



EMPLOYMENT TRIBUNALS

Claimant

Mr Knight

v

Respondent

Catalyst Housing Limited

Heard at: Watford (CVP) **On:** 31st May 2023

Before: Employment Judge R Wood

Appearances

For the Claimant: In Person

For the Respondent: Mr E Stenson (Counsel)

JUDGMENT

1. The application to strike out the claim for unfair dismissal on the grounds that it is time barred is allowed. The claim for unfair dismissal is therefore struck out.
2. The application to strike out the claim of disability discrimination on the grounds that it is time barred is dismissed. This claim continues to final hearing.

REASONS

Background

1. On 31st may 2023, I heard a preliminary hearing via CVP in the above matter. On that occasion, I handed down the judgment set out above. I gave verbal reasons during the hearing. I am now asked by the claimant to provide full written reasons. I hope that what follows will be of some assistance to him.
2. The case involves a claim brought by Mr Knight (“the claimant”) against his former employer, Catalyst Housing Limited (“the respondent”), for unfair dismissal and disability discrimination. He had previously worked as a caretaker for the respondent from 2013, until his dismissal, which took effect on 21st February 2022. In summary, the claimant had, and still has, health issues. The respondent asserts that these problems were chronic, and over a period of 2-3 years, justified his dismissal on the ground of incapability due to ill health. The claimant says he was unfairly dismissed, and that by reason

of the dismissal, he was discriminated against. He also alleges that there was a failure on the part of the respondent to comply with its duty to make reasonable adjustments under the Equality Act 2010 ("the 2010 Act").

3. The claimant lodged his claim with the Employment Tribunal on 26th July 2022, following a period of early conciliation from 17th May 2022 to 13th June 2022. The primary limitation period for both claims therefore expired on 12th June 2023. The claims were therefore lodged about 6 weeks after the expiry of the limitation period. The respondent invited me to refuse jurisdiction in respect of both of the claims on this basis.
4. As I have stated, I heard this application on 31st May 2023. It is worth noting that the parties had, since the previous hearing, agreed that the claimant had been a disabled person as defined by the 2010 Act. In particular, it was conceded by the respondent that the disability related to spinal stenosis and to a brain aneurysm, and that this resulted in both physical and cognitive impairment. The respondent did not concede knowledge of the disability, which remains an issue.
5. When deciding the claim, I heard helpful submissions from both parties. I also read a copy of Mr Stenson's submissions. There was a hearing bundle which comprises 56 pages. I also heard some evidence from the claimant, in the absence of a witness statement. There was no objection to this approach.
6. The claimant explained that he had been a member of the GMB union, and that they had provided him with legal advice leading up to his dismissal. His union representative had attended the disciplinary and appeal hearings with him. Although he couldn't recall the content of it, the claimant confirmed that his union representative had given him advice about how to take the case forward after dismissal. The union was not able to represent him, so he went to 'Citizen's Advice'. This was shortly after he had lost his appeal. He stated that he had not really had advice about the time limit. However, he did mention that his memory had been adversely affected by his aneurysm.
7. I asked him why he had emailed the claim form to his union, and not the Tribunal, on two separate occasions. He stated he had been advised to do so, though it was not clear by whom. His partner had filled out the form for him. She had emailed it to the union. The claimant confirmed that she had no legal experience herself. He explained that he had waited for a reply, which he didn't get. His partner telephoned the union in July 2022, who told them that they had not sent the claim form to the correct place. The claimant agreed that it was probably about two weeks before he chased up the claim form with the union. When asked, the claimant told me that he had not been thinking of time limits.

Legal framework

8. An unfair dismissal claim must be presented to a tribunal before the end of the three-month period starting with the effective date of termination (section 111(2)(a) Employment Rights Act 1996) unless it was not reasonably practicable for the complaint to be presented in time, in which case the claim must be presented within such further period as the tribunal considers reasonable (section 111(2)(b)).
9. A discrimination claim must also be brought with three months (section 123(1) Equality Act 2010). The Tribunal has jurisdiction to extend the time limit by such a period as it considers just and equitable (Section 123(1)(b)). The tribunal's application of its discretion should be the exception, not the rule - *Bexley Community Centre (t/a Leisure Link) v Robertson [2003] EWCA Civ 576*

Findings and Decision

10. I found that the claimant failed to lodge his claim for unfair dismissal in time. The primary cause of this was a misunderstanding as to the place to which a complete claim form should be sent. Indeed, the claimant had attempted to submit two separate claim forms. Both appear in the hearing bundle. I was told by the parties that the only substantive difference between the two is that in the second form, the box in question 8 marked 'disability' was ticked. The first form had been emailed on 11th July 2022 [2] and the second on 13th July 2022 [15]. Both forms were sent to 'employment@unionline.co.uk' which was an email in box for the GMB union.
11. I accept the claimant's evidence as set out above. It was my impression that he was trying to help me. I also accept that his recollection of relevant was far from complete, given the simple passage of time, and due to problems he has with the memory, the result of his medical conditions. I found that he had left the filling out and the lodging of the claim form to some extent with his partner. She was not legally qualified or experienced. The responsibility remained with the claimant to ensure that the claim form reached the Tribunal, and in good time.
12. The claim form was sent to his union. There was no explanation for this error. It is difficult to understand how he might have come to the conclusion that this was the correct recipient, as opposed to the Tribunal. Having gone on line to obtain the claim form, both he and his partner would have had a considerable amount of advice about lodging a claim available to them on the government website.
13. Of course, even by 11th July 2022, the claims were well out of time. I am satisfied that having consulted with his union, the 'Citizen's Advice', and ACAS, he would have received adequate and relevant advice about the time limits to which his claim was subject. He appears not have absorbed such information, or at least, not to have acted upon it. Again, there was limited explanation for this failure. As stated, I accept that the claimant was coping with some cognitive impairment at the time. This may have affected his ability to recall advice over a period of time. However, in my judgment, it

was not a significant factor in the context of the test of 'reasonable practicability'. He had his partner to help him. Further, I had limited evidence as to the nature and/or extent of the impairment and its likely impact in this context.

14. Accordingly, I found that it was reasonably practicable for the claimant to have presented the claim in time, and he did not do so. I therefore struck out the claim of unfair dismissal.
15. I then went on to consider the position in relation to the discrimination claim. As Mr Stenson properly conceded, the jurisdiction to extend time to allow a claim brought out of time is broader than for unfair dismissal claims. I decided to extend time in this case for the following reasons, looked at cumulatively. Firstly, the delay in bringing claim after the expiry of the limitation period was relatively short. In my judgment, the delay had not caused any prejudice to the respondent in the way it was able to obtain and present its evidence to the Tribunal. In other words, the response was not weakened by reason of the delay.
16. I had regard to the fact that the claimant represented himself in large part. He did not have the benefit of legal advisors for much of the time. Of course, as I had already found, the claimant had had some access to relevant advice. I also took into account the matters set out above in relation to the claimant's impairment. It may well have had a limited impact on matters. However, I take it into account with the other relevant factors.
17. Of course, had the claim been struck out, then it would have had a significant impact on the claimant. I would have prevented him from bringing a claim at all.
18. Weighing all matters up, I found that there was sufficient grounds upon which to extend time in relation to the disability claim such as to permit the Tribunal to accept jurisdiction. I refused the application on this respect.
19. In summary, the unfair dismissal claim was struck out and dismissed. The discrimination claim remained and will be heard by the Tribunal at a future date. I hope this assist the claimant to understand my decision more thoroughly.

Employment Judge R Wood

Date: 7th July 2023

Sent to the parties on: 18/07/2023

OLU: For the Tribunal Office