



EMPLOYMENT TRIBUNALS

Claimant: Mr S Flannery

Respondent: British Gas Services Limited

RECORD OF A PRELIMINARY HEARING

Heard at: Nottingham

On: 13 January 2021

Before: Employment Judge Fredericks

Appearances

For the claimant: Mr M Flannery (lay representative)

For the respondent: Ms Quigley, Counsel

JUDGMENT

DECISION ON PRELIMINARY ISSUE

1. The claimant's claim for unfair dismissal is dismissed because the tribunal does not have jurisdiction to hear the claim.
2. The claimant's claim for wrongful dismissal is dismissed because the tribunal does not have jurisdiction to hear the claim.

REASONS

Background and previous preliminary hearing

1. The claimant issued two separate claim forms in relation to his dismissal; one against the respondent, and one against Centrica Plc. These were both received by the tribunal on the same day. By case management order dated 5 January 2021, the two claims were to be heard together as they were founded on identical facts.
2. There was a previous preliminary hearing on 23 November 2021 before Employment Judge Blackwell, who listed the preliminary hearing which was heard today. The case management summary from that hearing records that the claimant was aware

that it was for him to show that it was not reasonably practicable to bring the claim form within the statutory time limit. To assist with today's hearing, the claimant was ordered to provide a statement setting out chronologically what steps he took, whether he sought advice and, if so, from whom, and any circumstances that would have rendered the bringing of the claim within time not reasonably practicable.

3. The record of preliminary hearing also notes that the claimant accepted that Centrica Plc was not his employer, and so the claim against Centrica Plc was dismissed upon withdrawal on 23 November 2021. The claimant has requested reconsideration and revocation of this judgment ("**Reconsideration Application**"), but this application was not dealt with today because, under Rule 70(3) of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, that is a matter for Employment Judge Blackwell.

Today's hearing

4. This preliminary hearing was held to determine whether the tribunal has jurisdiction to hear the claimant's surviving claims, given that: (1) the effective date of determination was not later than 13 February 2020; (2) the primary period expired on 12 May 2020; (3) the ACAS early conciliation certificate was dated 8 June 2020; and (4) the claim form was not received by the tribunal until 4 July 2020.
5. It was accepted by the claimant that his claim form was presented out of the time ordinarily prescribed.
6. Consequently, the issues to be determined were whether:
 - a. in respect of the unfair dismissal claim, the claim form was presented to the tribunal "*within such further period as the tribunal considers reasonable in a case where it was satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months*" (section 111(2)(b) Employment Rights Act 1996); and
 - b. in respect of the wrongful dismissal claim, whether it is the case that the tribunal "*is satisfied that it was not reasonably practicable for the complaint to be presented within [time], within such further period as the tribunal considers reasonable*" (Article 7 Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994).
7. For each of the issues, then, a key determination was whether it was 'reasonably practicable' for the claim form to have been presented in time. If I found that it was not reasonably practicable to have done so, then the second stage of the test is to decide if the claim form was presented within a reasonable time in the circumstances. Palmer and Saunders v Southend on Sea Borough Council [1984] IRLR119 CA provides useful guidance for deciding what is meant by 'reasonably practicable'. That case says that the meaning lies somewhere between 'reasonable' on the one hand and 'reasonably physically capable' on the other.

Submissions

8. The claimant had not, as ordered, produced a witness statement outlining the matters described in paragraph 2 above. The Reconsideration Application contained the grounds which Mr M Flannery relied upon in submissions as outlining the reasons why the claim form was not presented in time. These were taken to be the claimant's evidence on the points. The evidence and submissions referred significantly to matters which occurred after the claim form was presented. For the purposes of this preliminary issue, I focus only on the relevant time period between the claimant's effective date of termination (no later than 13 February 2021) and the presentation of the claims (4 July 2021).
9. At the outset of the hearing, I noted that there was no statement present dealing with the points requested from the previous preliminary hearing. The claimant's representative then stated he did not think the claimant could show that it was not reasonably practicable to have presented the claims in time. Consequently, the claimant did not wish to pursue this argument and wished instead to reverse the decision of the previous preliminary hearing where jurisdiction and time were raised. In short, the claimant conceded at the outset of the hearing that he could not meet the tests required for his claims to be heard having been presented out of the usual time limits.
10. I clarified that the purpose of the hearing was to determine whether the tribunal had jurisdiction to hear the claims against the respondent because of the time limits, and so asked again whether the claimant was really saying that there are no grounds from which the tribunal can consider it reasonable for the claim form to have been presented out of time. The claimant's representative responded that, having looked at the authorities, the hurdle set by the applicable tests appear to be too high for the claimant to achieve in the circumstances.
11. Once I had explained that this meant I would be obliged to dismiss the claims as beyond the jurisdiction of the tribunal, the claimant's representative referred to the final section of the Reconsideration Application which outlined that there was a genuine mistake on the part of the claimant. The claimant had believed Centrica Plc to be his employer because: (1) this was the entity named on his pay slips; (2) this was the entity through which he had a pension; and (3) Centrica Plc had power over and owned the respondent. It was only, he says, when he came to submit his claim that his father pointed out that the respondent was named on his employment contract as his employer.
12. According to the claimant, this meant that he acted reasonably in submitting the claim form as soon as the correct employer was known. Further, the claimant submitted that it was not reasonably practicable to submit the claim form within time because the claimant genuinely believed that Centrica Plc was his employer, in respect of which a claim form was submitted in time. When I asked, at the end of the submission, if the claimant's representative still stood by his earlier concession that it was not reasonably practicable for the claimant to have submitted his claim form in time, he said that he did. He asked for the tribunal to make a decision on the matter looking at all the circumstances notwithstanding this concession.
13. In reply, Ms Quigley for the respondent relied upon the claimant's concession that he could have presented the claim in time, and so submitted that the claims should be dismissed because the tribunal has no jurisdiction to hear them.

Conclusion

14. The claimant's representative, on behalf of the claimant, conceded twice that the claimant could have submitted the claims in time. Notwithstanding the concession, it was submitted that I might be able to find that it was not reasonably practicable for the claimant to know that the respondent was his employer at the time he was preparing his claims against Centrica Plc, who he believed to be his employer.
15. Unfortunately for the claimant, I place great weight on his own concession. He knows the circumstances surrounding the preparation of his claims, and if he admits that he could have named the correct employer initially, or sought the views of someone who would have pointed the issue out sooner than his father did, then I do not consider that I can find that he acted reasonably in presenting his claim late. In other words, if he himself says that it was reasonably practicable to have presented his claims in time, then I cannot disagree.
16. Even if I could ignore these concessions, then I would still consider it to have been reasonably practicable for the claimant to have presented the claim form in time. In my judgment, keeping in mind the assistance offered by *Palmer*, it would have been reasonable for the claimant to reflect on the significance of the respondent being named in his employment contract. It would also have been reasonable for him to have sought early assistance in the preparation of his claim to ensure that it was presented correctly and within the relevant time limits. I also consider that he was reasonably physically capable of seeking that advice either paid or for free, for example from his father, but apparently he did not until it was already too late.
17. Consequently, I concluded that the claims against the respondent were presented out of time and so the tribunal had no jurisdiction to hear them. The claims were dismissed.

Employment Judge Fredericks
Dated: 13 January 2022