



EMPLOYMENT TRIBUNALS

Claimant: Mr D Cartwright

Respondent: Carbolite Gero Limited

Heard via Cloud Video Platform in the North East Region

On: 27 July 2023

Before: Employment Judge Ayre (sitting alone)

Representation

Claimant: In person

Respondent: Mr O Jenkins, solicitor

JUDGMENT AT PRELIMINARY HEARING

The claim was presented out of time and the Tribunal does not have jurisdiction to hear it.

REASONS

The Background

1. The claimant was employed by the respondent until 13 October 2022. On 20 March 2023 the claimant issued a claim for unfair dismissal in the Employment Tribunal following a period of early conciliation that started on 14 March 2023 and ended on 16 March 2023.
2. The case was listed for a Preliminary Hearing in public today to consider whether the

Tribunal has jurisdiction to hear the claim as it was presented more than three months after the date of termination of the claimant's employment.

The Issues

3. The issues that fell to be decided today were those previously identified by Employment Judge Davies and set out in a letter dated 1 June 2023 to the parties, namely:
 1. Whether it was reasonably practicable for the claimant to present his claim within the time limit; and
 2. If not, whether he presented it within a further reasonable period.

The Proceedings

4. There was an agreed bundle of documents running to 255 pages. I heard evidence from the claimant, who had prepared a written witness statement, and submissions from both parties. The respondent also produced a written skeleton argument.

Findings of fact

5. The claimant was employed by the respondent until 13 October 2022. On 13 July 2022 the claimant sent an email to the respondent resigning from his position. In the email he wrote, amongst other things that:

"I have reached the end of my patience with the way this firm is run and hereby give 3 months' notice to leave."
6. The respondent replied to the claimant's email the following day confirming that the claimant's employment would terminate on 13 July 2022.
7. Prior to submitting his resignation, the claimant had, in June 2022, raised a grievance. The respondent initially sought to deal with this informally, but subsequently appointed an external firm of consultants, Croner, to hear the grievance.
8. On 28 September 2022 the claimant wrote to the respondent's Director of finance. In his letter he complained about the length of time that it was taking to arrange a grievance, and the time that he had been given to prepare for the grievance hearing. He referred to "*an ACAS recommendation*" in relation to grievance processes.
9. The claimant gave evidence to the Tribunal that, before writing this letter he had spoken to ACAS and taken advice from them. He said that he was aware, by the time of the letter of 28 September of the time limit for presenting claims to an Employment Tribunal. He was also aware of his right to bring a complaint of constructive unfair dismissal.
10. A grievance hearing was arranged for 3 October 2022 and, in preparation for that

hearing, the claimant wrote a covering letter to Croner. The letter had the title “*My active case for Constructive Unfair Dismissal against Carbolite Gero Ltd*” and the claimant accepted in evidence that he had written the letter prior to 3 October.

11. A grievance meeting took place on 3 October 2022 and the grievance outcome was sent to the claimant on 12 December 2022 along with a copy of the report prepared by Croner.
12. The claimant appealed against the outcome of his grievance. An appeal hearing was arranged for 5 January 2023 and on 6 February 2023 the claimant received the outcome of his appeal.
13. The claimant’s evidence to the Tribunal was that he knew the outcome of the formal grievance on 12 December 2022 and the outcome of the appeal on 6 February 2023.
14. The claimant then waited until 14 March 2023 to contact ACAS and start early conciliation. He has given no explanation or reason for the further delay, which he accepted was his fault. When asked during his evidence why he waited more than a month after getting the appeal outcome before contacting ACAS he replied “*honestly, I don’t know. I think I was wondering what to do...*”
15. The claimant obtained the ACAS Early Conciliation Certificate on 16 March 2023. He then waited a further four days, until 20 March, before issuing his claim.
16. Throughout the period from July 2022 onwards, the claimant had access to the internet and google searches, and to email.

The law

17. The time limits for bringing claims of unfair dismissal are set out in section 111 of the Employment Rights Act 1996 (“**the ERA**”) which provides as follows:

“(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.

(2A) Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (2)(a)...

...”

18. Section 207B of the ERA provides for the extension of time limits to enable early conciliation to take place before proceedings are commenced. There is however no extension of time if early conciliation starts after the expiry of the primary time limit.
19. Time limits for presenting claims are a jurisdictional issue (***Rodgers v Bodfari (Transport) Ltd 1973 325 NIRC***) and if a claim is out of time, the Tribunal must not hear it.
20. In cases, such as this one, in which a question arises as to whether it was reasonably practicable for the claimant to present his claim on time, there are three general principles that fall to be considered –
 1. The question of reasonable practicability should be interpreted liberally in favour of the claimant;
 2. It is a question of fact as to whether it was reasonably practicable for the claimant to present his claim on time; and
 3. It is for the claimant to prove that it was not reasonably practicable for him to present his claim on time.
21. In ***Palmer and another v Southend-on-Sea Borough Council [1984] ICR 372***, the Court of Appeal concluded that ‘reasonably practicable’ does not mean ‘reasonable’ or ‘physically possible’, but rather ‘reasonably feasible’.
22. The onus of establishing that it was not reasonably practicable to present a claim on time lies with the claimant, who must show why he did not present his claim on time (***Porter v Bandridge Ltd [1978] ICR 943***).
23. In ***Bodha v Hampshire Area Health Authority [1982] ICR 200*** the EAT held that the fact that an internal appeal process was ongoing did not in itself mean that it was not reasonably practicable to present a claim on time. This view was subsequently approved by the Court of Appeal in ***Palmer***. There are however some exceptional circumstances in which it has been held that delaying presenting a claim due to internal processes may render it not reasonably practicable to issue a claim on time (see, for example, ***John Lewis Partnership v Charman EAT 0079/11*** in which it was held that the young and inexperienced claimant who was ignorant of the right to claim unfair dismissal).
24. In ***Sodexo Health Care Services Ltd v Hamer [2009] EATS 0079/08*** the EAT overturned the decision of an Employment Tribunal to extend the time limit for a claimant who wrongly assumed that time would not start running until the end of the appeal process.
25. In relation to the question of whether a claim was presented within such further period as was reasonable, guidance was given by the president of the EAT in ***Cullinane v Balfour Beatty Engineering Services Ltd [2011] UKEAT/0537/10***.

The question, he said, is whether the period of time between the expiry of the primary time limit and the presentation of the claim is a reasonable one, which requires considering objectively the reasons for the delay and what period should reasonably be allowed in the circumstances for the claim to be presented, taking account of the strong public interest in claims being made promptly.

Conclusions

26. Time limits in ET claims exist for an important reason of public policy, namely, to ensure finality in litigation and that cases are litigated when the evidence is freshest in mind.
27. Time limits go to the Tribunal's jurisdiction to hear the claim. The wording of section 111 of the Employment Rights Act 1996 makes it clear that the Tribunal cannot hear a claim which is out of time unless it decides to extend time. There is no general presumption that time will be extended. Extensions of time remain the exception not the rule.
28. The burden of persuading the Tribunal that it was not reasonably practicable for the claim to be presented on time, and that it was presented within such further period as was reasonable lies with the claimant. He has not discharged that burden.
29. The claimant's evidence to the Tribunal was that he was aware of his right to bring a claim of constructive unfair dismissal by 3 October 2022, and that he knew about the time limit for bringing a claim by 28 September 2022. He therefore knew of his unfair dismissal rights and of the time limit more than three months before the time limit expired on 12 January 2023 (three months after the date on which his employment terminated).
30. The claimant was able to contact ACAS and to take advice prior to 28 September 2022 and wrote a letter to the respondent by 3 October headed '*My active case for Constructive Unfair Dismissal against Carbolite Gero Ltd.*' It was therefore clearly in his mind prior to 3 October that he would bring a claim. He waited a further 5 and a half months however before presenting that claim.
31. The claimant presented as an articulate and intelligent individual, who was well capable of doing research about his rights and taking steps to enforce them. He had access to everything he needed to issue a claim on time.
32. The only reason put forward by the claimant for not issuing his claim sooner was that he trusted in the grievance process and believed that Croner and the respondent would 'sort things out' and 'give him justice'.
33. In circumstances such as these, where the claimant knew of his rights, knew of the time limit, and had everything he needed to issue a claim, waiting for the outcome of an internal process did not render it not reasonably practicable for the claimant to present his claim on time. **Bodha** makes it clear that an internal process alone is not

sufficient.

34. I therefore find that it was reasonably practicable for the claimant to bring his claim in time. The claim should have been presented by 12 January 2023. It was not presented until 20 March, more than two months later. The delay was substantial, and there is no extension of time as a result of early conciliation because early conciliation did not start until after the expiry of the primary time limit.
35. I also find that the claimant did not present his claim within a reasonable period of the expiry of the three-month time limit. His evidence was that he became aware of the outcome of the grievance appeal on 6 February 2023, yet he did not start early conciliation until 14 March, and did not issue his claim until 20 March – a further delay of several weeks.
36. The claimant's evidence was that he did not know why he delayed further – he provided no evidence upon which I could have concluded that the further delay was reasonable.
37. The claim was therefore presented out of time and the Tribunal does not have jurisdiction to hear it.

Employment Judge Ayre

Date: 27 July 2023