



EMPLOYMENT TRIBUNALS

SITTING AT: LONDON CENTRAL

BEFORE: EMPLOYMENT JUDGE F SPENCER

BETWEEN: Mr D. Ranasinghe CLAIMANT

AND

Standard Chartered Bank RESPONDENT

ON: 27th May 2021

Appearances

For the Claimant: In person
For the Respondent: Ms Crawshay-Williams, counsel

JUDGMENT

The Judgment of the Tribunal is that it has no jurisdiction to consider the Claimant's claims, all of which were presented out of time.

REASONS

These written reasons are given at the request of the Claimant.

The claim and issues

1. In this case the Claimant, Mr Ranasinghe, worked for the Sri Lankan branch of the Respondent from 2 October 2006 until 31 December 2010. He submitted a claim to the Employment Tribunal on 19 January 2021. At box 8 of the ET1 claim form he has ticked boxes indicating that he is claiming unfair dismissal, a redundancy payment, breach of contract (notice pay), unpaid wages, discrimination because of religion and belief and "other payments". In the narrative section at box 8.2 the Claimant

complains that he had subscribed to a share save scheme by which he had obtained 159 shares and that the Respondent was now refusing to pay, that he was dismissed “for applying for overtime on a day I was on leave” which was impossible under the system, and that his termination was based on a personal agenda.

2. The Claimant left the employment of the Respondent on 31 December 2010. He contacted ACAS just over 10 years later, on 19 January 2021, and submitted his claim to the tribunal the same day. It is accepted that the Claimant worked exclusively in Sri Lanka, is a Sri Lankan national and resides in Sri Lanka.
3. There was a delay with the vetting and serving of the claim as, from mid December 2020 until April 2021, the offices at Victory House were shut and staff had no access to the paper files or the electronic database.
4. On 8 April 2021 the claim was considered at the vetting stage by Employment Judge Stout. She noted that the Claimant’s employment had terminated on 31 December 2010 and that the claim was not presented until 19th January 2021. The Claimant was sent a letter warning the Claimant that the claim might be struck out under rule 37 of the Employment Tribunals Rules of Procedure 2013 on the basis that the claim appeared to stand no reasonable prospect of success as being outside the tribunal’s jurisdiction, having regard to the applicable time limits for the claims identified. The Claimant was asked to write to the tribunal within 14 days stating on what basis he maintained that the Tribunal had jurisdiction to consider his claims and stating that an Open Preliminary Hearing (an OPH) by Cloud Video Platform would be listed. The Claimant was also directed to send the Respondent, not later than 7 days before the OPH, a signed and dated witness statement setting out why he did not bring the claim earlier and why he contends that the tribunal had jurisdiction to hear his claim. The Respondent was asked to submit an ET3 within normal time limits but that it need not set out any defence going beyond the jurisdictional issues for the time being.
5. The claim was served on the Respondent by post on 8 April 2021 at the address given by the Claimant which was the address of the Respondents branch in Colombo, Sri Lanka. It required a response by 6th May 2021.
6. No response was received by that date but on 26th May the Respondent wrote to the tribunal applying for an extension of time to file a response in accordance with Rule 20 and attaching a draft response. In the application the Respondent stated that the branch had not received the claim form. The first time that the Respondent had become aware of the claim was on 18 May 2021 when a letter from the tribunal was emailed to the CEO of the branch informing them that the telephone preliminary hearing scheduled for 27th May was to be converted to an OPH to consider whether the Claimant’s claim should be struck out as having no reasonable prospect of success. The tribunal sent the Respondent the ET1

on 25th May 2021. The draft ET3 and grounds of resistance were lodged the following day with an application for an extension of time.

7. In the letter accompanying the draft response the Respondent also applied for an order striking out the Claimant's claims on the basis that they had no reasonable prospect of success as being (i) out of time (ii) outwith the territorial jurisdiction of the Employment Tribunal (iii) res judicata - as the Claimant had already filed a civil claim of unfair dismissal against the branch in the Sri Lankan courts and (iv) for failure to comply with the order of Employment Judge Stout in her letter of 8th April 2021. In the alternative the Respondent applied for a deposit order.
8. The Claimant had sent numerous documents to the tribunal, some of which were photos of letters from 2007 and 2010 and some correspondence to various regulatory bodies complaining about his treatment by the Respondent. He had not provided the documents requested by Employment Judge Stout, but I considered that there was no reason to strike out the claim on that basis, and the purpose of today's hearing was to give the Claimant a chance during to answer the questions which had been posed by her in the letter of 8 April 2021.
9. I considered that I would determine the issue of jurisdiction before determining whether to accept the late Response but allow the Respondent to participate in the proceedings, as it appeared that it had good reason for the late Response.
10. The Claimant joined the hearing by CVP on his phone from Sri Lanka. Although he had not provided a witness statement, he gave evidence about the reasons for the substantial delay in presenting his claim.

The law

11. Insofar as the Claimant's claims of unfair dismissal, breach of contract, unpaid wages, are concerned the relevant sections of the Employment Rights Act 1996 or the Employment Tribunals (Extension of Jurisdiction) Order 1994 provide that an employment tribunal shall not consider a complaint of unfair dismissal, unpaid wages, or breach of contract unless the complaint is presented within 3 months of the effective date of termination or the date of the deduction of wages. The tribunal has a very limited discretion to hear a claim which is presented out of time if (i) the tribunal is satisfied that it was not reasonably practicable for a complaint to be presented before the end of the relevant period of 3 months and (ii) the claim was presented within such further period as the Tribunal considers reasonable
12. The burden of proof for establishing that it was not reasonably practicable to present the claim in time is on the Claimant. The issue is whether it was reasonably practicable for the Claimant to have presented his claim (or contacted ACAS) within the three-month time frame. Reasonably practicable does not mean reasonable, nor does it mean simply physically

possible. Individuals who have acted “reasonably” may fall foul of the time limit provisions.

13. In respect of claims for a redundancy payment the Claimant has 6 months to take action. There is a limited discretion to extend time if action is taken within a further 6 months but no jurisdiction to extend the time limit beyond the 12-month period.
14. Complaints of discrimination should also be presented within 3 months of the act complained of. Section 123 of the Equality Act 2010 provides that, subject to extensions to allow for early conciliation, complaints of discrimination may not be brought after the end of –“(a) the period of three months starting with the date of the act to which the complaint relates, or (b) such other period as the Tribunal thinks just and equitable.” This test gives the Tribunal a much broader discretion to extend time than the test of “not reasonably practicable” which applies for claims of unfair dismissal and unpaid wages. In looking at just and equitable test, all the circumstances are relevant including the extent and reasons for the delay, any prejudice to the Respondent if the application is allowed to proceed the likely injustice to the Claimant if the complaint is not heard, including whether any other redress is available.
15. In all cases the time limits for bringing a tribunal claim will be “stopped” at the point in time when ACAS receives the early conciliation request and will only resume when the prospective claimant receives the early conciliation certificate. However, a claimant does not get the benefit of any extension of time if the limitation period has already expired before claimant contacts ACAS.

The Claimant’s evidence

16. The Claimant told the Tribunal that his claim was late because
 - a. he had spent a lot of time seeking redress from the bank, the HR Department and the CEO and had been knocked back at every stage. HR had said he was not entitled, and the current CEO had said did not have time to deal with it. He had also complained to the Central Bank of Sri Lanka
 - b. 10 years ago there was limited technology in Sri Lanka so that he could not google forms of redress in the way that he could today. He was not aware until recently that he could bring a claim in the UK courts.
 - c. He had been busy. He was looking for jobs and seeking redress without success.
 - d. He had contacted the FCA and the financial ombudsman in UK. They said that they had no authority.

- e. He had gone to the magistrate's court in Colombo but had no success. He had also filed an action in the civil courts on 30th March 2021.
17. I asked the Claimant why he had ticked the box for discrimination on the grounds of religion or belief. The narrative in the claim form provided no particulars of any such discrimination. The Claimant said that the detrimental treatment "may have happened" because he is a Buddhist.
18. Insofar as the territorial jurisdiction was concerned Claimant accepted that he worked wholly in Sri Lanka but said that the Respondent was a UK company and the branch where he worked was not a separate legal entity. His contract of employment was governed by UK law.

Submissions

19. For the Respondent Ms Crawshay-Williams submitted that the claim was 10 years out of time. Even 10 years ago the Claimant could have gone to an Internet café to understand his rights. In any event, the Claimant had gone to a Sri Lankan court to pursue his rights and it was not appropriate to have duplicate proceedings into different jurisdictions. The claim was out of time. The Respondent disputed, as a matter of fact, that the Claimant's contract was governed by UK law and stated that it was governed by Sri Lankan law.
20. The Claimant submitted that the tribunal should extend time by virtue of section 207B of the Employment Rights Act 1996, that he had acted promptly after going to ACAS and that the Tribunal had territorial jurisdiction by virtue of section 201(3) of that Act.

Conclusions

21. As I explained to the Claimant, time limits for bringing claims in the Employment Tribunal are short. I had no discretion to consider his redundancy payment claim. (In any event it appeared that his claim was not in fact for redundancy payment in that he was not stating that he had been made redundant - rather his claim was for unfair dismissal for conduct.)
22. As the Claimant had not contacted ACAS within the primary limitation period, he could not benefit from the extension of time provided in section 207B of the Employment Rights Act 1996 (or section 140B of the Equality Act 2010) and the Claimant had misunderstood those provisions. He had not presented his claim within 3 months and the tribunal could only consider his claims for unfair dismissal and unpaid wages if I found that it was "not reasonably practicable" for him to have presented his claim in time. It could not be said on the evidence before me that this test had been met. In any event, even had it been not reasonably practicable to present his claim in time, I could only extend the time limit if the Claimant had brought his claim within a reasonable period thereafter. In the context of a

3-month time limit a gap of 10 years could not be said to be reasonable. Leaving aside the question of whether or not this tribunal has territorial jurisdiction to consider his claim, there was nothing preventing the Claimant presenting his claim to this tribunal significantly sooner than he had done. Unfortunately being busy looking for jobs, not having easy access to research tools and pursuing a remedy elsewhere, while understandable reasons, are not matters which mean that it was not reasonably practicable for the Claimant to have presented his claim in time.

23. In considering whether to extend time for claims of discrimination the Tribunal has a much wider discretion. Would it be just and equitable to allow the claim to proceed?
24. In this case the claim is very substantially out of time. The extent of the delay is very great. After a delay of more than 10 years witnesses the employment of the bank, memories are likely to have faded and it would be difficult for the Respondent to access relevant documents dating so far back. Such a significant delay was likely to prejudice a fair trial. The reasons given for the delay do not suggest that action could not have been taken sooner.
25. While the Claimant's reasons for delay may be understandable, they are not reasons which, in my view, make it just and equitable to extend the time limit. Moreover, in considering the balance of injustice to the Claimant if he is not allowed to proceed, against the prejudice to the Respondent, I consider that there is in fact no injustice to the Claimant as the Tribunal does not in any event have territorial jurisdiction. UK employment rights only apply to employment in Great Britain unless, exceptionally, an employee can establish that his or her employment relationship has much stronger connections with British employment law than with the law of any other jurisdiction.
26. Section 201 of the Employment Rights Act 1996 to which the Claimant refers is not relevant, (being applicable to activities in UK territorial waters or oil exploration). While the Claimant worked for a UK bank, he worked and lived wholly abroad, was working in Sri Lanka at the time of his dismissal and has no particular connections with Great Britain which might have made him an exception to the general rule. (see *Lawson v Serco Ltd* 2006 ICR 250, *Duncombe v Secretary of State for Children Schools and Families* (no 2) 2011 ICR 1312, and *Ravat v Halliburton Manufacturing and Services Ltd* 2012 ICR 389.) The same approach will apply in discrimination claims. (Although there is a dispute of fact it would make no difference in any event whether the Claimant's contract was governed by Sri Lankan or English law).
27. I conclude that the Tribunal has no jurisdiction to hear the Claimant claims and the claims are dismissed. The Claimant is understandably disappointed, but the Tribunal has no power to hear his claim.

28. Finally I note that the Claimant has written to the Tribunal asking for this decision to be reconsidered but has not set out the grounds on which he seeks a reconsideration or said why reconsideration of the decision is necessary.. If the Claimant still seeks a reconsideration after receiving these written reasons he should write to the Tribunal within 14 days of receiving these reasons setting out his reasons for seeking a reconsideration.

Employment Judge Spencer
30th June 2021

JUDGMENT SENT TO THE
PARTIES ON

30/06/2021.

FOR THE TRIBUNAL OFFICE