



# EMPLOYMENT TRIBUNALS

BETWEEN

**Claimant**

**AND**

**Respondent**

Mr J Seys

Compass Group UK & Ireland Limited

**HELD AT** Birmingham

**ON**

8 March 2022

**EMPLOYMENT JUDGE** Choudry

**Representation:**

**For the claimant:** In person

**For the respondent:** Mr A Joicey – Non-legal in house adviser

## JUDGMENT

- (1) The claimant's application for a reconsideration of the decision to strike out his claim for unfair dismissal on the basis that the claimant has insufficient service to bring a claim for unfair dismissal has no reasonable prospects of success and is refused; and
- (2) The claimant's claims for unfair dismissal and breach of contract/unlawful deduction of wages have been presented outside the time limits prescribed by section 111(2) of the Employment Rights Act 1996 and it was reasonably practicable for the claim to be brought in time.
- (3) As such, the claimant's claims are dismissed.

## **REASONS**

### ***Background***

1. The claimant brought a claim for unfair dismissal and other payments following his dismissal with effect from 24 August 2020.
2. The respondent is a food, hospitality and support services business.
3. By a Judgment dated 29 September 2021 (“the Judgment”) the claimant’s claim for unfair dismissal was struck out on the basis that the claimant did not have sufficient service to bring a claim for unfair dismissal.
4. By a letter dated 22 October 2021 the claimant sought a reconsideration of the decision to strike out the claimant’s claim for unfair dismissal.

### ***Evidence and documents***

5. I heard evidence from the claimant. I was presented with an agreed bundle of some 105 pages.

### ***Issues***

6. At the start of the hearing I explained that the issues that I needed to consider were:
  - 6.1 The claimant’s application for reconsideration of the Judgment that the claimant’s claim for unfair dismissal be struck out as the claimant does not have sufficient continuous service as required by section 108 (1) of the Employment Rights Act 1996 to bring a claim for unfair dismissal.
  - 6.2 Was the claimant’s complaint presented within the three month time limit set out in section 111(2)(a) of the Employment Rights Act 1996 (“ERA 1996”)? The claimant accepts that his effective date of termination was 24 August 2020?
  - 6.3 If not, was it presented 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?

### ***Facts***

7. I make the following findings of fact:

- 7.1 By a letter dated 22 August 2018 the respondent made the claimant an offer of employment for the role of Chef De Partie, commencing on 24 September 2018.
- 7.2 On 24 August 2020 the claimant's employment was terminated on the grounds of redundancy.
- 7.3 The claimant disputes that there was a genuine redundancy situation as he says that his role was given to the son of a supervisor.
- 7.4 The claimant also states that the respondent was in a rush to dismiss employees as a result of an anticipated increase to the employer's contribution level to furlough which did not in the event materialise.
- 7.5 Following his dismissal the claimant appealed against the decision to dismiss him on 26 August 2020 and attended an appeal hearing on 15 September 2020. The claimant says he did not receive the appeal outcome letter which is contained at pages 100 to 102 of the bundle, nor did he chase for the response as he felt it was the respondent's responsibility to send this to him.
- 7.6 The claimant indicated that he lost both of his parents in law in April 2020 within a short space of each other and he was supporting his wife.
- 7.7 The claimant confirmed that he did some research on time limits and thought he had six months to bring a claim which was his mistake. He did not seek advice from the Citizens Advice Bureau due to the national lockdown.
- 7.8 The claimant commenced Early Conciliation on 19 January 2021 with the Early Conciliation certificate being issued on the same day.
- 7.9 The claimant issued a claim for unfair dismissal and other payments on the same day.
- 7.10 The claimant's claim for breach of contract/other payments was clarified as that he should have been kept on furlough until March 2021 as an alternative to dismissal. The claimant accepted that he was not owed any monies under his contract of employment.
- 7.11 The claimant's application for consideration was based upon the fact that he had had a lot to deal with both emotionally and financially and due to the unfairness of the dismissal process.

### ***Applicable law***

8. Rule 70 of the Employment Tribunals (Constitution and Rules of Procedure Regulations) 2013 provide

*"A Tribunal may... on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration the decision ("original decision") may be confirmed, varied or revoked".*

9. Section 111(1) of ERA 1996 provides:

*“A complaint may be presented to an [employment tribunal] against an employer by any person that he was unfairly dismissed by the employer.*

10. Section 111(2) of ERA1996 provides:

*“[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.”*

11. Section 207 B of ERA1996 deals with the extension of time limits to facilitate conciliation before the institution of proceedings. Section 207 B provides:

*“(1) This section applies where this Act provides for it to apply for the purposes of a provision of this Act (a “relevant provision”).[...]*<sup>2</sup>

*(2) In this section—*

*(a) Day A is the day on which the complainant or applicant concerned complies with the requirement in subsection (1) of section 18A of the Employment Tribunals Act 1996 (requirement to contact ACAS before instituting proceedings) in relation to the matter in respect of which the proceedings are brought, and*

*(b) Day B is the day on which the complainant or applicant concerned receives or, if earlier, is treated as receiving (by virtue of regulations made under subsection (11) of that section) the certificate issued under subsection (4) of that section.*

*(3) In working out when a time limit set by a relevant provision expires the period beginning with the day after Day A and ending with Day B is not to be counted.*

*(4) If a time limit set by a relevant provision would (if not extended by this subsection) expire during the period beginning with Day A and ending one month after Day B, the time limit expires instead at the end of that period.*

*(5) Where an employment tribunal has power under this Act to extend a time limit set by a relevant provision, the power is exercisable in relation to the time limit as extended by this section”.*

12. The Court of Appeal in **Marks & Spencer plc v Williams-Ryan [2005] EWCA Civ 470** sets out a number of legal principles to consider in relation to time limits as follows:

- Section 111(2) of ERA 1996 should be given a liberal interpretation in favour of the employee;
- Regard should be had to what, if anything, the employee knew about the right to complain to a tribunal and of the time limit for doing so.
- Regard should also be had to what knowledge the employee should have had, had they acted reasonably in the circumstances. Knowledge of the right to make a claim does not, as a matter of law, mean that ignorance of the time limits will never be reasonable. It merely makes it more difficult for the employee to prove that their ignorance was reasonable.
- Where a claimant retains a solicitor and fails to meet the time limit because of the solicitor's negligence, the claimant cannot argue that it was not reasonably practicable to submit the claim in time.

### ***Submissions***

12. The claimant made no formal submissions but made representations throughout the hearing which I have taken into consideration.
13. The respondent submitted that the claimant did not provide any reasons why the claim was presented out of time. That the claimant was able to lodge an appeal, do research on the internet, contact ACAS and the fact that he was awaiting the outcome of an appeal was not acceptable given (1) this was disputed; and (2) he made no attempts to chase.

### ***Conclusions***

14. In reaching my conclusions I have considered all the evidence I have heard and considered the pages of the bundle to which I have been referred. I also considered the submissions submitted on behalf of the respondent as referenced in paragraph 13 above.
15. I am satisfied on the evidence before me that the claimant's application for a review of the Judgment has no reasonable prospects of success as the claimant had insufficient service to bring a claim for unfair dismissal and, has not put forward any grounds which would fall within the automatically unfair dismissal category which do not require two years' service. As such, the Tribunal does not have jurisdiction to hear the claimant's claim for unfair dismissal.
16. In any event, the claimant's claim has been brought outside the time limits prescribed by statute. The claimant does not benefit from any extension as a result of the early conciliation process. The claimant has not produced any evidence to show why it was not reasonably practicable for the claimant to bring his claim on time. I am not satisfied that waiting for the outcome of an appeal made it not reasonably practicable for the claimant to bring his claim on time when the claimant failed to chase the outcome of his appeal and in circumstances where he has shown that he had the ability to do research on the internet

(although he accepts he made a mistake in thinking he had 6 months' time to bring a claim). In the circumstances, I find that it was reasonably practicable for the claimant to bring his claim in time.

17. As such, the Tribunal does not have jurisdiction to hear the claimant's claim. The claim is therefore dismissed.

Signed by Employment Judge Choudry

on 8 March 2022

Judgment sent to Parties on 11/03/2022