



EMPLOYMENT TRIBUNALS

Claimant: Mr J Custy

Respondent: Qioptiq Limited

Heard at: Cardiff, by video

On: 10 November 2023

Before: Employment Judge S Jenkins

Representation

Claimant: Not present or represented

Respondent: Mr A Galvin (Solicitor)

JUDGMENT

The Claimant's claim of unfair dismissal was not brought within the period of three months beginning with the effective date of termination, and it had been reasonably practicable for the claim to have been brought within that period. His claim is therefore dismissed.

REASONS

Background

1. The hearing had been arranged to deal with the issue of whether the Claimant's claim of unfair dismissal had been brought in time and, if not, whether it should be dismissed.
2. This was the third public preliminary hearing that had been scheduled to consider this issue, two having been postponed just before they were due to take place.
3. The first hearing had been due to take place on 16 June 2023. However, on 13 June 2023, the Tribunal received a letter from the Claimant, attaching a Fit Note noting his unfitness to work up to 2 August 2023. Notwithstanding that the postponement application was made very close to the scheduled hearing, and failed to comply with the Presidential Guidance on postponements, I granted the postponement request. I noted however that if any future hearing was sought to be postponed on medical grounds, the Claimant would be expected to comply with the Presidential Guidance.
4. The hearing was rescheduled for 9 August 2023, notice of hearing being

sent out on 26 June 2023. Again, very close to the hearing, on 7 August 2023, the Claimant applied for a postponement. He provided a letter from his GP dated 3 August 2023 in which it was stated that the Claimant was not able to attend the hearing due to his current levels of stress and anxiety. A request was made for the hearing to be rearranged "*for a few months' time*". The application was put before Employment Judge Povey, the Judge who was due to deal with the hearing on 9 August 2023, and he granted the postponement request. He repeated my direction that any application to postpone a future hearing on medical grounds would need to be supported by medical evidence.

5. The hearing was then rescheduled for today, 10 November 2023, with the notice of hearing being sent out on 1 September 2023.
6. On 25 October 2023, a letter was sent from the Tribunal asking the parties to confirm their readiness for the hearing. In response, the Claimant sent in an undated letter, which was received on 31 October 2023, saying that he would not be ready for the hearing "*due to medical reasons*". He went on to say that he would have all the relevant information if the case could be postponed until January/February 2024.
7. A letter was sent to the Claimant in reply on 3 November 2023, noting the requirements of the Presidential Guidance, and that the Claimant needed to provide medical evidence. No further communication was received from the Claimant. It was then confirmed to the parties, on 9 November 2023, that the hearing remained listed.
8. At the time that the hearing was due to start, Mr Galvin was present on behalf of the Respondent, but the Claimant was not. The Tribunal clerk was unable to contact the Claimant by telephone.
9. I explained to the Respondent's representative that I had power, under Rule 47 of the Employment Tribunals Rules of Procedure, to dismiss the claim in the absence of the Claimant or to proceed with the hearing in his absence. I also noted that the Rule requires that, before doing so, I should consider any information which was available after any enquiries that may be practicable about the reason for the absence.
10. In that regard, I noted the previous postponements, and the clear indications, from me and from Judge Povey, that postponement requests on medical grounds would need to be supported by medical evidence. That was repeated in the Tribunal's letter of 3 November 2023, but none was forthcoming.
11. In the circumstances, I considered that it would be appropriate to proceed with the case in the Claimant's absence.

Issues and Law

12. The legislation in respect of the time limit for submitting a claim of unfair dismissal provides that an Employment Tribunal should not consider a complaint unless it is presented before the end of the period of three months beginning with the effective date of termination, or 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 have been presented before the end of that three month period. The three month period is to be extended by virtue of any time spent pursuing early conciliation with ACAS, which essentially means that a claimant must make contact with ACAS for the purposes of Early Conciliation during that three months.

13. There has been a considerable amount of case law on this point over the years, and one point that has been made clear is that it is a strict test. It is for a claimant to justify the conclusion that the claim was not able to be reasonably practicably brought within time, and that then it was brought within a reasonable time thereafter.
14. The cases have made clear that a number of reasons for delay can arise in assessing the reasonable practicability question, including the impact of a claimant's health.
15. With regard to ill health, the cases make clear that a debilitating illness may prevent a claimant from submitting a claim in time, but usually this will only constitute a valid reason for extending time if supported by medical evidence which demonstrates not only the illness, but the fact that the illness prevented the claimant from submitting the claim in time. Although equally the cases do confirm that medical evidence is not absolutely essential.

Findings

16. It was clear that the Claimant's claim had not been submitted within the stipulated time limit. He had been dismissed on 15 June 2022, which meant that the primary time limit expired on 14 September 2022. The Claimant commenced early consultation with ACAS on 9 August 2022, with the early conciliation certificate then being issued on 20 September 2022.
17. The terms of section 207B of the Employment Rights Act 1996 provide for "the clock to be stopped", and for the time spent on early conciliation to be added to the primary time limit. That meant that the claim needed to be submitted by 26 October 2022. In fact, it was submitted on 18 December 2022.
18. No evidence was put before me by the Claimant about any reason for his failure to submit his claim in time. However, I was conscious that the Claimant had been dismissed by reason of capability, and that, whilst his absence which led to his dismissal had initially related to a back condition, he had subsequently suffered from depression and anxiety. The Claimant's health may therefore have had an impact on his ability to comply with the time limit, but, as I have noted, no medical evidence was put before me to confirm that.
19. There was however evidence before me, in the form of a message to the Claimant from a legal expenses insurer on 27 September 2022, referring to a conversation that had taken place and providing a link for the Claimant to make an application for legal assistance. There was also evidence before

me in the form of an acknowledgement message to the Claimant dated 10 October 2022, that the Claimant had submitted that application. There was no indication as to what happened after that.

20. I also noted from the ACAS early conciliation certificate that the Claimant had contacted ACAS on 9 August 2022.

Conclusions

21. All the matters I referred to at paragraphs 19 and 20 above took place at a point where the Claimant would have been in time to submit his claim. Notwithstanding the impact of any health condition, the Claimant was clearly able to speak to a legal expenses insurer about his claim, and to complete that insurer's online form. There was nothing to suggest to me therefore that he would have been incapable of submitting his tribunal claim form online by 26 October 2022.
22. I concluded therefore that it had been reasonably practicable for the Claimant to have submitted his claim within the specified time limit, that he had not, and therefore that his claim should be dismissed.

Employment Judge S Jenkins
Date: 10 November 2023

JUDGMENT & REASONS SENT TO THE PARTIES ON 13 November 2023
FOR THE TRIBUNAL OFFICE Mr N Roche