



EMPLOYMENT TRIBUNALS

Claimant: Mr S Lewis

Respondent: Caffyns Plc

Heard at: London South **On: 19/5/2023**
(Croydon) via CVP

Before: Employment Judge Wright

Representation:

Claimant: Did not attend and no written representations

Respondent: Mr D Soanes - solicitor

JUDGMENT PUBLIC PRELIMINARY HEARING

The claimant's claim was presented out of time. The Tribunal does not have jurisdiction to consider it and so it is dismissed.

REASONS

1. The claimant's employment commenced on 1/5/2016 and ended following him resigning and giving notice on 25/10/2021 with that notice to expire on 24/11/2021 (the claimant gives a termination date of 30/11/2021, however

the tribunal is satisfied that the correct termination date is 24/11/2021 (page 35)). A period of early conciliation took place between 25/11/2021 and 13/12/2021. The claim was presented on 11/9/2022. The claim is almost six months out of time. In his claim form the claimant said (page 14):

'As a direct result of the stress and anxiety caused by this case, I could not submit this application on time. My mistreatment by my employer has affected my mental health, confidence and self-esteem. I can provide evidence of my ill health to substantiate this delayed application.'

2. There was no such evidence forthcoming from the claimant.
3. In its response, the respondent took issue with failure to present the claim in time and on the 16/11/2022 the respondent applied for a public preliminary hearing to decide the question of jurisdiction. The claimant was copied into that email and so he was aware from that date that the respondent took issue.
4. This hearing was listed on 9/1/2023 and the parties were informed the purpose of the hearing was for the Employment Judge to consider whether the claim was brought in time and for case management if the claim was to proceed.
5. The hearing commenced at 10am and at approximately 10.05am, the clerk discovered an email from the claimant, sent the previous day at 13:46pm. The email was not copied to the respondent and so it was not on notice of it.
6. The claimant attached a GP's Statement of Fitness for Work For social security or Statutory Sick Pay (Med 3). That certified the claimant as unfit for work due to anxiety, having assessed the claimant on 18/5/2023, it stated that he is unfit for work for two weeks and said the GP will not need to assess his fitness for work again at the end of that period.
7. The covering email apologised and stated that the claimant was unable to attend the hearing. He referred to 'some kind of one-way camera' so that he was not seen by the respondent or solicitor to help him to deal with the situation. That suggestion appeared to apply to a further hearing, rather than to this hearing.
8. A short adjournment was granted for the respondent to consider the claimant's email.

9. Mr Soanes for the respondent made the following submissions.
10. It was understandable the claimant was clearly anxious about the process and it was recognised his is a litigant in person. Rule 30A(1) does however apply and the application for a postponement had not been copied to the respondent. Mr Soanes had sent the bundle to the claimant earlier in the week and therefore, that should have reminded the claimant he was acting for the respondent.
11. Mr Soanes referred to the anxiety this hearing was causing the claimant and for his substantive application to be heard, as it may be in the claimant's best interests as if it is successful, it will dispose of the claim. He accepted this point was not entirely altruistic.
12. It was also submitted that Rule 30A(2)(c) provides that where the application is made less than seven days before the hearing, absent agreement, the hearing should only be postponed in exceptional circumstances. It is not exceptional for a claimant representing themselves to be anxious. Furthermore, Rule 47 provides that the hearing can proceed in the absence of a party.
13. In the alternative if the hearing was postponed, Mr Soanes made an application for costs under Rule 76(1)(c). He said that the costs were minimal as the preparation for this hearing would carry forward to the next hearing. He did however make an application for the time he had spent attending, of one hour.
14. The Tribunal decided to proceed in the claimant's absence. The claimant admitted his claim was out of time. He had said that he would provide evidence of his ill health, but did not do so. He had been on notice that the respondent took issue with the Tribunal's jurisdiction since 16/11/2022 and he had had the notice of this hearing since 9/1/2023. He could have made a written representations under Rule 43. He could have arranged for a friend or relative to represent him (as per the notice of hearing). His GP certificate certified him as unfit for work, not as unfit to attend a video hearing, which was only scheduled to last three hours. Finally, the claimant's email was not in accordance with the Rules and it did not comply with the Presidential Guidance on seeking a postponement of a hearing dated 4/12/2013.
15. It is accepted the Tribunal process can be stressful for those involved, however, it is the claimant who has presented the claim and it was his

- choice to engage in the Tribunal process. The claimant's ill health (which he could have anticipated may be affected) is not an exceptional circumstance warranting a postponement.
16. Delay causes prejudice. The claimant's employment terminated in November 2021. A final hearing is listed for March 2024 and that would be jeopardised if this hearing was postponed as it may not be possible to relist this hearing and allow enough time for the parties to then prepare for the final hearing, depending upon when the preliminary hearing was relisted for.
 17. It is in the interests of justice and in accordance with the overriding objective that the case is progressed.
 18. Then turning to the substantive application, Mr Soanes was asked if he had anything to add to his written application. Mr Soanes took the Tribunal through the documents which were now available in the bundle. The claimant resigned giving one month's notice on 25/10/2021 and detailed his dissatisfaction over 2.5 pages (page 33). The claimant was given the opportunity to withdraw his resignation on 26/10/2021 (page 38) and on 27/10/2021 (page 40). The claimant was fit enough at that time to respond and did so on the 28/10/2021 (page 41). On the 31/10/2021 he wrote a two-page letter and referenced the Acas Code. On the 11/11/2021 he wrote a further two-page letter, which demonstrated his familiarity with the grievance and disciplinary process. He also referenced what he said were protected disclosures he had made.
 19. The claimant then contacted Acas and commenced early conciliation between the 25/11/2021 until the certificate was issued on the 13/12/2021.
 20. On the 19/12/2021 the claimant then appealed against the grievance outcome and again referred to Acas guidance (page 50).
 21. A letter from the respondent dated 6/1/2022 made it clear that all matters, from its point of view, had concluded (page 52). This was not a case where there was some open-ended matter which could have led the claimant to consider that he was waiting for 'something' such that he may misapprehend that he could not present his claim (such as an outstanding appeal).
 22. In the absence of any input from the claimant, all the Tribunal had to go on was what the claimant had said in his ET1 and he had not provided the information he had said he would.

23. The respondent submitted the claimant was referring to stress and anxiety in the common use/sense; namely stress in response to an uncomfortable situation. It was acknowledged that resigning from his role in acrimonious and unhappy circumstances was stressful.

24. Mr Soanes referred to two authorities. Asda Stores Limited v Kauser UKEAT/0165/07/RN, where the claim was presented late due to the claimant being 'very stressed' but where there was no finding of illness or in capacity:

'It cannot be sufficient for a claimant to elide the statutory time limit that he or she points to having been 'stressed' or even 'very stressed'. There would need to be more.'

25. He also referred to Cygnnet Behavioural Health Ltd v Britton EA-2020-000972-OO:

'The employment judge ... reminded himself that the onus of proving that the presentation of the claim in time was not reasonably practicable rests with the claimant.'

'A person [is] who is considering bringing a claim for unfair dismissal is expected to apprise themselves of the time limits that apply; it is their responsibility to do so.'

'Notwithstanding his dyslexia and mental health problems the claimant had been able to do the following things in the relevant period:

- (i) Appeal against his dismissal in October 2019;
- (ii) To contact Mr Molloy from ACAS about his potential ET claims in mid-November and mid-February 2020;
- (iii) To complete the formalities of early conciliation;
- (iv) To work as a locum in December 2019;
- (v) To work in a temporary post from January 2020 onwards;
- (vi) To move house;
- (vii) To engage in great detail with the FTP proceedings and to engage in detailed correspondence;

- (viii) To discuss his potential claim with a former colleague;
- (ix) To ask Mr Molloy what the time limit was in February 2020; and
- (x) To ask Mr Molloy how he could go about claiming.'

'Even though during this period he was depressed and had dyslexia, this did not mean that he was incapacitated and it did not mean that it was not reasonably practicable for him to find out the time limits.'

26. Likewise, in this case, even if it was accepted the claimant was suffering from stress and anxiety in the medical sense, rather than as a reaction, having a medical condition does not of itself mean the claimant was prevented from presenting his claim in time or be ignorant of the time limit. The claimant in the relevant period appealed against the grievance outcome, contacted Acas and went through the early conciliation process and, it appears from his claim form, to have been working since 1/11/2021. In the absence of any evidence to the contrary that the claimant was able to hold down a job and to work, there is no reason why it was not reasonably practical to submit his claim in time.

27. Section 111 Employment Rights Act 1996 provides:

(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.

28. The time limits are deliberately short in the Employment Tribunal. This is so that claims are presented promptly and are considered whilst matters are still fresh in the parties' minds. If there is, as is currently the case, delay due to an oversubscribed system, the fact a claim has been presented promptly means that evidence can be preserved if the hearing is not going to take place for some time. Personnel move on and can be difficult to trace. Employment Tribunal time limits are not aspirational, they

- are deadlines. A lack of legal knowledge does not excuse, particularly when a simple internet search will reveal the time limits within approximately three clicks. There are numerous, well-known sources of information, such as Acas, CAB, the GOV.UK website etc.
29. The respondent's submissions were accepted and adopted. There was no evidence from the claimant to support his implied application to persuade the Tribunal that it was not reasonably practicable to present his claim within the three month time limit. Nor, that it was presented within such further period as is considered reasonable. The burden is upon the claimant and there was simply no evidence from him. He had not even provided the 'evidence' which he referred to in his claim form.
30. The claimant (subject to engaging in Acas early conciliation) could have presented his claim form at any time after his resignation on the 25/10/2021 (s.111(3) Employment Rights Act 1996 (ERA)).
31. If the claimant's health is so delicate, he could have anticipated that he would not be well enough to attend the hearing and to have provided written representations (Rule 42).
32. In the absence of any evidence from the claimant, the Tribunal has determined that the claim was not presented within the time limit and that it was practicable for him to have done so. This is particularly so in light of the other actions which the claimant took during the limitation period.
33. For those reasons, the claimant's claim was presented outside of the time limit and the Tribunal does not have the jurisdiction to consider it.

Employment Judge Wright

19 May 2023

Case Number: 2303202/2022

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