



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr M Parekh

v

Lloyds Bank Plc

Heard at: London Central (by video)

On: 25 January 2021

Before: Employment Judge P Klimov

Representation

For the Claimant: in person

For the Respondent: Mr N Bidnell-Edwards (of Counsel)

This has been a remote hearing which was not objected to by the parties. The form of remote hearing was by Cloud Video Platform (CVP). A face to face hearing was not held because it was not practicable due to the Coronavirus pandemic restrictions and all issues could be determined in a remote hearing.

JUDGMENT

The Tribunal does not have jurisdiction to consider the claimant's claim. Accordingly, the claim is struck out.

REASONS

Claim and Preliminary issue

1. By the claim form presented on 4 September 2020, the Claimant brought complaints of unfair dismissal, breach of contract (wrongful dismissal) and unlawful deductions from wages.
2. The respondent resists the claim on the grounds, *inter alia*, that the claim was presented significantly out of time, and therefore the tribunal does not have jurisdiction to hear it.
3. In relation to the complaint of unfair dismissal, the respondent avers that the claimant does not have the two years' qualifying service to bring a complaint of unfair dismissal under section 94 the Employment Rights Act 1996 (ERA 1996).

4. The respondent further pleads that the claimant's complaint of breach of contract (wrongful dismissal) has no reasonable prospect of success, because the respondent paid the claimant his one months' salary in lieu of notice, it was entitled to do so under the claimant's contract of employment, and that was the only amount due to the claimant on the termination.
5. The respondent denies making any unauthorised deductions from the claimant's wages. It pleads that, in the event the tribunal decides that it has jurisdiction to hear the claimant's claims, an order for the claimant to provide further and better particulars of his claim for unauthorised deduction from wages should be made by the tribunal.
6. An open preliminary hearing was listed for 25 January 2021 at 11am, to determine the issue if, having regard to the applicable time limits, the tribunal has jurisdiction to hear the claimant's claims.
7. On 21 January 2021, in the preparation for the hearing I wrote to the parties and made the following order: *"By 4pm tomorrow, 22 January 2021, the Claimant must send his written representations why his claims should not be struck out."*
8. The claimant did not reply. He did not send any representations to the tribunal or to the respondent. He did not notify the tribunal that he was unable to comply with the order.
9. The claimant and Mr Bidnell-Edwards for the respondent joined the video hearing. Before the hearing began, when the clerk was greeting the parties, the claimant said to her that he was not feeling well and wanted to postpone the hearing for a later date. He said he could not smell and thought it was a symptom of Covid-19.
10. After consulting with me, the clerk informed the claimant that he would have to make his application for a postponement to the judge. She gave the parties the usual ground rules and passed it over me.
11. I asked the claimant what was wrong with him. He said that he had woken with a sore throat and feeling weak. He said he tried to call the tribunal but could not get through. I asked the claimant if he could hear and understand what I was saying. The claimant confirmed that he could.
12. I decided that the hearing should proceed. It was a short hearing to determine a single issue of jurisdiction. The claimant was not going to give witness evidence and there were no respondent's witnesses for him to cross-examine. No substantial documentary evidence needed to be examined.
13. Moreover, the claimant was given sufficient time to prepare his representations, which he should have submitted in writing before the hearing. He said that he had woken up feeling unwell today. That should

not have prevented him from preparing and submitting his representations earlier, as he was ordered to do pursuant to my order of 21 January 2021.

14. Finally, I was not satisfied that the claimant was genuinely unwell to the extent that he could not effectively participate in the hearing.
15. I asked the claimant what representations he wished to make and if he had prepared any written representations pursuant to my order. The claimant said that he might have prepared something. I asked him if he had sent those. In reply the claimant said that he was not feeling good and wanted to rest. He made no further submissions. He then rested his head on his arms and turned his face away from the camera.
16. I asked the claimant to turn his head back to face the camera and warned him that under the Tribunal Rules of Procedure his claim could be struck out and a costs order made against him if the tribunal decides that his conduct was vexatious, abusive, disruptive or otherwise unreasonable. The claimant did not respond and did not turn his head to face the camera.
17. When I asked Mr Bidnell-Edwards to make his submissions on behalf of the respondent, the claimant moved away from the camera, so he was no longer visible. I asked the claimant to come back on camera. He ignored my request. I asked the clerk to call the claimant and repeat my request. When she did at 11:18am, the claimant told her that he had just vomited and could not come on camera.
18. At 11:19am the claimant disconnected himself from the hearing and terminated the clerk's call. I adjourned the hearing until 11:30am and asked the clerk to call the claimant again to tell him that he must re-join the hearing at 11:30am, otherwise the hearing would proceed in his absence. The claimant did not answer the clerk's call. The clerk texted the claimant with this information.
19. The hearing resumed at 11:30am. The claimant did not re-join it. On the balance of probabilities, I found the claimant was deliberately avoiding the continuation of the hearing. Based on my observations of the claimant's behaviour and interactions with the clerk before the hearing began and the claimant's responses to my questions at the start of the hearing, I was satisfied that the claimant was capable to effectively participate in the hearing and it was his choice not to take further part in it. Accordingly, I decided that the hearing should proceed.
20. Having reviewed the documents in the bundle of documents of 238 pages submitted by the respondent and having heard the parties' submissions at the hearing, I make the following findings of fact.

Findings of Fact

21. The claimant was employed by the respondent from 1 April 2019 until 21 February 2020.

22. The claimant was dismissed by the respondent with the effective date of termination of 21 February 2020.
23. Under the terms of the claimant's contract of employment the claimant was entitled to receive one month's notice of the termination. The respondent was entitled to make a payment in lieu of notice.
24. The respondent paid the claimant the sum of £2,083.43 (gross) in lieu of notice.
25. The claimant's claim was presented on 4 September 2020, which date is more than three months after the effective date of termination of his employment.
26. The claimant's early conciliation notification was received by ACAS on 6 July 2020, after the expiry of the time limit.

The Law and Conclusions

27. In accordance with s.23(2), 111(2)(a) of ERA 1996 and Article 7 of Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994/1623, the time limit for all the complaints made by the claimant in his claim form (ET1) is three months from the effective date of termination.
28. Because the claimant commenced the early conciliation procedure after the expiry of the three months' time limit, the period of conciliation has not extended the time limit under section 207(B)(3) of ERA 1996. Therefore, the claim should have been presented on or before 20 May 2020. The claimant presented his claim on 4 September 2020, some three and a half months after the expiry of the time limit.
29. Under sections 23(2) to (4) and 111(2) of ERA 1996 and Article 7 of Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994/1623 the Tribunal does not have jurisdiction to consider the claimant's complaints, unless it is satisfied that it was not reasonably practicable for the claimant to present his claim before the end of the three months' time limit, and it was presented with a reasonable period thereafter.
30. The burden of proving that it was not reasonably practicable to present the claim in time rests on the claimant (***Porter v Bandridge Ltd 1978 ICR 943, CA***). If the claimant fails to argue that it was not reasonably practicable to present the claim in time, the tribunal shall conclude that it was reasonably practicable (***Sterling v United Learning Trust EAT 0439/14***).
31. I am satisfied that the claimant was given a reasonable opportunity to give his representations as to why it was not reasonably practicable for him to present the claim in time. He did not do that. I am also satisfied that the

illness the claimant says has befallen him on the morning of the hearing did not prevent him from giving his representations before or at the hearing.

32. Therefore, it is my judgment that it was reasonably practicable for the claimant to present his claim within the three months' time limit. He failed to do so. Accordingly, the Tribunal does not have jurisdiction to consider the claimant's claim and it shall be struck out.

Employment Judge P Klimov
25 January 2021

Sent to the parties on: 13/09/2021

For the Tribunals Office

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