



EMPLOYMENT TRIBUNALS

Claimant: Mr C Woodall

Respondent: Trailer Engineering Limited

PRELIMINARY HEARING

Heard at: Midlands (West) (by CVP; in public)

On: 22 April 2021

Before: Employment Judge Camp

Appearances

For the claimant: in person (by telephone)

For the respondent: Mr S Hoyle, lay representative (consultant)

REASONS

1. This is the written version of the reasons given orally at the hearing for the decision that the claim failed for time limits reasons, written reasons having been requested by the respondent's representative at the end of the hearing.
2. This is a preliminary hearing to deal with time limits as a preliminary issue.
3. The claimant, Mr Woodall, was employed by the respondent from 2011 as a Commercial Painter and Fitter. His only Employment Tribunal complaint is one of unfair dismissal. In the claim form he gave the date his employment ended as the 3 June 2020. He went through early conciliation from 2 to 22 October 2020. He presented his claim to the Tribunal on 18 November 2020. On the basis of those dates, Mr Woodall was a month late in starting early conciliation and his claim was presented some two and half months or so late.
4. This hearing today was listed by a letter of 10 December 2020 containing a notice of hearing. The issues to be decided were said in that notice of hearing to be whether the claim is out of time; if it is, was it not reasonably practical for the claim to be presented in time; and, if it was not reasonably practicable for it to be presented within time, whether the claim was presented within a further reasonable period.
5. The notice of hearing also contains some case management orders, including an order for Mr Woodall to prepare and provide a witness statement explaining

why his claim was submitted late and what he knew about Tribunal procedures and time limits. He did not comply with that order.

6. In its response, the respondent indicated that the dates of employment given in the claim form were incorrect and that Mr Woodall's employment had in fact ended on 24 July 2020. If that were the case, the claim would have had no time limits problems. Mr Woodall was subsequently asked by the Tribunal by email to confirm the date of dismissal, but did not do so.
7. This hearing has been conducted via the Cloud Video Platform or "CVP". It was due to start, and did start, at 10 am, but at that time, Mr Woodall was not present and had not contacted the Tribunal to say he was having difficulties connecting, or was unable to attend, or anything of that kind. Mr Hoyle, the respondent's representative, was unable to shed any further light on the question of what the true date of dismissal was.
8. Although I could have proceeded with the hearing without Mr Woodall, I asked the Tribunal clerk to telephone him to try to find out what was happening. It turned out that – due to particular personal circumstances that I don't need to go into in these Reasons – Mr Woodall was having difficulty connecting. However, we eventually got him into the hearing, albeit by telephone only. We have all been able to hear each other clearly and I am satisfied that him being in the hearing by telephone rather than by video has not disadvantaged him, or otherwise significantly affected the fairness of this hearing; and neither he nor Mr Hoyle has suggested otherwise.
9. We discussed how we should proceed given that Mr Woodall had not produced a witness statement. I suggested, and Mr Hoyle and Mr Woodall agreed, that the appropriate way forward was for Mr Woodall to give his evidence by me asking him questions and then giving Mr Hoyle an opportunity to cross-examine him if necessary.
10. When I questioned him, Mr Woodall confirmed that his employment had indeed ended on 3 June 2020. He said he was told on the day that he was dismissed and that he received a letter of dismissal giving that as the dismissal date. He then explained that when his employment ended he was completely ignorant of his rights and thought there was nothing he could do; he didn't even know he could appeal. However, he spoke to various people and, in particular, towards the end of August 2020, he spoke to an ex-employee of the respondent he knew who told him that he should go to ACAS, who would guide him through the process, but that before doing so he should go to a solicitor for some advice.
11. Mr Woodall duly did that. He contacted George Green Solicitors. At this stage it was still August, which meant there was still time for him to begin early conciliation and get his claim in on time. According to Mr Woodall, although he told the solicitor the date his employment ended, she said nothing to him about time limits, or to the effect that he needed to contact ACAS to begin early conciliation before 3 September 2020, or anything else to communicate a sense of urgency. Instead, the solicitor drafted a letter before action. Apparently, the reply did not arrive until around mid September 2020, and was to the effect that the claim was rejected and that there was no interest in further discussions. Mr Woodall could not afford to retain the solicitor any longer. She told him to go to

ACAS but again did not tell him he needed to do so immediately. As already mentioned, he started the early conciliation process on 2 October 2020, one month late.

12. The position is therefore:
 - 12.1 either – Mr Woodall was negligently advised, in that any solicitor holding themselves out as competent to advise in relation to Employment Tribunal claims should be well aware of the 3 month basic time limit for bringing an unfair dismissal claim;
 - 12.2 or – Mr Woodall was properly advised and for no apparent reason failed to take in and follow that advice.
13. In either scenario, Mr Woodall is unable to satisfy me that it was not reasonably practicable for the claim to be presented within 3 months (plus any early conciliation extension) of the effective date of termination of his employment, in accordance with section 111 of the Employment Rights Act 1996 and the legal authorities – very familiar to employment lawyers – of Dedman v British Building and Engineering Appliances Ltd [1973] IRLR 379 and Palmer and Saunders v Southend-on-Sea Borough Council [1984] 1 All ER 945.
14. In conclusion, if I accept Mr Woodall's evidence – and I have no good reason to do otherwise – as to the effective date of termination, as to when he took advice from a solicitor, and as to the advice he was and was not given by that solicitor, his claim fails because of time limits. Since the Dedman case, the law has been that where a claim is late, where the claimant was advised by a solicitor, and where the claim would have been presented in time if the solicitor had advised the claimant properly, it was reasonably practicable for the claim to be presented in time. The claimant's only potential remedy in this situation is to bring a civil claim against the solicitor.
15. In those circumstances I have no option other than to dismiss Mr Woodall's claim because of time limits and that is the end of his Employment Tribunal case.

Employment Judge Camp
28 April 2021