



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr Ahmed Iman

v

Community Integrated Care

OPEN PRELIMINARY HEARING

Heard at: Southampton (by video)

On: 23 February 2022

Before: Employment Judge C H O'Rourke

Appearances

For the Claimant: In person

For the Respondent: Mr D Brown – Counsel

JUDGMENT

The rejection of the Claimant's claim of unfair dismissal, on 1 September 2022, is maintained, on the basis that the Claimant has not validly presented his claim.

REASONS

(Having been requested subject to Rule 62(3) of the Tribunal's Rules of Procedure 2013)

Issues

1. This claim having already been rejected by the Tribunal, on 1 September 2022 [letter not included in bundle, but the Claimant had a copy and a further copy was subsequently provided to the Respondent], today's hearing was essentially to hear an application for reconsideration of that decision, based on the Claimant asserting that he had subsequently complied with the requirements for valid presentation of his claim and that having done so, the Tribunal should exercise its discretion to extend time, in the event of any failure by him to meet the relevant time limit. The Respondent had originally applied for strike-out of the claim for non-compliance with ACAS Early Conciliation (EC) requirements and also on time limitation and maintained that position today.

2. Background. The Claimant's effective date of termination was 23 May 2022 (none of these dates or facts are in dispute) and he purported to present a claim of unfair dismissal against the Respondent, on 22 August 2022 [3]. However, that ET1 form did not, at paragraph 2.3, provide an ACAS EC number and, instead, the Claimant attempted to explain that failure by ticking the box stating that '*my claim consists only of a complaint of unfair dismissal which contains an application for interim relief*'. However, as he accepted, he had made no such application for interim relief. As had not included the ACAS EC number and had provided no valid reason for that failure, the claim was rejected on 1 September 2022. The Claimant then belatedly entered into EC on 12 September 2022 and an EC Certificate was issued on 14 September 2022, which he said he forwarded to the Tribunal the same day. Despite the rejection of the claim on 1 September 2022, the claim was then (wrongly) accepted by the Tribunal and the Respondent was invited, on 26 September 2022, to respond to it [16], which they did, raising the jurisdictional points set out above [27].

The Law

3. As to compliance with EC requirements, s.18 of the Employment Tribunals Act (ETA) 1996 (as relevant to the circumstances of this claim) states that:
 - (1) **Before** a person presents an application to institute relevant proceedings relating to any matter (as, in this case, an unfair dismissal claim), the prospective claimant **must** (my emphasis) provide to ACAS prescribed information, in the prescribed manner, about that matter.
 - (4) the conciliation officer shall issue a certificate
 - (8) 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).
4. In the case of **Pryce v Baxterstorey Limited [2022] EAT 61**, the Employment Appeal Tribunal gave the following guidance:

The claimant issued sex and race discrimination claims before she had obtained an early conciliation certificate from ACAS. By virtue of section 18A(8) of the ETA 1996 the ET plainly had no jurisdiction to consider the claims at that stage.

A few days later she emailed the ET enclosing a copy of a certificate she had obtained in the meantime and inviting the tribunal to add the reference number to the form. The claims were then allowed to proceed but some time later they were dismissed by the ET for lack of jurisdiction.

On appeal against that decision, the EAT rejected the appeal:

 - (1) *The claimant's email enclosing the certificate could not be considered as a "re-presentation" of the claim form since rule 8 of the ET procedure rules requires a claim to be presented by sending a completed ET1 to the tribunal, a requirement that cannot be waived; and*
 - (2) *There was no jurisdiction to waive the requirement to re-present the claim since, if there was, it would undermine the express statutory provision in section 18A(8) of the ETA 1996.*

5. In respect of the application of time limits for an unfair dismissal claim, I referred myself to s.111(2) ERA, which states:

*(1) A complaint may be presented to an employment tribunal against an employer by any person that he was unfairly dismissed by the employer.
(2) an employment tribunal shall not consider a complaint under this section 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.*

6. I also referred myself to the following cases:

- 6.1. **Dedman v British Building and Engineering Appliances Ltd [1974] ICR 53 EWCA**, in which Lord Denning MR set out the principles to be considered in such a case, to include the reasons for the failure to meet the deadline, whether there was acceptable ignorance of the fact and other factors, such as awaiting information from the employer, or physical impediments etc.
- 6.2. The burden of satisfying the Tribunal that it was not reasonably practicable to present the claim on time rests firmly on the claimant (**Porter v Bandrige Ltd [1978] IRLR 271 EWCA**).

The Facts

7. I heard evidence from the Claimant and submissions from both parties.
8. The Claimant said the following:
- 8.1. He confirmed the dates and events set out in paragraph 2 above.
- 8.2. He agreed that he was aware of the three-month time limit, having got advice from a friend, at some point before that time limit elapsed and accordingly attempted to present his claim, on the last possible date of that limit. He said that a family member assisted him to complete the ET1 form. He asserted that a reason for any delay on his part was the Respondent's dilatory approach to processing his appeal (which was denied by the Respondent) but accepted that, in any event, he presented the claim in time.
- 8.3. He was challenged as to mentioning, in his statement, to having had advice from a solicitor [43] and said that that was only informal advice from an acquaintance and that that solicitor practiced only in criminal law.
- 8.4. He said that he had found out details as to the Tribunal, on-line.
- 8.5. He agreed, when it was pointed out to him that contact details having been provided for ACAS at paragraph 2.3 on the ET1 and which note said that

'Nearly everyone should have this number (the EC number) before they fill in the claim form. You can find it on your ACAS Certificate. For help and advice, call ACAS on or visit www....' that he could have done so but didn't.

- 8.6. He was asked why, when informed by the Tribunal on 1 September 2022 that his claim had been refused that he then delayed for eleven days, before contacting ACAS and said that he *'was still waiting for the actual situation to be handled and there'd been no response from the Respondent'*. But, when further challenged, it being pointed out that it was clear from the Tribunal letter that his claim had been rejected and that he needed to take urgent action, he agreed that he had *'done nothing'* for eleven days and had *'no answer'* as to why that was the case.

Submissions

9. I heard submissions from the Claimant and Mr Brown.
10. Respondent's Submissions. Mr Brown made the following submissions:
- 10.1. Rule 12 makes it clear that a claim shall be rejected if it does not contain an EC number. Rule 13 sets out that any claimant whose claim is rejected in that way can apply for reconsideration of that decision. The Tribunal is therefore bound to reject the claim.
- 10.2. In the alternative, if the Tribunal finds that the claim can be accepted, then, in any event, it is out of time and it was reasonably practicable for the Claimant to have presented it within time. If not in fact practicable, then the Claimant did not present the claim within such further time as was reasonable.
- 10.3. The Claimant had some advice, had searched on the internet and knew of the time limit. The ET1 form provides ACAS's contact details and the Claimant accepts that he should have contacted them, as he clearly had further questions. Doing so would have automatically extended the time limit.
- 10.4. Thereafter, having been informed on 1 September 2022 that his claim was rejected, he took no action for eleven days, for which he has provided no reason and therefore did not present the claim within such further time as was reasonable.
11. Claimant's Submissions. Following a break, the Claimant made the following submissions:
- 11.1. He didn't know the law very well and had done what he could.
- 11.2. He did eventually provide an EC number.
- 11.3. He has no reason for the eleven-day delay, but the matter had 'got to him' by this point.

11.4. He has attempted to comply with the procedure.

Conclusions

12. Rejection of Claim. I find that the claim was validly rejected (and remains so), for the following reasons:

12.1. Applying **Pryce**, this claim has, even now, never been validly presented to the Tribunal. The only attempt to do so was correctly rejected for non-provision of the EC number and no attempt has been made to re-present it since. On the EAT's interpretation of s.18 ETA the ET1 form could only be validly presented if it contained an EC number, either when first presented, or subsequently, if re-presented, in full, this time including the relevant number, which has not happened.

12.2. The EAT makes it quite clear that the Tribunal does not have the jurisdiction (or, in other terms, any discretion) to waive this requirement.

13. Time Limitation. While not strictly required, having made the finding above, I was invited by Mr Brown to consider, in the alternative, if the Tribunal did have jurisdiction to find that the claim had been validly presented, whether time should be extended to permit late presentation. I found, applying s.111(2) ERA, that the Tribunal had no jurisdiction either, in this scenario, as it was reasonably practicable for the Claimant to have presented a (valid) claim in time. I found this for the following reasons:

13.1. The Claimant knew of the three-month and met it, just, on the final day.

13.2. He is clearly, from his evidence, an intelligent man and who had access to the internet, a cursory google search of which would have shown the necessary requirements, to include the need to enter into EC and provide a certificate number. The vast majority of similarly unrepresented claimants manage to do so and the Claimant provided no evidence that shows him to be an exception from that group.

13.3. He accepted that the ET1 form advised him to contact ACAS if he was unclear about the EC process, but he didn't do so, instead providing a clearly false explanation for his failure to provide an EC certificate number. As stated, had he done so, the time limit would have been automatically extended.

13.4. Whether or not his ex-employer was delaying the appeal process is neither here nor there, as he knew of the time limit and nonetheless met it. Any delay by the Respondent does not explain the Claimant's failure to comply with EC.

14. Finally, however, even if it were not reasonably practicable for the Claimant to have presented his claim in time, he then, without any reasonable excuse, further delayed another eleven days, when he knew that he had already failed to comply with the required procedures and that obviously time would be of the essence. This indicated a complete lack of urgency on his part, indicating that any claim

that may have been presented at that point would not have been brought within such further time as was reasonable.

Judgment

15. For these reasons therefore, I find that the rejection of the Claimant's claim of unfair dismissal is maintained, on the basis that it has not been validly presented.

Employment Judge O'Rourke

Dated 23 February 2023

Sent to the parties on: 09 March 2023

For the Tribunal: