Case No: 3309183/2022

EMPLOYMENT TRIBUNALS

Claimant: Muhammad Raheel Bashir

Respondent: Splendid Restaurants (Colonel) Ltd

Heard at: Midlands West (remote hearing) **On:** 26 July 2023

Before: Employment Judge B Smith (sitting alone)

Representation
Claimant: In person
Respondent: Ms Sodhi

JUDGMENT

1. The name of the respondent is amended to: Splendid Restaurants (Colonel) Ltd.

2. The claim for unfair dismissal is struck out.

REASONS

1. The claimant's employment started with the respondent on 8 June 2011. He makes a claim for unfair dismissal following his summary dismissal for gross misconduct on 18 March 2022. ACAS conciliation began on 5 July 2022 and the certificate was issued on 7 July 2022. The ET1 was presented on 7 July 2022. The chronology is agreed by the parties. The claimant pursued an internal appeal of his dismissal with the outcome letter dated 20 May 2022. The appeal was unsuccessful.

2. I heard evidence under affirmation from the claimant and he was cross-examined. I took into account a hearing bundle of 52 pages, a 'witness statement' from the claimant (undated) sent to the respondent on 20 July 2023, and heard from both parties in closing arguments.

3. The parties have agreed the legal test to be applied, namely, was the claim made to the Tribunal within three months (plus early conciliation extension, if applicable) of the effective date of termination. If not, was it reasonably practicable for the claim to be made to the Tribunal within the time limit? If

so, was it made within a reasonable time thereafter. This applies s.111(2) Employment Rights Act 1996.

4. The EAT ruled in *Bodha v Hampshire Area Health Authority* 1982 ICR 200 that the existence of an impending internal appeal was not by itself sufficient to justify a finding that it was not reasonably practicable to present a complaint to a tribunal within the time limit. This was expressly approved by the Court of Appeal in *Palmer and anor v Southend-on-Sea Borough Council* 1984 ICR 372.

5. A claimant's ignorance of his or her rights or procedure may make it not reasonably practicable to present a claim in time. However, the claimant's ignorance must itself be reasonable. Applying *Porter v Bandridge Ltd* 1978 ICR 943 the correct test is not whether the claimant knew of his or her rights but whether he or she ought to have known of them.

6. The claimant's 'witness statement' was submitted to the respondent on 20 July 2023. This was out of time in light of the Tribunal's order dated 5 December 2022. This said that the claimant's statement must be sent by 22 December 2022 and address the question of time limits and must include any supporting documents. Out of an abundance of fairness to the claimant I permitted him to go beyond his late submitted document and directly answer the question as to why his claim was submitted when it was in oral evidence. This is because the document provided on 20 July 2023 did not address this question and was with the respondent's agreement.

7. I am therefore satisfied that the claimant had a fair hearing and an ample opportunity to present his case and provide any relevant evidence. This is because no application to adjourn the hearing was made by the claimant and no objection was made during the hearing to me making a determination on the material available. Although after I had given judgment the claimant raised the prospect of him having other evidence (unspecified) he may have wanted to rely on, it is not in the interests of justice for this to be considered. This is because the claimant did not file additional evidence in accordance with the Tribunal's order. Although the claimant stated that he was unsure of the procedure, the claimant did not raise concerns about his understanding before today's hearing and I am satisfied from his oral evidence that his level of English did not cause any material of prejudice.

8. I find as a matter of fact that the claimant was summarily dismissed for gross misconduct by the respondent on 18 March 2022, ACAS conciliation began on 5 July 2022 and the certificate was issued on 7 July 2022. The ET1 was presented on 7 July 2022.

9. I accept, for the purposes of this hearing, the Claimant's evidence that his father passed away from Covid in August 2021, the Claimant himself had Covid in October 2021, and that he returned to the UK to a different branch in his employment on 1 December 2021. I also accept that his wife had a stillbirth in late May or early June 2022.

10. The claimant accepted that the claim was not brought within the three-month time limit. He argued that it was not reasonably practicable for him to bring the claim within time because: (i) he was awaiting the outcome of an internal appeal; (ii) the stillbirth; (iii) him having had Covid in August 2021;

(iv) his father's passing in 2021; and (v) his own ignorance of Employment Tribunal procedure.

11. I do not find that any of these reasons establish that it was not reasonably practicable for him to bring the claim within time. Accordingly, the Tribunal has no jurisdiction to hear the claim and it is struck out. This is for the following reasons.

12. Firstly, the dates of the claimant's own time with Covid, and his father's passing, do not assist him given the chronology of events. No clear evidence was provided that either of these matters affected the claimant in a manner such that he could not have brought the claim in time.

13. Secondly, there was no clear evidence that the sad circumstances of his wife meant that the claimant was unable to bring the claim within the relevant period. In particular, this is because there was a significant period of time during which the claimant could have brought the claim, and there is no clear or good reason why he should have waited until the very end of the period to consider bringing a claim. In fact, it did not appear that the claimant intended to bring a claim until the internal appeal was resolved, in any event.

14. Thirdly, I do not find that any ignorance that the claimant had about Employment Tribunal procedure was reasonable. I take into account that English is not his first language, and he is not represented in these proceedings. However, the claimant was able to commence ACAS conciliation and submit his claim online with the assistance of a friend. Also, there is no clear or cogent evidence to suggest that he could not have investigated the time period for starting an unfair dismissal claim. This is, in part, because that information is widely available on the internet for free from a whole ranges of sources, including from Citizens Advice and various law firms. The only evidence in support of the claimant's ignorance was his verbal assertion, first made during the hearing today, that he did not know what the time limit was. This is insufficient to establish that his ignorance was reasonable in all of the circumstances. I also take into account that the claimant had a relatively senior role as an Assistant Restaurant General Manager and he accepted that he a reasonable level of knowledge of the respondent's disciplinary procedures under cross-examination.

15. Fourthly, I do not accept that the internal appeal process in this particular case was such at that it was not reasonably practicable for the claim to have been brought within time. I make this finding applying the relevant law, as set out above. There were no particular circumstances of the appeal procedure, or the claimant's contractual rights, that would justify extending time on that basis. Nothing in the appeal process, in my judgment, precluded the claimant bringing his claim during the required period.

16. An order for the respondent's name to be amended as above is made with the agreement of the parties.

Employment Judge Barry Smith
26 July 2023