



EMPLOYMENT TRIBUNALS

Claimant: Mr M Connor

Respondent: Wolverhampton City Council

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

Heard at: Midlands West Employment Tribunal (by CVP)

On: 11 April 2022

Before: Employment Judge Kelly (sitting alone)

Appearances

For the claimant: In person

For the respondent: Mr Bryan, solicitor

JUDGMENT

The judgment of the Tribunal is that:

1. The claimants' claims are dismissed because the Tribunal does not have jurisdiction to consider them because they have been presented out of time.
2. The claimant is ordered to pay the respondent the sum of £140.13 in respect of the respondent's counter claim, the claimant having failed to respond to the counterclaim.

REASONS

1. These reasons relate to the dismissal of the claimant's claims, the claimant having requested them at the hearing.
2. This was a hearing to determine if the Tribunal has jurisdiction to consider the claimant's claims for unfair dismissal, deduction from wages and breach of contract.

3. The hearing was much delayed by unforeseen Tribunal circumstances and then a medical emergency in the claimant's household.
4. We had a bundle of documents, a witness statement from the claimant and written submissions from the respondent which were supplied to the claimant on the morning of 8 April 2022. The submissions referred to cases and quoted from them but did not provide copies of them.
5. At the start of hearing, the claimant complained about the late provision of the submissions and the failure to provide the full cases to him. We gave the claimant an opportunity for the hearing to be adjourned so that he could have more time to study the submissions and be given a copy of the cases to consider. The claimant decided to continue with the hearing, stating that he did not consider the cases referred to to be relevant.
6. The claimant gave oral evidence and was cross examined.

Relevant law

7. Under the Employment Rights Act 1996 (ERA), Section 111(2): "an employment Tribunal shall not consider a complaint under this section unless it is presented to the Tribunal—
 - 7.1. (a) before the end of the period of three months beginning with the effective date of termination, or
 - 7.2. (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.
8. Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (2)(a).
9. Under section 207B ERA
 - 9.1. 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
 - 9.2. 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.
 - 9.3. 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.
 - 9.4. 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.
10. Under section 18A Employment Tribunals Act 1996,

- 10.1. Before a person (“the prospective claimant”) presents an application to institute relevant proceedings relating to any matter, the prospective claimant must provide to ACAS prescribed information, in the prescribed manner, about that matter...
- 10.2. A person who is subject to the requirement in subsection (1) may not present an application to institute relevant proceedings without a certificate under subsection (4).
11. The same provisions apply to claims for deduction from wages under the ERA and claims for breach of contract under the Employment Tribunals Extension of Jurisdiction (England & Wales) Order 1994.
12. In brief, the effect of these provisions is that there is a requirement to start early conciliation within 3 months of the matters complained of and to present the Tribunal claim within a month of the end of the early conciliation period.

Facts and analysis

13. The following facts are relevant.
14. The claimant’s employment ended on 19 Dec 2019. The primary limitation date for an unfair dismissal claim and breach of contract claim was, therefore, 18 Mar 2020. The date is slightly later for the deduction from wages claim. The claimant could not recall exactly when each month his pay was paid to him but confirmed it was prior to the end of the month. Therefore, the last day he was entitled to payment of his wages was 31 Dec 2019. The primary limitation period in respect of the deduction from wages claim would therefore expired on 30 Mar 2020 at the latest, 31 Dec 2019 being the last date when December 2019 pay would be paid.
15. The claimant applied to ACAS for early conciliation on 1 Apr 2020. The end of early conciliation period was 14 May 2020. He presented his claim form to the Tribunal on 12 Aug 2020.
16. The claimant contended that he was not out of time with his ACAS early conciliation application, it being merely a formality where the timing was not crucial. However, on the contrary, its timing is crucial.
17. The claimant was therefore out of time with the ACAS early conciliation application and, even if it had been in time, he was out of time with the employment Tribunal claim form which should (if the ACAS early conciliation process had been started in time, the expiry of the early conciliation period being 13 May 2020) have been presented by 13 Jun 2020.
18. The claimant said it not reasonably practicably to present his claim in time because he was too busy caring for his elderly mother who has debilitating Parkinsons Disease. The pressure of this was exacerbated by COVID lockdown when he got no support from any outside agencies. He further said that he suffered from severe anxiety and depression to the point of being suicidal. Further, in the run up to 19 Mar 2020, he was preparing for a judicial review (JR) hearing, with the help of a pupil barrister (who was funded by crowd funding and who could not assist him

with the Tribunal claim.) The JR hearing took place on 19 Mar 2020. The claimant's written statement said that the JR 'had to be my focus rather than my own ET case' because of all the people whom he knew would benefit from a successful outcome of that hearing.

19. The claimant conducted the advocacy at the JR hearing and ultimately won the case.
20. The claimant said that he did not start early conciliation immediately after concluding the JR hearing because he was exhausted after that hearing.
21. The JR judgment was issued on 27 Jul 2020. The claimant presented the Tribunal claim on 12 Aug 2020. He explained this date as being the first day he had when he was 'clear' of depression. He denied having had any 'clear' days prior to this.
22. The claimant produced no medical evidence in support of his reliance on his mental health issues.
23. The claim form is brief. However, it succinctly sums up the claimant's claims with relevant details, referring to the ERA, even in so far as to claim there was a failure to provide a s1 ERA statement. The claimant cited this section of the ERA.

Conclusions

24. We consider that it was reasonably practicable for the claimant to have contacted ACAS for early conciliation prior to 1 Apr 2020 and within the 3 month primary time limits. During this period, the claimant was not too unwell himself or under such pressure from the demands of caring that he was unable to give his attention to legal issues. Albeit with the assistance of a pupil barrister, he prepared for a JR application and he was able to successfully advocate at such hearing on 19 Mar 2020. If he was able to do that, he could have applied for early conciliation, which is not an onerous process. It is clear from the claimant's written statement that the reason he did not start the ACAS early conciliation process was that his focus was on the JR. It was his decision to prioritise the JR over his Tribunal claim.
25. If we are wrong on that, we go onto consider the timing of the presentation of the Tribunal claim which should have been presented by 13 Jun 2020 (if the early conciliation process was begun in time) and which was not presented until 12 Aug 2020, 2 months later. It could have been presented after the issuing of the early conciliation certificate on 13 May 2020.
26. The claimant produced no evidence that he was too unwell to present the claim prior to 13 Jun 2020, nor that the first day he was clear of depression thereafter was 12 Aug 2020, as he claims. Although we accept that lockdown may well have made circumstances with his caring responsibilities harder for the claimant, the claimant was someone who was, with assistance, able to prepare for and successfully advocate at a JR hearing in March 2020 whilst looking after his mother and, according to the claimant, suffering severe anxiety and depression. There was no evidence that his mental health was any worse after 13 May 2020 or so much worse after 13 May 2020 that he was prohibited from dealing with his claim. We

consider there is not the evidence to uphold the claimant's contention that he was unable to take forward his claim after 13 May 2020 until, on 12 Aug 2020, he was suddenly able to competently complete his claim form, evidently having researched the relevant law by being able to cite s1 ERA.

27. We therefore consider that it was reasonably practicable for the claimant to have presented his claim form by 13 Jun 2020.

28. Accordingly, the claim is out of time and we dismiss the claim.

**Employment Judge Kelly
Signed electronically by me
11 April 2022**