



EMPLOYMENT TRIBUNALS

Claimant: Mr Sharif El-Fiky
Respondent: Tesco Stores Limited
Heard at: Watford Employment Tribunal Hearing Centre
On: 5 May 2022
Before: Employment Judge Hoyle (sitting alone)

Appearances
Claimant: Did not attend
Respondent: Mr Gorasia, Counsel

This has been a remote hearing which has been agreed to by the parties. The form of remote hearing was by video hearing through HMCTS Cloud Video Platform (in which all participants except the judge were remote). A face-to-face hearing was not held because the relevant matters could be determined in a remote hearing.

JUDGMENT

The Judgment of the Tribunal is that the claim, having been presented outside the time limit in section 111(2) Employment Rights Act 1996, the Tribunal does not have jurisdiction to consider this complaint. Accordingly, the claim is dismissed.

REASONS

Introduction

1. The claimant, Mr El-Fiky was employed as a delivery assistant by the respondent from 13 November 2013 until 5 February 2021. The respondent submitted a Claim Form ("ET1"), received on 29 June 2021, claiming unfair dismissal.
2. ACAS received notification of the claim on 2 May 2021 and issued a certificate on 27 May 2021.

3. A Response (“ET3”) form was received on 30 Aug 2021 which raised a jurisdictional issue that the claimant’s claim was not presented to the Tribunal in time. A preliminary hearing was held today to determine the jurisdictional issue.

Preliminary issues

Identity of the Respondent

4. Mr Gorasia raised that the respondent’s correct legal entity was “Tesco Stores Limited” and he applied for this to be amended from “Tesco” as is currently on the ET1 and various documents in the case file. As the application came from the respondent, and were I to find in favour of the claimant it would be beneficial to him for the correct legal entity to be identified, I found there would be no injustice or hardship to either party in amending the respondent’s name and I granted the application.

Proceeding in absence

5. The claimant did not attend the hearing. The claimant was sent correspondence about today’s hearing by the Employment Tribunals on 15 November 2021 and 26 April 2022 and he was also sent an email with the link for today’s remote hearing on 4 May 2022. Further, the respondent’s solicitor emailed the claimant on 29 April 2022 and 3 May 2022 asking if there was anything the claimant wished to be included in the Bundle but received no reply. Mr Gorasia also told me the claimant had not corresponded with the respondent in accordance with the case management orders sent to the claimant on 15 November 2021. So, in addition, the claimant had not complied with the case management orders.

6. There was no application to adjourn and I could not see any purpose in adjourning this hearing. Mr Gorasia requested that I proceed with the hearing in any event. I therefore concluded, pursuant to rule 47 of The Employment Tribunals Rules of Procedure 2013, that it would be fair, just and proportionate to proceed in the claimant’s absence and avoid delay, notwithstanding that the purpose of today’s hearing was to consider a jurisdictional issue which might have required the claimant to give reasons as to any delay in his submission of the ET1.

The issue

7. Having decided to proceed in the claimant’s absence, the issue I had to determine was whether the claimant’s ET1 form had been received by the Tribunal in time and if not, whether it was not reasonably practicable for the complaint to be presented on time.

The hearing

8. Mr Gorasia contended that the claimant was dismissed on 5 February 2021 after a disciplinary hearing, not 4 February 2021 as the claimant had cited in the ET1 form. He showed me the dismissal letter. He also told me that an internal appeal hearing was held on 17 March 2021 and that the claimant was represented at both the disciplinary hearing and appeal hearings by a union representative. ACAS received notification of the claim on 2 May 2021 and issued a certificate on 27 May 2021, meaning the claimant’s ET1 form should have been received by the Tribunal by 27 June 2021 but it was instead received two days later.

9. Mr Gorasia submitted that the claim was presented to ACAS towards the end of the

normal time limit, and that following the issue of the Early Conciliation Certificate, the claimant would have been aware the claim would have to be presented to the tribunal shortly thereafter. In any event, it was two days too late. Mr Gorasia submitted that the claim should be dismissed by applying rule 27 of The Employment Tribunal Rules of Procedure 2013, resulting in an ‘unless Order’, which I accepted during the hearing, but rule 27 is applicable to initial consideration and a review of the pleadings once the ET3 form has been received, which is not relevant in this case.

Fact findings

10. The claimant’s effective date of termination was 5 February 2021, the claimant having been dismissed after an initial disciplinary hearing, which was followed by an internal appeal hearing on 17 March 2021. ACAS issued a certificate on 27 May 2021. The ET1 form was received on 29 June 2021.

The law

11. In a claim for unfair dismissal, the complaint must be presented to the Tribunal before the end of the period of three months beginning with the effective date of termination, in accordance with Section 111(2)(a) ERA 1996. Section 18A Employment Tribunal Act 1996 extend this time limit for the purposes of ACAS Early Conciliation. Section 111(2)(b) provides a Tribunal may consider a complaint in this sort of case where it is satisfied it was not reasonably practicable for the complaint to be presented on time. It is for the claimant to discharge the burden of proof in establishing the Tribunal’s jurisdiction.

Conclusions

12. I find the claimant’s ET1 form was received by the Tribunal two days late. There was no information or evidence presented to me to determine that it was not reasonably practical for the claimant not to comply with this time limit. Accordingly, I determine that there was sufficient time for the claim to have been presented within time even accounting for the internal appeal procedure. In these circumstances, rule 27 is not applicable but instead the claim is dismissed by virtue of the primary legislation, section 111(2) ERA 1996.

Employment Judge Hoyle
26 May 2022
JUDGMENT SENT TO THE PARTIES ON
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FOR THE TRIBUNAL OFFICE

Note

Public access to employment tribunal decisions

All judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.