



EMPLOYMENT TRIBUNALS

Claimant: Mr R Verburg

Respondent: The Down's Syndrome Association

Heard at: London South **On:** 27 September 2021

Before: Employment Judge Cheetham QC

Representation

Claimant: in person

Respondent: Alex Sims (solicitor)

OPEN PRELIMINARY HEARING

JUDGMENT

1. The Tribunal does not have jurisdiction to hear the complaint of unfair dismissal, as the Claimant was employed for less than 2 years.
2. The Tribunal does not have jurisdiction to hear the complaints for wrongful dismissal and detriments arising from making protected disclosures, as they have been brought out of time.
3. The complaint of age discrimination has been withdrawn.
4. The claim is therefore dismissed.

REASONS

1. This is a claim that was brought on 31 July 2020, arising from the Claimant's employment as an Employment Development Officer. Although the ET1 gave 17 March 2020 as the date his employment ended, the correct date was

actually 17 February 2020. His employment started on 3 February 2019, so the Claimant had less than 2 years' continuous service.

2. The complaints listed in the ET1 were unfair dismissal and age discrimination and there was also reference to wrongful dismissal and (in terms) detriment suffered as a result of making a protected disclosure. However, given the length of employment, the Tribunal does not have jurisdiction to hear the claim for unfair dismissal.
3. On 21 October 2020, EJ Andrews gave directions for further information about the claim. That was because the particulars did not mention either age discrimination or protected disclosures, but focused only the dismissal. There was an amount of correspondence about the particulars, but – to take a short-cut through all of the documentation – the issue for this hearing was limitation.
4. The Respondent maintained that the ET1 was out of time and that therefore the Tribunal did not have jurisdiction to hear the claim. The Claimant made it clear at this hearing that he was no longer complaining of age discrimination, so the complaints were (at least potentially) detriment(s) for making protected disclosures and wrongful dismissal.
5. Under the relevant provisions of the Employment Rights Act 1996, complaints must be brought to the Tribunal before the end of the period of 3 months beginning with the date of the act complained of. The Tribunal does, however, have a discretion to extend time, but only where it was “not reasonably practicable” for a claimant to comply with that time limit.
6. In fact, that 3 month time limit is extended by the Acas Early Conciliation procedures so, in this case, the relevant dates were as follows:
 - Date of termination: 17.2.20
 - Acas notification: 14.5.20
 - Acas Early Conciliation certificate: 18.6.20
 - Limitation date (i.e. last day the claim could be brought): 18.7.20
 - Date of ET1: 31.7.20
7. The claim was therefore 13 days late. The Claimant provided a number of reasons, some of which had been set out in his ET1. First, he had experienced technical difficulties accessing online forms, partly – it appears – because he was still using Windows 7. He also referred to his computer being temperamental.
8. Secondly, he had suffered from ill-health since losing his job, although he did not provide any medical evidence to show how that might have prevented him from completing the form.
9. Thirdly, he had been awaiting a response to the Freedom of Information request that he had submitted to the Respondent.
10. Fourthly, the Claimant blamed the Covid epidemic, which he said caused him to delay seeking legal advice and approaching Acas.
11. Finally, the Claimant referred to his caring responsibilities for another person.

12. The Tribunal concluded that, those reasons taken separately or together, do not explain why it was not practicable – in other words, feasible – to present the claim in time. Whilst accepting that those reasons may not have made it easier to comply with the deadline, it nevertheless remained feasible to do so.
13. The likelihood of technical difficulties, particularly where one's computer is temperamental and still using a relatively old operating system perhaps emphasises the importance of not leaving such things to the last minute.
14. The Claimant's ill-health and caring responsibilities no doubt made bringing a claim more challenging, while Covid19 has affected every party to the Tribunal in different ways. Equally, the Claimant may well have wanted to receive the FOI information first. However, in the Tribunal's judgment, it still remained practicable to bring the claim in time.
15. That being so, the Tribunal does not have jurisdiction to hear this claim, which is therefore dismissed.

Employment Judge Cheetham QC

Date 21 October 2021