



EMPLOYMENT TRIBUNALS

Claimant: Marius Samavičius

Respondent: Mitie FM Ltd

Heard at: Bristol (video hearing) **On:** 16 August 2022

Before: Employment Judge Housego

Representation

Claimant: In person

Respondent: Qurrar-Tulain Amir, Solicitor, of Dentons UKME LLP

JUDGMENT

The claims are struck out.

REASONS

1. The Claimant's employment with the Respondent ended on 26 February 2021.
2. Accordingly, the three-month period for filing a claim with the Employment Tribunal ended on 25 May 2021.
3. On 01 June 2021 the Claimant filed this claim with the Employment Tribunal.
4. The claim form states that the Claimant did not have an Acas early conciliation certificate. He ticked the box stating that his only claim was one of unfair dismissal in respect of which he was claiming interim relief.
5. The claim form did not include a claim for interim relief.
6. No claim for interim relief could be made, because such a claim must be made within 7 days of being dismissed, and this claim was more than three months after the end of the Claimant's employment with the Respondent.
7. The claim form included claims of disability discrimination and race discrimination, and for unpaid wages. All these claims needed an Acas certificate.

8. In a case management hearing on 24 February 2022 the Claimant accepted that he did not have two years' service, and withdrew his claim for unfair dismissal, which was dismissed by a judgment that day.
9. At that hearing the Claimant also withdrew the claim of race discrimination and that was also dismissed by a judgment dated 24 February 2022.
10. The claim form does not contain a public interest disclosure claim (either in its' narrative, or in the box marked "other claims", but a box was ticked asking that reference be made to a regulator about a public interest disclosure claim. The Respondent has pleaded to that claim, without objecting that an application to amend was required. That is a claim for automatically unfair dismissal. No thought has been given to the fact that the claim for unfair dismissal was dismissed on 24 February 2022. I take it that this related only to the standard unfair dismissal claim and that a claim for automatically unfair dismissal for a public interest disclosure reason is still extant. The solicitor for the Respondent accepted this analysis.
11. All the remaining claims remaining require an Acas early conciliation certificate. The Claimant obtained one after issuing the claim. The Acas early conciliation period was 09 – 14 June 2021. As the three months elapsed on 25 May 2021 the claims were already out of time. For this reason, there is no extension of time arising from the early conciliation period.
12. It is settled law that it is not possible to get a retrospective Acas early conciliation certificate¹.
13. There are therefore two issues for the Claimant:
 - 13.1. He has no Acas early conciliation certificate for his claims.
 - 13.2. His claims are out of time.
14. The Acas certificate is a jurisdictional requirement, and as there is none for any of the claims, I am obliged to dismiss them. (The later Acas certificate does not count – the whole point of the early conciliation requirement is that people who want to claim against a former employer have to give Acas the chance to see whether the claim can be settled.)
15. While that is sufficient to deal with the claims, for the sake of completeness I also deal with the out of time points.
16. In respect of the monetary claims and the public interest disclosure automatically unfair dismissal claims the test for permitting a late claim to proceed is whether it was reasonably practicable for the claim to be brought in time, and if not whether the claim was brought in such further time as I consider reasonable.
17. The Claimant knew when filing the claim that it was out of time – the claim form says so.

¹ Pryce v Baxterstorey Ltd [2022] EAT 61

18. It was reasonably practicable for these claims to be brought in time. In his claim form the Claimant says he was waiting for the Respondent to investigate his grievances, raised at the time he left. Taking the Claimant's case at its highest, the outcome letter rejecting the grievances was dated 21 May 2021. That left the Claimant four days to file his claim. He did not do so until 01 June 2021. There is no reason given for that delay, other than he wanted to get legal advice and it was complicated. Therefore, I would have dismissed the money and public interest disclosure unfair dismissal claims as out of time, because it was reasonably practicable for them to be brought in time.
19. The Claimant says it was all very difficult for him, for a variety of reasons including mental health problems. He was able to file his claim online. To do so he had to go past the screens that tell claimants they first have to approach Acas, and the system signposts them. It is not difficult to start the early conciliation process. Starting the process extends the time, usually by a month. The Claimant said that he was focussed on submitting his claim. It was reasonably practicable for the Claimant, when getting the grievance outcome, to start the Acas early conciliation process. He would then have had ample time to put his claims in to the Tribunal. He did not do so.
20. The test for extending time disability discrimination claim is whether it is just and equitable to extend time. It would not have been. There is nothing to suggest that the claimed disability impaired the Claimant's ability to bring a claim. For it to be just and equitable to extend time there needs to be some reason why it is appropriate to extend the time beyond the statutory limit. None was forthcoming.
21. Nor is this a strong claim. It appears to be that because the Claimant was off sick (for three months continuously from 11 November 2020), he was dismissed ending on 26 February 2021. He was off sick because of claimed mental health problems which the Claimant says is a disability. The claim appears to be no more than to say that he was dismissed and that he has a disability and so the one was caused by the other. It does not seem to be inherently unusual or unfair to dismiss a person on a temporary contract (as was the Claimant) with only two months' service (start date was 07 September 2020) before going off on a long-term sickness absence with no prognosis of return. This is not a strong claim. Accordingly, I would not have extended time in the disability discrimination claim.
22. However, and for the avoidance of doubt, the out of time points are secondary, because the claims must be struck out for want of an Acas early conciliation certificate.
23. I record that I have not addressed the issue of whether the Claimant is or was disabled by reason of mental health problems, nor whether, if that was the case the Respondent knew or should have known of it. That is because there were two reasons why the claims had to be dismissed, and so this was not appropriate.

Employment Judge Housego
Date: 16 August 2022

JUDGMENT & REASONS SENT TO THE PARTIES ON
30 August 2022 by Miss J Hopes

FOR THE TRIBUNAL OFFICE