only submission in response to that suggestion.
- (26) For these reasons I find it is not just and equitable to extend time to give the tribunal jurisdiction to hear the complaint of unlawful discrimination and again, in so far as the tribunal has jurisdiction to do so, I dismiss this claim as well.

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**Employment Judge Cassel**

**22 March 2021**

Sent to the parties on:

.....14/04/2021.....

For the Tribunal:

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