



EMPLOYMENT TRIBUNALS

Claimant: O Johnson

Respondent: Tesco Stores Limited

Heard at: London South Employment Tribunal by CVP

On: 27 January 2022

Before: Employment Judge L Burge

Appearances

For the Claimant: In person

For the Respondents: L Kaye, Counsel

JUDGMENT having been delivered orally on 27 January 2022 and written reasons having been requested by the Claimant in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013 (“ET Rules”), the following reasons are provided:

REASONS

1. Mr Johnson’s employment at the Respondent terminated on 25 September 2019. Mr Johnson appealed the decision to dismiss him by letter dated 27 September 2019, he was a member of the Union USDAW and discussed the issues with his representative. The appeal hearing took place on 10 January 2020 and his dismissal was upheld by letter dated 19 January 2020. Mr Johnson contacted ACAS on 3 February 2020, and they issued a certificate on 4 February 2020. Mr Johnson submitted his claim to the Employment Tribunal on 4 February 2020.
2. In his claim form Mr Johnson said he believed he had been unfairly dismissed. He also ticked the boxes for various types of discrimination and “other payments” but provided no detail of these.
3. On 8 July 2020 the Tribunal made an Order:

“Having considered the file, Employment Judge Wright is of the view that the Tribunal has no jurisdiction to consider part of the claim, namely the claims of

discrimination and for the 'other payments', have no reasonable prospect of success for the following reasons:

Section 8.2 of the claim form (which is a compulsory section of the claim form) contains no particulars whatsoever in respect of the claims. From the Information provided, It is impossible for the respondent or the Tribunal to ascertain what allegations the claimant is making.

Employment Judge ORDERS that the claim of discrimination and 'other payments' will stand dismissed seven days from the date of this notice without further order, unless before that date the claimant has explained in writing why that part of the claim should not be dismissed".

4. Mr Johnson did not provide further particulars or reasons why this part of his claim should not be dismissed.
5. A Preliminary Hearing was held by CVP on 12 August 2020. EJ Truscott QC said in his Order that:

"The claimant could be seen on the screen as attending the conference but he was unable to participate in the conference due to the connection. The Tribunal was not confident he could hear what was being said. The Tribunal received oral submissions from the respondent and reviewed the papers. The claimant had intimated that he wished to continue with his claim but did not provide further information. The Tribunal decided that there should be an Open Preliminary Hearing to address the issues which were identified."

6. EJ Truscott QC identified the issues for consideration at the next Preliminary Hearing:

1. *Whether amendment of the claim should be permitted*
2. *Is the alleged conduct on which the Claimant seeks to rely, (the Conduct) time barred, either in whole or in part? If so:*

2.1 Is the claim for unfair dismissal time barred under the Employment Rights Act?

2.2 If this claim was not lodged in time, was it reasonably practicable for the claim to be so lodged?

2.3 Which sections of the Conduct pleaded under the Equality Act are time barred?

2.4 Does any time barred Conduct form part of a continuing act under section 123(3)(a) of the Equality Act 2010?

2.5 Is it just and equitable for the Tribunal to exercise its discretion and allow the time barred Conduct to be included out of time under section 123(1)(b) of the Equality Act 2010?

3. *Whether the claim has been or should be struck out."*

7. By email dated 28 October 2020 Mr Johnson confirmed to the Respondent that he was pursuing a claim for “Unfair Dismissal” in response to a request to give “Full details of the claim or claims he is making against the respondent”.
8. The Preliminary Hearing listed for 28 January 2021 was postponed due to lack of judicial resources.
9. In relation to today’s Preliminary Hearing, Mr Johnson was unable to attend by video, he had technological difficulties. He was able to attend by telephone. Miss Kaye and I remained on CVP. I asked him if he would rather continue with the hearing today or postpone to a day when he could come into the Tribunal. He wanted to have the hearing today as there had already been delays and he did not want further delay. Ms Kaye was uncomfortable with not being able to see Mr Johnson when he was giving evidence. However, the Respondent’s position was that if there was likely to be lengthy delay for a postponed in-person hearing, they would rather continue today. I decided that it was in the interests of justice to continue with the hearing today. The case had already suffered considerable delay and Mr Johnson wanted to continue. It was in accordance with the overriding objective in dealing with the case flexibly, avoiding delay and saving expense. Mr Johnson’s telephone connection was good and the Tribunal could properly consider the issues.
10. We went through the issues that had been set out by EJ Truscott QC and Mr Johnson confirmed that he understood them. Mr Johnson wanted me to reconsider the decision of EJ Wright, that the discrimination and “other payments” claims were dismissed because he had not written in. Miss Kaye submitted that Mr Johnson’s application for reconsideration should have been made within 14 days of the date that the original decision was sent out (Rule 71 of the ET Rules). She also said that in his email to the Respondent on 28 October 2020 Mr Johnson had confirmed that his claim was for “Unfair Dismissal”. Mr Johnson said that it was a pandemic and he had no computer or resources, he did send a bundle of documents in later on and hoped he could talk to the judge about it all at the next hearing.
11. I decided that the application for reconsideration of EJ Wright’s decision was significantly out of time. I also decided that I would not exercise my discretion to extend time because while the country was in the midst of a pandemic, we were not in lockdown and despite Mr Johnson’s lack of resources he could have written down his further particulars and posted them. Further, he had written to the Respondent’s solicitors saying that he was pursuing an unfair dismissal claim, not claims of discrimination or “other payments”. Moreover, Mr Johnson had not, to this day, provided any further particulars of the discrimination or claims for “other payments”. I therefore refused his application.
12. We then discussed the remaining issues in EJ Truscott QC’s Order. Mr Johnson did not know what was being referred to by “*Whether amendment of the claim should be permitted*”.
13. The next issue for the Tribunal was whether Mr Johnson’s claim for unfair dismissal was time barred under the Employment Rights Act and if so whether it

was reasonably practicable for him to have lodged in in time. Mr Johnson gave evidence on oath. He said that he was pursuing his internal appeal and so he thought that his claim had been lodged in time. Mr Johnson was speaking to his Union representative from USDAW about his dismissal at that time.

Relevant law

14. The relevant parts of S.111 Employment Rights Act 1996 provide:

“(1) A complaint may be presented to an employment tribunal against an employer by any person that he was unfairly dismissed by the employer.

(2) Subject to the following provisions of this section, an employment tribunal shall not consider a complaint under this section unless it is presented to the tribunal—

(a) before the end of the period of three months beginning with the effective date of termination, or

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.”

15. Miss Kaye referred the Tribunal to the case of *Bodha v Hampshire Area Health Authority* 1982 ICR 200 which said that the existence of an internal appeal alone was likely to be insufficient to justify a finding that it was not reasonably practicable to present a complaint to a tribunal within the time limit.

Decision

16. Mr Johnson did not see why he should put his claim into the Tribunal before the internal appeal process had expired as otherwise he would have to withdraw his claim if his appeal was successful and he was reinstated. The reason why he had to put his claim in within 3 months is because s.111 of the Employment Rights Act is clear that Tribunals cannot consider a claim of unfair dismissal unless it is submitted within three months of the date of dismissal except where it was not “reasonably practicable” for them to do so.

17. I decided that it was reasonably practicable for Mr Johnson to have brought his claim in time. Mr Johnson’s employment terminated on 25 September 2019. He had three months to bring his claim. He did not contact ACAS or bring his claim and so time expired on 24 December 2019. He had assistance from USDAW at that time. In his letter of appeal he set out four reasons why he thought his dismissal was unfair and he said “I have also discussed this matter with my Rep at Usdaw and they have promised to follow it up”. His appeal was not upheld on 10 January 2020 and a letter confirming this was dated 19 January 2020. He did not contact ACAS until 3 February and did not submit his claim until 4 February 2020. I also decided therefore that Mr Johnson had not put his claim in within such further reasonable period.

18. Mr Johnson’s claims of discrimination and “other payments” had already been dismissed by EJ Wright’s Order dated 8 July 2020. I have decided that the

Tribunal does not have jurisdiction to consider Mr Johnson's remaining complaint of unfair dismissal and so all his claims are dismissed.

EJ L Burge

28 January 2022