



EMPLOYMENT TRIBUNALS

Claimant: Mr J Penninx

Respondent: McLaren Automobile Ltd

Heard at: Watford by CVP

On: 5 March 2021

Before: Employment Judge Cotton

Appearances

For the Claimant: Mr J Penninx (in person)

For the Respondent: Mr J Bryan (counsel)

This has been a remote hearing which was not objected to by the parties. The form of remote hearing was a video hearing. A face to face hearing was not held because it was not practicable and all issues could be determined at a remote hearing.

JUDGMENT ON PRELIMINARY HEARING

1. The Claimant presented his claim of unfair dismissal outside the statutory time limit.
2. It was reasonably practicable for him to have presented his claim within the time limit.
3. The claimant's claim for unfair dismissal is time barred and cannot proceed. The tribunal has no jurisdiction.

REASONS

1. The respondent is a company which manufactures luxury high performance sports cars. It is a wholly owned subsidiary of the McLaren Group.
2. The claimant was employed by the respondent from 2014 or 2015 to 18 July 2018, most recently as a logistics team leader. He was summarily dismissed on 18 July 2019, the stated ground being conduct or, alternatively, some other substantial reason.

3. The purpose of this preliminary hearing was to consider whether the claimant's claim for unfair dismissal should be struck out because it was presented out of time. This is a preliminary issue only, and is not connected with the merits or otherwise of the claim for unfair dismissal.

The Law

4. Section 111(2)(a) of the Employment Rights Act 1996 ('the 1996 Act') says that the Tribunal shall not consider a complaint of unfair dismissal unless it is presented to the tribunal before the end of 3 months beginning with the Effective Date of Termination, as defined in section 97 of the 1996 Act. This is the 'primary' limitation period.
5. The effect of sections 18 and 18A of the Employment Tribunals Act 1996 is, in summary and so far as relevant in this case, that before a prospective claimant can bring a claim for unfair dismissal he or she must contact Acas and provide Acas with certain information so that the possibility of settlement between the parties can be explored – 'the conciliation process'.
6. The 'primary' limitation period can be extended through the Acas early conciliation process (section 111(2A) of the 1996 Act) but any period of Acas early conciliation which takes place outside the primary time limit does not have the effect of extending time.
7. Where a claim is presented out of time, the tribunal can extend time if (section 111(2)(b) of the 1996 Act):-
 - 7.1 The claimant can show that it was not reasonably practicable for the claim to have been presented in time and
 - 7.2 The claim was presented within such further period as the Tribunal considers was reasonable.
8. It is for the claimant to demonstrate that it was not reasonably practicable for him, in his particular circumstances, to present his claim on time. Case law makes it clear that the time limit is strict.

Evidence and submissions

9. In this case, it was common ground that the claimant's effective date of termination was 18 July 2019, and that his primary limitation date was therefore 17 October 2019. The claimant presented his claim (his ET1) on 7 October 2019 – within the primary time limit - but at this stage he had not undergone the Acas conciliation process, as required by Sections 18 and 18A of the Employment Tribunals Act 1996. Accordingly, the tribunal rejected his claim by a letter dated 15 October 2019.
10. The claimant said that he received this rejection letter on 18 October and, upon learning of his error, notified Acas on 21 October 2019 (after the primary time limit) and also submitted a compliant ET1 on 21 October 2019. His claim was therefore four days out of time.
11. The claimant gave two reasons for his claim having been presented out of time:-
 - 11.1 When he had completed the claim form which was submitted on 7 October, he had mistakenly believed that he was actually contacting Acas to initiate early conciliation. It was only on receiving the Tribunal's letter rejecting his claim that he realised this error. It had not been reasonably practicable for him to pursue his claim between 7 and 18 October given that he had believed that it was

safely in progress; and he acted as quickly as possible after realising his mistake.

- 11.2 He had been led to believe that the three month time limit ran from the date of his appeal (8 August) rather than from the date of his dismissal (18 July.)
12. In explaining how his mistake had been made, claimant said that, in the weeks following his dismissal on 18 July, his life had been in turmoil due to the loss of his job, and it was not until the beginning of October that he was able to turn his mind to his claim. Initially – he was not clear on exactly what date - he contacted a Citizens Advice Bureau (CAB) by telephone – he said it was a call of 20-30 minutes – and then he telephoned Acas. He was aware from those conversations that the law required him to complete an Acas conciliation process before he could bring a claim. Acas told him he had to fill in a form which he would find online. He identified the form by googling rather than being directed to it by Acas or by being sent a link.
13. He said that unfortunately, without him realising it, the form he completed online was not the conciliation form but the actual claim form – the ET1. During the course of completing this form, he had not been alerted to the fact that it was the incorrect form. When asked why he had not called Acas or the CAB to make sure that he was completing the correct form he referred to his poor mental state at the time, due to losing his job, and to the fact that he was poor with forms. He also referred to family issues and his lack of professional assistance.
14. The claimant said that he received the rejection letter from the tribunal on Friday 18 October and acted as quickly as he could. He did not contact Acas on the 18th because he read the letter only after Acas had closed at 4pm, but he contacted them the following Monday, 21 October, and on that day he completed the Acas process and submitted his second, compliant, ET1.
15. The respondent argued that the test of ‘reasonable practicability’ is a high bar and on the relevant facts could not be said to have been met. I was referred to the case of Walls Meat Co Ltd v Khan [1979] ICR 52 as authority for the proposition that a mistaken belief as to an essential matter can only be regarded as an impediment making it not reasonably practicable to present a complaint in time if the mistaken belief, as well as being genuine, is also reasonable; and that a mistake will not be reasonable if it arises from the fault of the complainant in not making such inquiries as he should reasonably in all the circumstances have made.

Conclusions

16. I am not persuaded that the main reason or a contributory reason for the claim being presented out of time was that the claimant mistakenly believed that the time limit ran from the date of his appeal in August 2019. The claimant’s actions and evidence do not support that this was what he genuinely believed; there was no evidence of anyone having given him this information or of him having acted upon it; and, if this is what he at one point believed, it is highly likely that his subsequent discussions with the CAB and Acas would have clarified the position.
17. I find that the main reason for the claim being presented out of time was the claimant’s mistaken belief that the form he submitted on 7 October was the Acas conciliation form rather than the claim form. As noted, the claimant said he was confused by the process and had been suffering from stress due to losing his job; and that he had completed the form without legal assistance.

18. In considering whether this mistake meant that it was not reasonably practicable for the claimant to present his claim in time, I took into account the following matters:-
- 18.1 The fact that information about the process of submitting a claim online, and about the need for early conciliation and an Acas certificate before a claim can be submitted, is readily available. The claimant had also demonstrated that he was able to access assistance by contacting both the CAB and Acas.
- 18.2 The claim form clearly says 'Claim Form' at the top.
- 18.3 Box 2.3 asks the question: 'Do you have an Acas early conciliation certificate number?' There is a note beside this saying that nearly everyone should have this number before they fill in a claim form, and a contact number for Acas is provided. The claimant ticked 'no' in answer to this question, and at the hearing explained that he had not been alerted to the fact that he was completing the wrong form because of his belief that the conciliation number was the very number he was applying for.
- 18.4 The claimant also ticked a box saying that the reason he had no Acas number was because he was applying for interim relief for his unfair dismissal complaint. The claimant said that this was a mistake - he did not know what interim relief was and he ticked the box because he was making an unfair dismissal complaint.
19. Even taking into account the claimant's confusion and difficult circumstances, I am not, on balance, satisfied that it was not reasonably practicable for him to present his claim in time. He had already spoken to both the CAB and to Acas, and been made aware of the Acas process and the importance of time limits. It would be reasonable to expect him to be aware that the conciliation process was different from the process of making a claim; that the conciliation process needed to be followed before a claim could be submitted; and that it was important to take steps to ensure that the correct process was followed. It would be reasonable to expect the online information and/or the indicators in the claim form itself, referred to above, to have alerted the claimant's attention to the fact that further enquiries might be necessary to ensure that he was following the correct process. The claimant was aware of his own difficulty with forms, and of the availability of assistance, and it would have been straightforward for him to telephone Acas or the tribunal, who would have advised him.
20. In conclusion, I find that it was reasonably practicable for the claimant to have brought his claim within the prescribed time limit. In light of this finding, there is no need to consider whether he acted reasonably quickly after becoming aware of his mistake, but I note that having become aware of it on 18 October he had completed the conciliation process and submitted the claim by Monday 21 October.
21. The claim is dismissed.

Employment Judge Cotton

Date: 21 April 2021

17/5/2021

Sent to the parties on:
J Moossavi

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For the Tribunal Office