



EMPLOYMENT TRIBUNALS

Claimant: Mr M Kelly

Respondent: Hindle Gears Limited

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ON: 28 February 2023

BEFORE: Employment Judge Shulman

REPRESENTATION:

Claimant: Ms F Gordon, Solicitor

Respondent: Mr P Ledbrook, Solicitor

JUDGMENT

1. The proper title of the respondent is Hindle Gears Limited.
2. The claimant is out of time in issuing his claim for unfair dismissal and it would have been reasonably practicable for him to have issued in time and the claim is hereby dismissed.

REASONS

1. Claim

- 1.1. Unfair dismissal.

2. Issue

The issue in this case relates to whether before the end of the period of three months beginning with the effective date of termination or within such further period as the Tribunal considers reasonable and in such 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. It is not in dispute that the complaint was not filed before the end of the period of three months so that the main issue relates to reasonable practicability.

3. **The Law**

- 3.1. This can be found in section 111(2) of the Employment Rights Act 1996.
- 3.2. The parties have referred the Tribunal to certain decided cases. The Tribunal has taken these cases into account although the parties were to a certain extent relying upon them for fact similarity rather than points of law and in those cases as in this case whether or not the issue can be decided is a question of fact.

4. **Facts**

The Tribunal having carefully reviewed all the evidence (both oral and documentary) before it finds the following facts (proved on the balance of probabilities):

- 4.1. At the time of his dismissal on 17 June 2022 the claimant was an acting manager responsible for 40 to 45 colleagues and had been employed by the respondent since 20 August 1990.
- 4.2. Following his dismissal the claimant made a first contact with ACAS on 21 June 2022.
- 4.3. The claimant appealed against his dismissal and there was an appeal hearing on 21 July 2022. The day before that appeal hearing the claimant had made another contact with ACAS this one lasting 15 minutes.
- 4.4. There was an adjourned appeal hearing on 9 August 2022.
- 4.5. The claimant contacted ACAS again the day after that adjourned appeal hearing and spoke to them for six minutes.
- 4.6. The appeal was adjourned until 8 September 2022, following which the claimant made an abandoned call to ACAS on 13 September 2022 but he does not know why the call was abandoned.
- 4.7. The respondent took notes of the final day of the hearing which were produced to the Tribunal. Towards the end of that hearing Mr Hindle, who was not called to give evidence by the respondent, asked the claimant if he had anything else to say, to which the claimant replied in the negative. Mr Hindle then said he would go through everything and come back to the claimant, hopefully within a week. It was then that the claimant mentioned "that takes me over the 3 month bracket." Mr Hindle questioned the nature of this bracket and the claimant said "ACAS said there is 3 months to deal with all this." Mr Hindle said he would get back as soon as possible and Mr Dobson, the claimant's witness, asked the claimant what the consequences might be of going over the three months and the claimant said "I don't know" and Mr Hindle said to the claimant "you'll need to do your homework and find out." These appeal hearing notes were not in dispute between the parties.
- 4.8. It should be noted however that the claimant maintains that he was at that stage unaware of the three month time limit with which we are dealing and that any time limit of which he was then aware related to the internal appeal process. In any case that three month time limit process was up by 16 September 2022.

- 4.9. On 21 September 2022 a letter with the outcome of the claimant's appeal was posted to him, which was received at his address on the next day but which the claimant did not read until 23 September 2022.
 - 4.10. On that date the claimant had a 22 minute phone call with ACAS and still maintained that he was unaware of the three month time limit with which we are dealing.
 - 4.11. On 24 October 2022 there was short contact with ACAS.
 - 4.12. On 5 October 2022 the claimant had entered early conciliation and was told that his claim was out of time.
 - 4.13. On 24 October 2022 ACAS issued the early conciliation certificate.
 - 4.14. On 31 October 2022 the claimant put in the claim.
 - 4.15. The claimant effectively had from 22 September 2022 (which was the end of the internal appeal process) to contact ACAS for early conciliation and from 24 October 2022 to issue this claim.
 - 4.16. The claimant said he was hampered by stress in not issuing, looking for a job, attending interviews with the DWP, dealing with child support and because of the condition of his brother who was gravely ill. This is unfortunate and no matter how true the Tribunal did not see most of this detail in the claim nor in the claimant's witness statement.
 - 4.17. The claimant was vague as to why he did not issue his claim straight after receiving his conciliation certificate.
5. **Determination of the Issue (After listening to the factual and legal submissions made by and on behalf of the prospective parties):**
- 5.1. The claimant says that ACAS did not advise him of the three month time limit which is the subject of this hearing and that is despite five actual calls to ACAS. There is no evidence that the claimant did not receive advice which did not deal with the three month time limit.
 - 5.2. However by 8 September 2022 the nature of the evidence changed. By then the claimant himself raised the three month issue at the appeal hearing. The claimant said he did not know the consequences of being outside the time limit and was told by Mr Hindle to do his homework.
 - 5.3. What did the claimant do? He made an abandoned call to ACAS and then waited another 10 days before contacting them again, this time for a 22 minute call, and the claimant says that that discussion did not confront the time limit.
 - 5.4. The claimant received his letter dealing with his appeal on 22 September 2022 but did not read it until the next day.
 - 5.5. The claimant then failed to contact ACAS for an early conciliation certificate until 5 October 2022 and then failed to lodge his claim on 24 October 2022 which was the end of the early conciliation period and then not until 31 October 2022, without any apparent reason.
 - 5.6. The Tribunal finds that there is no question of a lack of awareness on the part of the claimant relating to time limits from and after 8 September 2022 when the final appeal hearing took place, but even if that awareness did not stretch to what he had to do to start Employment Tribunal

proceedings, the claimant, a manager of 40 to 45 men, was well on the road to issuing.

- 5.7. After 23 September 2022 and the 22 minute phone call with ACAS, it was clearly reasonably practicable for the claimant to lodge his complaint. He did not go straight to ACAS for early conciliation and then once through the early conciliation process he did not issue straightaway, knowing then he was out of time.
- 5.8. In all the circumstances the Tribunal finds that it was reasonably practicable for the claimant to lodge his complaint in time and his claim for unfair dismissal is hereby dismissed.

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Employment Judge Shulman

Date: 3 April 2023