



EMPLOYMENT TRIBUNALS

Claimant
P Singh

Respondent
Royal Mail Group Limited

v

Heard at: Reading by CVP
Before: EJ Anderson

On: 6 February 2023

Appearances

For the Claimant: G Sidhu (lay representative)

For the Respondent: Z Tahir (solicitor)

JUDGMENT

1. The claimant's claim is out of time.
2. It was reasonably practicable for the claimant to have filed the claim before the end of the period of three months beginning with the effective date of determination.
3. The tribunal has no jurisdiction to hear this claim and it is struck out.

REASONS

Background and evidence

1. The claimant, a work area manager employed by Royal Mail Group Limited, was dismissed with effect from 12 February 2022 by way of a letter dated 7 February 2022 which he received on or around 11 February 2022. He appealed against the dismissal and the appeal hearing took place on 7 April 2022. The claimant was notified that his appeal was not upheld on 25 May 2022. Early conciliation commenced on 14 June 2022 and ended on 20 June 2022. This claim was filed at the Employment Tribunal on 21 June 2022.

2. It was submitted by Ms Tahir for the respondent that the last date for in time filing of the ET1 was 11 May 2022 and the claim was already out of time when early conciliation commenced. The claimant did not dispute this.
3. On his ET1 the claimant wrote that the reason for the delay was that he was under the impression that he could only submit a claim once he had exhausted all internal procedures. When he received the decision he spoke with a friend who he then visited and the friend instigated the early conciliation procedure. The claimant adds that he is in a financially difficult position and is the sole carer for his parents.
4. The respondent raised in its ET3 that the claim was out of time, and on 17 September 2022 the tribunal listed this hearing for the purpose of determining whether the claim was presented in time. If in time, listing and directions were to be considered today. The parties were directed to compile a bundle for the hearing today and to exchange witness statements. The respondent was ordered to prepare a summary of legal issues. I received a bundle of 72 pages. Mr Sidhu said that the claimant relied on the ET1 and the oral evidence he was to give. Ms Tahir summarised the legal issues orally at the outset of the hearing.
5. As noted above the claimant did not provide a witness statement but gave evidence at the hearing. He said that he was a member of a trade union, the CMA union, but had not had trade union assistance at the meetings involved in the disciplinary process, as meetings were set at short notice and he could not get a representative at short notice. He said some meetings were deferred for this reason but in the end he attended without a representative. He said that he had spoken to the union but he was unclear in evidence as to how much advice he had received. The claimant said that he had heard from another manager, during his 11 year employment with the respondent, that internal procedures needed to be finalised before a claim could be made to the tribunal. This was information from another manager and not official information to managers from the respondent. The claimant said that he called the union about a week after he received the appeal decision and was advised to contact ACAS. As to why it then took a further two weeks for early conciliation to be initiated and completed, he said that the situation was overwhelming for him, he was very stressed and did not know what to do. He was dealing with stressful family matters following on from two family deaths at the end of 2020 and in January 2021.
6. Mr Sidhu, a friend of the claimant and his lay representative at the hearing, said in closing that the disciplinary process dragged on for 14 months, the process was unfair and even though the claimant was a trade union member he did not receive proper advice. Mr Sidhu said he did his best to help out when the claimant approached him. He said that the claimant was a carer going through a stressful time with family matters and he had sought help from his GP in summer 2021 for stress. Mr Sidhu said that the claimant had a strong case for unfair dismissal and urged the tribunal to show leniency.

7. Ms Tahir said in closing that the claim is clearly out of time and the claimant had not disputed that. She said that the test for an extension of time is a high one and the burden is on the claimant to show why it was not reasonably practicable for him to have filed the claim in time. He had not done so. She noted that family problems were not mentioned in the ET1 nor had any issues been raised about difficulties with getting advice from the trade union. She noted that on the claimant's own admission some meetings were re-arranged where he could not get a representative. No issues had been raised in the ET1 about short notice meetings and there was no evidence in the bundle. He had been accompanied to the appeal meeting on 7 April 2022 by a trade union representative. Ms Tahir said that the claimant had access to the internet and a simple search could have led him to the information he needed about time limits. If he had received poor advice from the CMA union then his recourse was against the union and was not a reason for time to be extended.

Decision

8. *S111(2) of the ERA 1996 is as follows:*
Complaints to employment tribunal.
(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)Subject to the following provisions of this section, 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.
9. The onus of proving that presentation in time was not reasonably practicable is on the claimant. Even where a tribunal is satisfied that presentation in time was not reasonably practicable it still must decide whether the claim was presented within such further period as it considers reasonable.
10. The claimant's case is not that he was ignorant of his rights but that he was ignorant of the time limit. Where a claimant is aware of their rights they are under an obligation to seek information and advice about how to enforce that right (*Trevelyan's (Birmingham) Ltd v Norton 1991 ICR 488, EAT*). While there are cases where a claimant has been successful in an application to extend time where they have waited for an internal process to end before filing a claim, those cases are few and all cases turn on their particular facts.
11. I find that the claim was presented out of time. The last day for filing the claim was 11 May 2022 and it was filed on 21 June 2022. It is not disputed by the claimant that the claim was filed late.
12. I need then to decide whether it was reasonably practicable for the claimant to have filed the claim in time and if not, whether I should extend time for filing to 21 June 2022. I have noted Mr Sidhu's comments about leniency and how the claim will be conducted going forward, but those are not matters I can take into account in reaching a decision on whether the filing of the claim was reasonably practicable. This is not a just and equitable consideration.

13. The claimant was a manager with 11 years' experience of working in a unionised workplace. He was himself a union member. He had access to union advice. He had a union representative at the appeal meeting on 7 April 2022 when he was still within time to file his claim. There has been no evidence about substandard union advice, other than the oral evidence, and even if there had been this would not provide an automatic route to an extension of time for the claimant.
14. The claimant was articulate in evidence and agreed with Ms Tahir that he had access to the internet.
15. While there is reference in the ET1 to the claimant being a carer to his parents, there is no reference to other family matters or to stress leading to ill health, both of which were raised today for the first time. No evidence was supplied other than the claimant's oral evidence and within the submissions of Mr Sidhu. I note also that the claimant was pursuing an appeal after his dismissal so was able to deal with work related matters.
16. I find that it was reasonably practicable for the claimant to have filed his claim within the relevant time limit. He had experience in the workplace as a manager, he had trade union representation and he could have made enquiries of his own by contacting ACAS, searching online or contacting other legal advice providers.
17. As I have concluded that it was reasonably practicable to file within time, I do not then need to go on to consider whether the further delay from 11 May 2022 to 21 June 2022 was reasonable.
18. As the claim is out of time and I have decided that it was reasonably practicable for the claim to be filed in time, the tribunal does not have jurisdiction to hear this claim and accordingly it is struck out.

Employment Judge Anderson

Date: 6 February 2023

Sent to the parties on: 16th March 2023

GDJ
For the Tribunal Office