



EMPLOYMENT TRIBUNALS

Claimant: Mr M Hassan Dable

Respondent: Amazon UK Services Limited

Heard: in Leicester

On: 16 March 2023

Before: Employment Judge Ayre, sitting alone

Representatives:

Claimant: In person

Respondent: Mr R Dunn, counsel

JUDGMENT AT PRELIMINARY HEARING

The claims of unfair dismissal and for disability discrimination are out of time and the Tribunal does not have jurisdiction to hear them.

REASONS

Background

1. The claimant was employed by the respondent from 20 August 2017 until 23 January 2022 when he was summarily dismissed.
2. He started early conciliation started on 5 May 2022 and the Early Conciliation Certificate was issued the same day. The claim was also presented on 5 May 2022. The claims being made are for unfair dismissal and disability discrimination.

3. All of the claims are, on the face of it, out of time. A Preliminary Hearing took place on 11 August 2022 before Employment Judge Britton. At that hearing it was decided that there should be a Preliminary Hearing to decide whether the Tribunal has jurisdiction to hear any of the claims.

The Proceedings

4. There was before me an agreed bundle of documents running to 47 pages.
5. I heard evidence from the claimant and submissions from both parties. Mr Dunn submitted a written skeleton argument, for which I am grateful. I adjourned the hearing briefly to give the claimant time to read and consider the skeleton argument.

The Issues

6. The issues that fell to be determined today were as follows:
- a. Whether the Tribunal has jurisdiction to hear the claims as they have been presented out of time;
 - b. If the Tribunal does have jurisdiction to hear the claims, to identify the issues in the claim and make case management orders.

Findings of Fact

7. The claimant was dismissed by the respondent on 23rd of January 2022. At the time of his dismissal, he formed the view that his dismissal was unfair and that it was linked to his diabetes and glaucoma. He was in possession of the relevant facts to present claims of unfair dismissal and disability discrimination from 23 January 2022.
8. He was also aware prior to the date of his dismissal of the existence of Employment Tribunals. After he was dismissed, he did a Google search to find out the time limit for bringing claims in the Employment Tribunal. The Google search revealed that the time limit was three months. The claimant was not sure whether the three months ran from the date of dismissal or from the date of the appeal. He assumed that it ran from the date of the appeal but took no steps to check this.
9. The claimant received the outcome of his appeal on 9 February 2022. He took no steps to check the date from which time limit ran until 5 May 2022 which was almost 3 months later.
10. The claimant presented no evidence of ill-health during the period between the date of his dismissal and 5 May 2022 other than evidence that in mid to late March he attended hospital because of an increase in pressure in his eyes linked to his glaucoma. He was in hospital for approximately two hours and received eyedrops by way of treatment.

Those eyedrops relieved the problem and he was able to leave hospital quickly. He was able to resume work two or three days later.

11. The claimant accepted in his evidence that he was able to see and read despite his glaucoma and that the incident at which he described as an acute pressure attack had only affected his eyes for a few hours.
12. The claimant said he had suffered from stress after his dismissal but there was no medical evidence to support this, and no evidence of any diagnosis of any mental health problems.
13. The claimant obtained new employment within less than two months of his dismissal. He began working 20 hours a week for another employer on 18 March 2022. He remained in this employment until approximately only month before today's preliminary hearing.
14. The claimant contacted ACAS on 5 May 2022, and they told him that time limits ran from the date of dismissal. When asked during today's hearing why he contacted ACAS on 5 May rather than on any other date the claimant said that that was when 'his mind had settled' and he could continue researching. The claimant acted promptly when he contacted ACAS, issuing proceedings on the same day.
15. The claimant gave evidence, which I accept, that the situation had not been easy for him following his dismissal because he had no income and bills to pay. This put pressure on his marriage and caused marital disharmony resulting in the claimant seeking support from a local mosque on 29 April 2022. The mosque conducted a mediation on the same day and the marital issue was happily resolved.

The Law

Time limits in Unfair Dismissal claims

16. Section 111 of the Employment Rights Act 1996 contains the time limits for bringing claims of unfair dismissal:

“(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.*

(2A) Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (2)(a)...

17. Time limits for presenting claims are a jurisdictional issue (***Rodgers v Bodfari (Transport) Ltd 1973 325 NIRC***) and if a claim is out of time, the Tribunal must not hear it. The burden of proof lies on the claimant to show both that it was not reasonably practicable to present his claim on time and that he presented it within such further period as was reasonable (***Porter v Bandridge Ltd [1978] ICR 943 CA***)
18. In cases, such as this one, in which a question arises as to whether it was reasonably practicable for the claimant to present his claim on time, there are three general principles that fall to be considered –
- a. The question of reasonable practicability should be interpreted liberally in favour of the claimant;
 - b. It is a question of fact as to whether it was reasonably practicable for the claimant to present his claim on time; and
 - c. It is for the claimant to prove that it was not reasonably practicable for him to present his claim on time.
19. In ***Palmer and another v Southend-on-Sea Borough Council [1984] ICR 372***, the Court of Appeal concluded that ‘reasonably practicable’ does not mean ‘reasonable’ or ‘physically possible’, but rather ‘reasonably feasible’.
20. In ***ASDA v Kauser UKEAT/0165/07*** the EAT held that the test is not what was possible, but whether, on the facts of the case, it was reasonable to expect what was possible to have been done.
21. Where a claimant is ignorant of time limits, the ignorance must be reasonable. If the claimant knows about his rights, ignorance of time limits will rarely be reasonable, as he is expected to try and find the time limits. In ***Trevelyan (Birmingham) Ltd v Norton [1991] ICR 467*** the EAT held that if an individual has knowledge of his rights to claim unfair dismissal, he is under an obligation to try and find out information or take advice about the enforcement of those rights.
22. More recently, in ***Sodexo Health Care v Harmer EATS 0079/08***, a case involving a claimant who assumed that the time limit ran from the appeal, not dismissal, the EAT held that it was reasonably practicable for the claimant to bring her claim on time. Lady Smith said that:
- “Had the Tribunal approached this case correctly, it would have gone on to ask itself whether, in the circumstances, the claimant was reasonably ignorant of the time limit...The only answer to that question was, no. The cause of her ignorance was assumption on her part which was not induced by any advice or information given to her about time limits and which was made in circumstances where she made no enquiries into the matter notwithstanding an awareness of the existence of the three month time limit. There was no basis on which the Tribunal could properly grant the extension sought.*”

....time limits for applications to Tribunals are strict for good reasons and the “reasonable practicability” test that claimants have to satisfy where they present late claims has been devised in the interests of justice, taking proper account of the need to be fair to both parties.”

23. The ease with which claimants can inform themselves about time limits was a factor in ***Cygnets Behavioural Health Ltd v Mr G Britton EA-2020-000972-00*** in which The Honourable Mr Justice Cavanagh commented in the EAT that *“it would be the work of a moment to ask somebody about time limits or to ask a search engine.”*

Time limits – discrimination claims

24. Section 123(1) of the Equality Act 2010 provides that complaints of discrimination may not be brought after the end of:

*“(a) the period of 3 months starting with the date of the act to which the complaint relates, or...
(a) Such other period as the employment tribunal thinks just and equitable.*

25. Section 123 (3) states that:

*“(a) conduct extending over a period is to be treated as done at the end of the period;
(a) Failure to do something is to be treated as occurring when the person in question decided on it.”*

26. Tribunals have a discretion as to whether to extend time but exercising that discretion should still not be the general rule. There is no presumption that the Tribunal should exercise its discretion to extend time: *Robertson v Bexley Community Centre t/a Leisure Link [2003] IRLR 434.*

27. Factors that are relevant when considering whether to extend time include:

- a. The length of and reasons for the delay in presenting the claim;
- b. The extent to which the cogency of the evidence is likely to be affected by the delay;
- c. The extent to which the respondent cooperated with any requests for information;
- d. How quickly the claimant acted when he knew of the facts giving rise to the claim; and
- e. The steps taken by the claimant to obtain professional advice once he knew of the possibility of taking action.

Conclusions

Unfair dismissal

28. I have considered firstly whether it would have been reasonably practicable for the claimant to submit his claim in time. I have reminded myself that the burden of proving that it was not reasonably practicable lies with the claimant. I have also considered what Lady Smith said in **ASDA v Kauser**, namely that it is reasonable to expect that which was possible to have been done.
29. The claimant was aware of his rights and of the existence of Employment Tribunals from 23 January 2022. He was able to conduct a Google search to find out the three month time limit for bringing a claim in the Employment Tribunal. He is clearly an intelligent and articulate individual. It would in my view have been reasonable for him to conduct a quick Google search to find out whether his mistaken assumption that the time limits ran from the date of the appeal was correct or not.
30. The claimant has not produced any persuasive evidence as to why he did not do so. Whilst I accept the claimant's evidence that this was a difficult time for him resulting in financial stress and marital disharmony that in itself does not render it not reasonably practicable to present a claimant to the employment tribunal. Many employees who are dismissed experience stress and disharmony.
31. There was no medical evidence before me other than in relation to a few hours spent in hospital following which the claimant recovered. The claimant was well enough to seek and to find work which he started on 18 March 2022. He worked consistently thereafter for a period approaching one year.
32. The claimant was able to seek and take advice from the mosque in relation to his marriage.
33. In these circumstances where a claimant has knowledge of his rights there is an obligation upon him to seek information or advice about the enforcement of those rights. He did not do so and as a result his ignorance of the fact that the three month time limit runs from the date of dismissal rather than the date of appeal was not reasonable.
34. This is a case which is similar to **Sodexo Health Care v Harmer** in which it was held that where the cause of a claimant's ignorance was an assumption on her part and where she made no enquiries into the matter notwithstanding an awareness of the existence of the three month time limit, there was no basis upon which the tribunal could properly grant the extension of time.
35. The claimant has not discharged the burden of proving that it was not reasonably practicable for him to submit his claim in time. I am also not persuaded that he submitted his claim as soon as was reasonably possible after the expiry of the time limit. He has given no valid explanation as to why he waited until 5 May before issuing his claim.
36. For these reasons I find that the Tribunal does not have jurisdiction to hear the complaint of unfair dismissal.

Disability discrimination

37. The test I have to apply in relation to this complaint is whether it would be just and equitable to extend time. The tribunal's discretion is a broad one and will generally be exercised more liberally .
38. There is however no presumption in favour of extending time. Time limits exist for an important principle of public policy, namely the need for the finality in litigation. The time to present a discrimination complaint should not be extended unless the claimant persuades the Tribunal that it is just and equitable to do so.
39. The length of the delay in this case is 13 days. Whilst that is not the longest of delays it is equally not insignificant, particularly for a claimant who knew of the right to bring a claim and of the 3 month time limit.
40. More importantly, the claimant has not presented any strong reasons for extending time. I accept that he suffered stress, but most individuals who experience dismissal do. Stress in itself does not make it just and equitable to extend time. Otherwise, most claimants would be granted extensions of time.
41. The claimant knew of the circumstances giving rise to the claim on 23 January 2022 but waited more than three months before contacting ACAS. There was no evidence before me of him having taken any advice on his claim, although he was clearly able to do so, as evidenced by the fact that he found out about the time limits through a Google search and was able to contact the mosque for advice on his marriage. He was also able to seek and find a new job, and to work 20 hours a week in that job.
42. The claimant has not discharged the burden of establishing that it would be just and equitable to extend time.
43. Whilst I take on board the submissions that Mr Dunn made in relation to the merits of the case, and have some sympathy with those submissions, I have not in this case taken account of the prospects of success in reaching my decision.
44. For the above reasons it would not be just and equitable to extend time in relation to the discrimination complaint. The Tribunal does not have jurisdiction to hear the complaint of discrimination.
45. The claims are therefore dismissed.

Employment Judge Ayre

16 March 2023
