



EMPLOYMENT TRIBUNALS

Claimant: Mr W Westwood

Respondent: Paragon Automotive Logistics Limited

Heard at: Reading (CVP) **On: 6 October 2022**

Before: Employment Judge Gumbiti-Zimuto

Appearances

For the Claimant: Not attending and not represented

For the Respondent: Ms C Moolenschot, consultant

JUDGMENT

The Claimant's complaint of unfair dismissal is struck out. The employment tribunal cannot consider the claim, it was presented outside the time limit for the presentation of complaints in section 111 Employment Rights Act 1996.

REASONS

1. In a claim form presented on 2 February 2022 the Claimant made a complaint of unfair dismissal. The Claimant was employed by the respondent from 10 December 2018 until 15 October 2021. The Claimant started early conciliation on 31 January 2022 until 1 February 2022. The Claimant's claim form was presented outside the limit for the presentation of complaints under section 111(2) Employment Rights Act 1996.
2. In his claim form the Claimant has not provided any grounds for his complaint of unfair dismissal. In section 8 of the claim form the Claimant states:

"I'm asking to extend my claim with the courts permission. My last working pay day was 15.10.2021 and my last dealing with my company was 05.11.2021. I put an appeal in against my dismissal. My company delayed my out come a further two weeks after this resulting in my final letter being posted. My company has dragged the process out for as long as possible wasting 7 weeks of my time to pursue the matter. I phoned my union on the 12.01.2021 (approx) to ask for an update on the matter as I'd not heard anything from them after requesting to take matters further. After a brief conversation they would check with the relevant people involved as my representative hadn't contacted them. After being concerned with still no reply approx 3 weeks later I phoned again to be told that there is a three month minus one day time limit and should have sent all paperwork via email which is easier than it looks as I work away all

week to find that I'm two weeks pass the three months minus one day. My final dealing with my company was my letter sent recorded on 19.11.2021. Please accept my forgiveness as these procedures are unfamiliar. If I may I'm asking for permission from the courts to pursue my claim as my old company in my opinion has taken liberty's with my career and name."

3. In its response the respondent states that *"the Claimant has failed to provide details as to the particulars of his claim during Early Conciliation (hereafter referred to as 'EC'), or within the ET 1. For this reason, the Respondent is unable to set out their defence to this claim. As referenced by the Claimant within his ET1, he is out of time to submit his claim. The Respondent asserts that no good reason has been provided by the Claimant as to why it was not reasonably practicable for his claim to be submitted within the relevant limitation period for an alleged unfair dismissal claim, as defined under S111 Employment Right Act 1996."* The respondent points out that the Claimant at the point of his dismissal he was a member of Unite the Union and at the time the response was presented continued to be represented by the union. The Claimant was, throughout the disciplinary and appeal process, represented by a union shop steward. The respondent contends that the Claimant was actively taking advice from the union and therefore there is no justification for not being aware of the time jurisdictions for submitting his claim.
4. Section 111(2) Employment Rights Act 1996 provides that an employment tribunal shall not consider a complaint 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.
5. In the case of Palmer and Saunders v Southend-On-Sea Borough Council [1984] IRLR 119, it was stated of the words "reasonably practicable", contained in section 111(2) that: "...to construe the words 'reasonably practicable' as the equivalent of 'reasonable' is to take a view too favourable to the employee. On the other hand 'reasonably practicable' means more than merely what is reasonably capable physically of being done... In the context in which the words are used in the... Act ... they mean something between these two. Perhaps to read the word 'practicable' as the equivalent of 'feasible'... and to ask colloquially and untrammelled by too much legal logic- 'was it reasonably feasible to present the complaint to the Industrial Tribunal within the relevant three months?'- is the best approach to the correct application of the relevant sub section."
6. Factors which an employment Tribunal may consider include
 - a. the manner in which and reason for which the employee was dismissed, including the extent to which, if at all, the employer's conciliatory appeals machinery has been used;
 - b. what was the substantial cause of the employee's failure to comply with the statutory time limit; whether he or she had been physically prevented from complying with the limitation period for instance, by illness or postal strike or something similar;
 - c. whether at the time when he or she was dismissed, and if not then when thereafter, he knew that he had the right to complain that he had been unfairly dismissed;
 - d. whether there has been any misrepresentation about any relevant matter by the employer to the employee;
 - e. whether the employee was being advised at any material time and, if so, by whom;

- f. the extent of the advisors' knowledge of the facts of the employee's case;
- g. the nature of any advice which they may have given to him;
- h. whether there was any substantial fault on the part of the employee or his advisor, which has led to the failure to comply with the statutory time limit

The list of possible relevant considerations cannot be exhaustive and at the end of the day the matter is one of fact for the Tribunal taking all the circumstances of the given case into account.

- 7. This case was listed for hearing today to consider whether the employment tribunal can consider the Claimant's case having regard to the time limit for the presentation of complaints. The Claimant did not attend and did not provide any witness statement. The Claimant was contacted by the Tribunal staff and informed them that he was on "in traffic on the M6 and could not attend today". The Claimant also stated that he wants to continue with the case but will not be attending today. Unite the union only pulled out a week ago. He needs more time to organise representation.
- 8. On the basis of the information before me there is no indication that the Claimant has made any attempt to contact the employment tribunal and inform them that he was not available today.
- 9. On 29 May 2022 the Claimant was sent notice of the preliminary hearing to take place by video (CVP). There is nothing from the Claimant or his Union stating that the date is not convenient for the Claimant.
- 10. It was not until today that the employment tribunal was informed by the Claimant that the Claimant was no longer being represented by his Union.
- 11. I have considered the contents of the claim form and the Claimant's explanation for presenting his claim late appears to be (i) that he had no knowledge of the time for presenting a claim until about the end of January 2022 when he was told by someone in his Union about the "three months minus one day" time limit and (ii) the respondent had delayed in dealing with his case.
- 12. I acknowledge that the Claimant says that he was unaware of the time limit for presenting a claim for unfair dismissal. However, the Claimant was represented by his Union throughout the period from his dismissal to the presentation of his claim. The Claimant's Union was aware of the time for presentation his claim. There is no explanation provided so as to indicate any sort of impediment presenting itself so that the Claimant could not present his case.
- 13. The Claimant says he was subject to delay by his employer who "dragged the process out for as long as possible wasting 7 Weeks" but the Claimant does not make clear how he was delayed by the respondent or what the respondent did or did not do to drag the process out. In his ET1 claim form at section 8.2 the Claimant says "my final delaing with my company was my

letter sent recorded on 19.11.2021.” It is not clear what the nature of the letter is. I note that at this point the Claimant’s claim could have been presented in time.

14. I am of the view that there are no facts before me justifying a conclusion that it was not reasonably practicable for the Claimant to present his case in time, on the contrary the information before suggest that the Claimant could have presented his claim in time. I also not that the Claimant has not set out any grounds of complaint that set out why he says that he was unfairly dismissed.
15. In the circumstances I have come to the conclusion that the Claimant’s claim has been presented outside the time limit for the presentation of complaints and the employment tribunal cannot consider the claim.

Employment Judge Gumbiti-Zimuto

Date: 6 October 2022

Sent to the parties on: 25.10.2022

GDJ
For the Tribunals Office

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