



EMPLOYMENT TRIBUNALS

Claimant

Respondent

v

Mr M Coleman

Nuffield Health

PRELIMINARY HEARING

Heard at: Watford in public by CVP On: 1 September 2021

Before: Employment Judge O'Neill

Appearance:

For the Claimant: In person

For the Respondent: Ms A Kent (Solicitor with Weightmans)

Judgment

The claim of unfair dismissal is struck out as having no reasonable prospect of success because it has been lodged out of time and the claimant has failed to show that it was not reasonably practicable to lodge the claim in time and I decline to extend time.

Reasons

1. The claimant makes a claim of unfair dismissal which is governed by the time limits imposed by section 111 Employment Rights Act 1996 (ERA).
2. The parties agree the following key dates
 - ET1 lodged 7 April 2021
 - ACAS start date 1 April 2021
 - ACAS certificate 6 April 2021
 - Employment began 1 March 2018
 - Effective date of termination, agreed as 31 December 2020
 - Internal appeal concluded 30th of March 2021
 - Claimant notified of final outcome by email on 31 March 2021
 - Primary limitation date expired on 30 March 2021

3. Given the date the claimant form was presented and the dates of early conciliation and the date of dismissal, the application was made to ACAS out of time. The period of early conciliation began on 1 April, which is after the expiry of the primary limitation period, and therefore the extension under section 207B does not apply and the claim which has been submitted on 7 April 2021 is out of time.
4. Section 111 (2)(b) gives the tribunal discretion to admit a claim form as being within time where firstly, the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months (as extended by section 207B, if applicable) and secondly it is been presented within such further period as the Tribunal considers reasonable
5. Therefore, the question arises as to why the claimant failed to present the complaint to ACAS within the primary limitation period.
6. The claimant relies on a number of matters to justify an extension of time.
7. I accept that the claimant was unfamiliar with the employment tribunal processes and was without professional advice. Nevertheless, for 20 years he has been employed in a management position with the respondent and the previous company, in which he had some responsibility for managing and disciplining staff. He accepts he was aware of ACAS and he was aware that at some stage he needed to refer his own matter to ACAS. He was familiar with the Internet on which for example he booked his holidays. It was perfectly feasible for him to have researched the Internet to establish the necessary time limits but he did not do so.
8. The claimant was aware of his right to go to tribunal and had referred to that right in an email to the company of early as 8 February 2021. In the circumstances I find that the claimant could and should have made himself aware of the time limit.
9. The claimant had raised a grievance about his dismissal and the outcome did not reach him until 31 March 2021 when an email was sent to him enclosing the final outcome letter, which was dated 30 March 2021. This was at the very least, the most unfortunate timing but there is insufficient evidence before me to suggest that this was done by the Respondent in bad faith or deliberately to mislead the claimant
10. I accept the claimant evidence when he said that he mistakenly believed that he had to complete the internal process before referring his complaint to ACAS
11. I accept that he acted immediately on receipt of the outcome letter and put his complaint to ACAS online on 1 April 2021 which strongly supports his evidence that he was waiting for the grievance outcome before taking the next step.

12. Although the claimant suspects that the respondent had strung out the grievance to defeat him under the time limits rules, there is no evidence of any such bad faith. The claimant accepts that no one from the respondent's HR department or management team misled him into believing that he had to complete the grievance before he was permitted to take formal steps to ACAS or the tribunal.

13. He missed the time limit because he was acting in a state of ignorance because he had simply failed to make some simple enquiries, online or with ACAS or with any other source of employment advice as to the steps he had to take and the time limits relevant to taking them which he could and should have made.

Conclusions

In the circumstances I do not find the claimant has shown that it was not reasonably practicable for him to make his complaint to ACAS in time and therefore he does not enjoy the benefit of s207B extension and his claim is out of time and I decline to allow him an extension and in the circumstances I strike out his application as having no reasonable prospects of success.

Employment Judge O'Neill

1 September 2021

Sent to the parties on:

15th October 2021.....

For the Tribunal:

THY.....