EMPLOYMENT TRIBUNALS

Heard at: London South (hybrid) **On:** 26 May 2023

Claimant: Christopher Williams

Respondent: McDonalds

Before: Employment Judge Sudra (sitting alone) (via CVP)

Representation:
Claimant In person
Respondent Stephen Wyeth

JUDGMENT

1. The Claimant's claim is struck out and dismissed in its entirety as the Tribunal has no jurisdiction to hear any of his complaints as they are out of time.

REASONS

Introduction

2. This public preliminary hearing was to decide:
   (i) Whether or not the Claimant can carry on with his claim, despite it being sent to the Tribunal late and despite him having given the wrong name to Acas and the Tribunal;
   (ii) to decide whether the name of the Respondent can be changed from 'McDonalds' to 'ILS Operations Limited' whom the Respondent says was the Claimant's actual employer; and
   (iii) for the Claimant to tell the Tribunal why his claim was late and why it was sent to the wrong name and address, in order for the Tribunal to decide if the claim should be allowed to continue.

3. The general rule for claims of unfair dismissal is that the process must be started within three months of the employment coming to an end, (**s.111(2)(a) Employment Rights Act 1996** ('ERA')) or within such further period as the Tribunal considers reasonable **s.111(2)(b) ERA**. The time limits are strict and they have to be considered quite separately from the merits of the case. The strongest case may have to be dismissed if it is presented late. The Tribunal simply does not have jurisdiction to hear it.

4. The process of bringing a claim now involves contacting Acas, to engage in what is known as early conciliation. Acas then attempt to resolve matters. They are normally involved for about a month and if early conciliation is not successful, they then issue a certificate to say that their efforts are at an end. =

5. The claim then has to presented to the employment tribunal, and time limits become important again. By, **s.207B ERA** the time spent in early conciliation does not count towards the three month period. Usually there is a minimum period of a further month from the end of early conciliation, but not always. There is no such extra month where early conciliation does not start during the initial three month period.

6. In this case the relevant dates are as follows:

    a. Start of employment: 16th October 2015.

    b. End of employment ('EDT') 29th April 2022.

    c. Start of Acas early conciliation ('Day A') 9th November 2022.

    d. End of Acas conciliation ('Day B') 9th November 2022.

    e. Claim form (ET1) presented 10th November 2022.

7. The normal approach to calculating the deadline for starting early conciliation is to add three months and then subtract one day. For an EDT on 29th April 2022, early conciliation should have begun by 28th July 2022.

8. However, early conciliation, as just noted, did not begin (Day A) until 9th November 2022, when it also ended (Day B). The extension of time limits does not apply as early conciliation was not commenced within the primary limitation period.

9. The claim form was therefore, presented three months and 12 days outside of the primary time limit.

10. In such circumstances a Tribunal can only consider the claim if it is satisfied that it was 'not reasonably practicable' for it to be presented in that time. Even then, it can only do so if that it was presented within a further reasonable period (**s.111(2) ERA**).

Procedure and evidence

11. The matter was listed to commence as a hybrid hearing at 10.00 am today (the Claimant to attend the Tribunal in-person and the Respondent to join via CVP). Whilst the Respondent attended, the Claimant did not. My clerk telephoned the Claimant who explained that he is dyslexic and mistakenly thought that he had to log-in to the hearing from home. He then said that he could attend the Tribunal in 10 minutes. Therefore, I adjourned the hearing until 10.20 am.

12. At 10.30 am the Claimant had still not arrived at the Tribunal so my clerk telephoned him again. The Claimant said that he had gone to Croydon Crown Court and would come to the Tribunal in 20 minutes; I again adjourned the Hearing to 11.00 am.

13. The hearing began at 11.00 am; by which time the Claimant had arrived and settled in. As is usual in time limit cases, the only live evidence was from the Claimant. There was also a bundle of 74 pages which the Claimant had received but not brought to the Tribunal. The Claimant said that he was happy to look at the bundle on his mobile telephone as due to his dyslexia, he preferred that over having to read papers copies of documents. Mr Wyeth said that he would not be referring to a large number of documents and would be referring to documents which the Claimant would have already seen. I asked the Claimant if he would like my clerk to print off the relevant pages for him but he declined the offer and said he was happy to look at the documents on his mobile telephone.

14. I asked the Claimant to let me know if he encountered any difficulties.

15. I raised the point that one of the Respondent's grounds for striking-out the Claimant's claim was that he had not citied the correct employer on his ET1 and that neither the ET1 nor the Acas early conciliation certificate, contained the correct name of the Respondent i.e. ILS Operations Limited and not McDonalds.

16. Mr Wyeth took a pragmatic view and said that the Respondent would not be pursuing that point as the Tribunal had discretion to allow the name of the Respondent to be corrected if it was in the interests of justice to do so.

17. Having considered the evidence and submissions on each side, I make the following findings.

Relevant Findings of Fact

18. Only findings of fact relevant to the issues, and those necessary for the Tribunal to determine, have been referred to in this judgment. It has not been necessary, and neither would it be proportionate, to determine each and every fact in dispute. The Tribunal has not referred to every document it read and/or was taken to in the findings below but that does not mean it was not considered if it was referenced to in the witness statements/evidence and considered relevant.

19. The Claimant began work with the Respondent on 16th October 2015 as a crew member. On 13th January 2021 the Claimant went on sickness absence whilst he awaited knee surgery. On 26th January 2022, the Claimant was invited to a meeting under the Respondent's long term sickness absence management process. The Claimant did not attend the meeting.

20. The Claimant's fitness for work certificate expired on 11th April 2022 but he did not attend any work shifts scheduled after this date. The Respondent then invited the Claimant to a investigation meeting, on 15th April 2022 and a disciplinary meeting on, 29th April 2022. The Claimant failed to attend either.

21. Subsequently, the Respondent dismissed the Claimant, on 29th April 2022, on grounds of gross misconduct. The dismissal was communicated to the Claimant on the same day via email and was followed by a letter sent to the Respondent on 3rd May 2022. In this letter the Claimant was advised of his right to appeal; he did not do so.

22. The Claimant approached Acas on 9th November 2022, was issued with an Acas early conciliation on the same day and presented his ET1 on 10th November 2022.

23. During the months that followed his termination of employment, the Claimant had some help and support from friends/ family and attended London South Employment Tribunal, in person, and was advised that he needed to contact Acas. This was in or around, 12th May 2022 and well within the primary time limit.

24. The Claimant stated that he contacted Acas, in or around May 2022 and was told that he would be put on a 'waiting list' and that Acas did not tell him of any time limits. I do not find the Claimant's recollection to be accurate as it seems an extraordinarily odd way for Acas to deal with a potential Claimant who wishes to present a claim for unfair dismissal against his employer.

Applicable Law

25. The starting point is **s.111** of the **Employment Rights Act 1996** which states (so far as material),

111 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.

26. Some general points are well-established. Firstly, according to the Court of Appeal in *Dedman v British Building and Engineering Appliances Ltd* 1974 ICR 53, CA, the question of what is reasonably practicable should be given a "liberal construction in favour of the employee."

27. Secondly, it is a question of fact, not some refined legal concept. As Lord Justice Shaw put it in *Wall's Meat Co Ltd v Khan* 1979 ICR 52, "Practical common sense is the keynote."

28. Thirdly, it is for the claimant to show that it was not reasonably practicable. 'That imposes a duty upon him to show precisely why it was that he did not present his complaint' — *Porter v Bandridge Ltd* 1978 ICR 943, CA.

29. But what does reasonably practicable mean in practice? In *Palmer and anor v Southend-on-Sea Borough Council* 1984 ICR 372, CA, the Court of Appeal held that it does not mean "reasonable", which would be too favourable to employees, and does not mean "physically possible", which would be too favourable to employers, but means something like "reasonably feasible".

30. Lady Smith in *Asda Stores Ltd v Kauser* EAT 0165/07 explained it in the following

words: “the relevant test is not simply a matter of looking at what was possible but to ask whether, on the facts of the case as found, it was reasonable to expect that which was possible to have been done”.

Lack of knowledge

31. If a person is completely unaware of his right to claim unfair dismissal, that may mean that it is not reasonably practicable to present a claim in time, but equally that lack of knowledge must itself be reasonable. As Lord Scarman commented in *Dedman*, the tribunal must ask further questions: “What were his opportunities for finding out that he had rights? Did he take them? If not, why not? Was he misled or deceived?”

32. In *Porter*, the Court of Appeal then held that the correct test is not whether the claimant knew of his rights but whether he ought to have known of them.

33. This is not a case however, where the Claimant says that he did not know anything about his legal rights or about Employment Tribunals. It is clear from his emails that he did [p.56].

Ignorance of time limit

34. On the other hand, where the claimant is generally aware of his rights, not knowing about the time limit will rarely be an acceptable excuse. A claimant who is aware of his rights will be expected to find out more. In *Trevelyans (Birmingham) Ltd v Norton* 1991 ICR 488, Mr Justice Wood said that, when a claimant knows of his right to complain of unfair dismissal, he is under an obligation to seek information and advice about how to enforce that right. Failure to do so will usually lead the tribunal to reject the claim.

Conclusions

35. In those circumstances, it is clear that it was reasonably practicable for the Claimant to have submitted the claim in time. His dyslexia did not prevent him from communicated with his friends and family, the Respondent, or engaging in correspondence about his rights. The Claimant’s lack of knowledge about time limits is not in my view reasonable. He admitted that he had help from his sister-in-law, attended London South Employment Tribunal, spoke with Acas and was threatening to take the Respondent to the Tribunal as early as 12th May 2022.

36. The Claimant has failed to make out why it was not reasonably practicable for him to present his claim in time. Therefore, it is not necessary for me to decide if it was presented within a further reasonable period. That only applies if it was not reasonably practicable to submit the claim form on time.

37. For all of the above reasons the Claimant’s claim is dismissed in its entirety.

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Employment Judge Sudra
Date: 5 May 2023