



EMPLOYMENT TRIBUNALS

Claimant: Mr Dilmi

Respondent: Wilson Jones Catering Ltd

Heard by CVP

On: 8 March 2021

Before:

Representation

Claimant: In person

Respondent: Mr Bhari – Managing Director

JUDGMENT

1. The Claimant's claim of unfair dismissal was presented out of time and it was reasonably practicable to have presented it in time. The Claimant's claim of unfair dismissal is struck out.
2. The Claimant's claim of disability discrimination was presented out of time and it is not just and equitable to extend time. The Claimant's claim of discrimination for the protected characteristic of disability is struck out.

REASONS

1. This hearing was to determine whether the Claimant had presented his claims in time and whether it was reasonably practicable for him to have presented his claim in time (for the unfair dismissal claim) or whether it was just and equitable to have extended time for the discrimination claim.
2. For discrimination claims, Section 123 Equality Act provides for a 3 month limitation period from the date that the act complained of was done. This can be extended if there are just and equitable grounds to do so.

3. Marks & Spencer plc v Williams Ryan [2005] EWCA Civ 470. The onus was on the Claimant to take proactive steps to establish what those rights were and to act accordingly. Had the Claimant made reasonable enquiries, for example, research on the internet, she would have been aware of the Tribunal system and her right to complain, as well as the relevant time limits.
4. In Robertson v Bexley Community Centre t/a Leisure Link 2003 [IRLR] 434 CA, it was noted that, while Tribunals have a wide discretion to extend time in discrimination cases, it should only be exercised in exceptional circumstances. ‘time limits are exercised strictly in employment and industrial cases. When tribunals consider their discretion to consider a claim out of time on just and equitable grounds there is no presumption that they should do so unless they can justify failure to exercise the discretion.’
5. In O’Brien v Department for Constitutional Affairs [2009] IRLR 294, the Court of Appeal held that the burden of proof is on the Claimant to convince the Tribunal that it is just and equitable to extend time. In most cases there are strong reasons for a strict approach to time limits.
6. For unfair dismissal claims, section 111(2) of the Employment Rights Act 1996 (ERA 1996) says that a tribunal “shall not consider” an unfair dismissal claim unless it is presented in time.
7. A tribunal may only extend time for presenting a claim where it is satisfied it was “not reasonably practicable” for the complaint to be presented in time or “within such further period as the tribunal considers reasonable”.(Section 111(2)(b), ERA 1996.) It is for the Claimant to prove that it was not reasonably practicable for them to present their claim in time.
8. The Claimant provided a witness statement and bundle of documents. None of these document addressed the issues before me today. The Respondent had sent a letter which had a very useful chronology attached. I read the pleadings and all the orders made by the Tribunal. Employment Judge Baron made an order on 26 October 2018 that the Claimant provides in writing his reasons for the delay in presenting his claim by 30 November 2018. There was no response in the documents sent to the Tribunal the Respondent said it had not received anything. The Claimant said he had emailed a response, however rather than delay the hearing for him to send this on, I asked him to explain in his own words why he had not presented his claim earlier.
9. The relevant dates are as follows:

Effective date of termination of employment	11 July 2017
ACAS certificate issued	4 April 2018
ET1 presented	14 August 2018

10. The Claimant had someone with him who could act as an interpreter if needed. However the Claimant did not need any assistance and confirmed that he had understood everything said in the hearing.
11. I asked the Claimant why he had waited until April 2018 to contact ACAS. The Claimant said he was waiting for his appeal to be heard by the Respondent. The appeal had been delayed substantially as the Claimant was abroad in Algeria for family reasons and he failed to attend hearings. Eventually the Respondent heard it on 9 February 2018 in his absence as it had received an extensive appeal letter and the appeal needed to be concluded.
12. The Claimant told me that whilst in Algeria he had access to a computer and sent many messages to the Respondent. He accepted that there was nothing preventing him from presenting a claim to the Tribunal earlier. He also told me that he was used to searching matters on the internet but had not searched to see what he had to do to present a claim to the Tribunal.
13. I then asked why the Claimant did not present his claim soon after 4 April 2018 which is when he obtained his ACAS certificate and why he waited for four months. The Claimant told me he felt he had no help from anyone and no one told him his rights. He took responsibility for delaying.
14. I asked the Respondent about the people who had been involved with the Claimant's employment and the issues arising from his claim. I was told that the two people concerned had left some time ago. The HR Manager left a year ago, and the Claimant's line manager left 18m ago and had emigrated to Greece. The Respondent does not have contact details for them.
15. In relation to the unfair dismissal claim I find it was reasonably practicable for the Claimant to have brought his claim in time or within a reasonable time after the time limit expired. He had access to a computer and the internet and was able to correspond with the Respondent. He accepted he could have brought his claim earlier.
16. In these circumstances I find it was reasonably practicable for the Claimant to have brought his claim in time and his claim is out of time. His claim is struck out.
17. In relation to the discrimination claim I do not find it is just and equitable to extend time. The Claimant delayed substantially in bringing his claim. Even if he believed he had until the end of the appeal process to present a claim, his actions in not attending hearings led to a delay in that process being concluded. Even when concluded, it took the Claimant two months to contact ACAS and another four months to present his claim. The prejudice to the Respondent is obvious. It has no witnesses it can bring to the Tribunal to defend the claim. Had the Claimant brought his claim in a timely manner they would have still been employed and the Respondent would not be prejudiced.

18. I gave full reasons at the end of the hearing and checked with the Claimant that he understood what I said. He said that he did. He indicated he wanted to appeal and I told him he should look up on the internet to check the procedure and time limits and informed him the time limits were very strict in the Employment Appeal Tribunal. As the Claimant may wish to appeal and because I wanted to be sure he understood the reasoning for this judgment I have provided these written reasons.

Employment Judge Martin
Date 8 March 2021