



EMPLOYMENT TRIBUNALS

Claimant: Mr E Ojinnaka

Respondent: Tuffnells Parcel Express Limited

Heard at: Manchester (remotely, by CVP) **On:** 2 November 2021

Before: Employment Judge Robinson
(sitting alone)

REPRESENTATION:

Claimant: In person

Respondent: Mr G Jaques

JUDGMENT

The judgment of the Tribunal is that there is no jurisdiction for the Tribunal to deal with the claims and consequently the claims of the claimant are struck out as follows:

1. The claims for unfair dismissal, wrongful dismissal and any claim the claimant may have for unlawful deduction of wages or other payments are all dismissed on the basis that they have been made out of time and it was reasonably practicable to issue proceedings within time.
2. Furthermore, and in the alternative, the claimant did not issue proceedings within such further period as this Tribunal considers reasonable in the case where, if it were satisfied that it was not reasonably practicable for the claim to be presented before the end of that period of three months, the claims would be dismissed in any event because the claimant could have issued proceedings sooner than he did after contacting ACAS.
3. The claimant did not have two years' service in order to mount a claim for unfair dismissal.

REASONS

1. The judgement of the Tribunal was made on the 2 November 2021 and full reasons were given orally to the parties on that day. The short written Judgment was sent out to the parties on 23 December 2021 and the claimant requested written reasons on 6 January 2022.
2. The full reasons are consequently set out below.
3. The claimant was upset at the way he was treated by the respondent but the issue for me today was purely a question as to whether the claim was issued in time and, if not, whether time should be extended in order to allow the claimant to proceed with his claims. With regard to unfair dismissal there was a question as to whether the claimant had two years full service in order to mount an ordinary unfair dismissal claim.

The Law

4. Section 111 of the Employment Rights Act 1996 requires a complaint to the Tribunal for unfair dismissal, breach of contract and/or unlawful deduction of wages to be issued within three months of the effective date of termination or within three months of the unlawful deduction or breach of contract.
5. The section goes on to say that an Employment Tribunal should not consider a complaint under this section unless it is presented to the Tribunal before the end of the period of three months beginning with the effective date of termination or 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.
6. The burden is upon the claimant to prove, in these circumstances, that it was not reasonably practicable to issue proceedings within time.
7. Section 94 of the Act confirms the right of an employee not to be unfairly dismissed, but that section does not apply to the dismissal of an employee unless he has been continuously employed for a period of not less than two years ending with the effective date of termination (Section 108 of the Act).

The Facts

8. ACAS issued an early conciliation certificate to the claimant (after his application for one on the 17 June 2021) on 24 June 2021 and the claimant issued his proceedings in this Tribunal (ET1) on 29 June 2021.
9. The effective date of termination of the claimant's employment was 20 March 2020. He was a warehouse operative at the respondent's depot in Royston where parcels are sorted to be sent out around the country. The claimant was seemingly criticised for poor performance leading up to that date in March and resigned without notice. He did not appeal, what he suggests, was an unfair dismissal. His complaint at paragraph 8.2 of the ET1 is 22 lines long, with very little detail. The claimant has

ticked the boxes alleging unfair dismissal and that he is owed “other payments”. However, all payments due to him at the time he resigned were paid to him and there was no evidence from the claimant today of any shortfall.

10. The limitation period for all his claims, therefore, ended on 19 June 2020. The claims were made over one year out of time. The date the limitation period started running for the breach of contract and unlawful deduction of wages claim was the same date, 20 March 2020.

11. The claimant produced no medical evidence to show that he was unable to issue proceedings because of his type one diabetes and his isolating during the COVID-19 pandemic.

12. The claimant also has not been employed for the two years required in order to mount an unfair dismissal claim. He was employed from 29 November 2019 to 20 March 2020, a period of just short of four months.

13. Although he did not give evidence with regard to this issue, in his submissions to me today the claimant suggested, for the first time, that he had issued proceedings because he was a whistle-blower. No application has been made to amend his original application and there is nothing in the ET1 to suggest that he lost his job because he made protective qualifying disclosures.

14. In any event, that claim would also have been issued one year out of time as would his wrongful dismissal claim and his unlawful deduction of wages claim.

15. During the period between his dismissal in March 2020 and the issuing of the proceedings on 29 June 2021 the claimant has not been absent from the country nor has he been hospitalised nor was there any other impediment to him issuing these proceedings. He did not contact any employment expert or other advisor in order to obtain advice and to complete the Employment Tribunal’s application form online.

16. Ultimately the claimant did issue proceedings without seeking legal advice and did so by using the online service of the Employment Tribunal in order to forward to the Tribunal his ET1 in June 2021.

17. The claimant did not seek advice from ACAS and he tells me that, when he did eventually speak to an officer from ACAS, he was not told that there was a time limit. He then took a further five days to issue the proceedings after his early conciliation certificate was issued on 24 June 2021.

18. The claimant felt, in March 2020, that he had been dealt with poorly by the respondent and that he had a claim against them for unfair dismissal, wrongful dismissal and unlawful deduction of wages. Indeed, the very reason he resigned was because he believed there had been a breach of his contract and he was being blamed for poor performance which he thought was unwarranted. This was not a case where a claimant only becomes aware of potential employment wrongs done to him or her at a much later stage. The claimant was, at the time his employment ended, annoyed with his employer and felt he had a claim or claims against it.

19. The claimant suggested that the reason for him not issuing proceedings sooner was that he was isolating because of his diabetes and stayed at home because of the pandemic. That should not have precluded the claimant from issuing the proceedings and, when he was still isolating, he managed to go online and issue the proceedings himself without any assistance. He left the employment of the respondent at a time when the first lockdown was implemented and had plenty of time to consider his position and seek professional advice, yet he chose not to.

Conclusion

20. Applying the law to the facts of this case, it is clear that the claimant had every opportunity, immediately after he was dismissed, to issue proceedings. He felt that he had been wronged yet he waited for over a year before issuing the proceedings. I could not understand why the claimant did not issue proceedings within time and he has given me no plausible explanation as to why he waited nor why, once he had got his ACAS certificate, he waited a further five days before issuing the proceedings. I do not know why he did not contact ACAS, have ACAS immediately issue the certificate and then go online to issue the proceedings without delay.

21. In hearing the claimant give evidence today, I concluded that he was an intelligent man who would have been able to go online and issue the proceedings at any stage between 20 March 2020 and 19 June 2020. The burden is upon him to show to me that it was not reasonably practicable to issue proceedings. I find that he has not discharged that burden. These claims cannot proceed and they are struck out for want of jurisdiction both because of the late issue of the proceedings but also, with regard to his unfair dismissal claim, he does not have the required two years' service.

Employment Judge Robinson

Date: 8 February 2022

JUDGMENT AND REASONS SENT TO THE PARTIES ON

22 February 2022

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