



EMPLOYMENT TRIBUNALS

Claimant: Mr S W Kibrom
Respondent: Uber London Limited
Heard at: East London Hearing Centre (by Cloud Video Platform)
On: 15 December 2023
Before: Employment Judge Gardiner

Representation

Claimant: In person, assisted by Mr Yared, friend
Respondent: Miss K Davis, counsel

JUDGMENT

The judgment of the Tribunal is that:-

The Claimant's claim is dismissed. The Tribunal does not have the jurisdiction to consider the complaints made, given the applicable statutory time limits and the date on which this claim was first presented.

REASONS

1. This Preliminary Hearing has been listed to decide whether the Tribunal has jurisdiction to consider the various complaints brought by Mr Kibrom, given the relevant statutory time limits. Mr Kibrom has represented himself, although he was assisted by a friend, Mr Yared. The Respondent is represented by Kerenza Davis.
2. For Mr Kibrom, English is not his first language. He confirmed at the start of the hearing that his understanding of spoken English sufficient for the hearing to continue, and he did not require an interpreter. If he did not understand anything, he was told to ask for it to be repeated or reworded.

3. The complaints made by Mr Kibrom are of unfair dismissal, failure to pay accrued holiday pay and unauthorised deduction from wages.
4. The key dates for statutory time limit purposes are these. Mr Kibrom started working as an Uber driver in April 2015. He worked in his capacity from then until the Spring of 2019. The precise end date is unclear. It could have been as early as March 2019 or as late as May 2019. At that point, Uber ended his role. The Claimant initiated Early Conciliation on 1 April 2023 and an Early Conciliation Certificate was issued on 3 April 2023. These proceedings were issued on 24 May 2023.
5. There was therefore a gap of around four years between the end of his time as an Uber driver and when he first contacted ACAS seeking Early Conciliation.
6. Mr Kibrom relies on two witness statements and a letter dated 12 October 2019. He has been cross examined by Miss Davis, counsel for Uber London. The explanations that the Claimant have given in writing and verbally for the delay in issuing proceedings are as follows:
 - (1) He says that he was only given the reason for the termination of his engagement over the telephone and was not able to appeal.
 - (2) He was then unemployed for a period of eight months until 2020, at which point he obtained other employment.
 - (3) He says that the law about the status of Uber drivers is uncertain.
 - (4) He first became aware that he might have a claim when he was approached by a firm of solicitors representing Uber drivers in 2023.
7. No evidence has been adduced on behalf of the Respondent. However, I can take Judicial Notice of the following features of the evolving legal dispute about the status of Uber drivers. Uber drivers first issued employment tribunal claims asserting they were entitled to employment rights in 2015. There was many such claims and a handful were selected as test cases. An Employment Tribunal decided in October 2016 that these particular drivers had worker status. There were subsequent appeals. The case reached the Supreme Court in 2020. Their Lordships handed down their judgment in February 2021 confirming the Employment Tribunal's decision.
8. I also take Judicial Notice that this litigation and its outcome at various stages was widely publicised in the media. It was seen as potentially relevant not only to Uber drivers (and their passengers) but as establishing principles that were of potential relevance to the entire 'gig economy'. There was additional publicity when the Supreme Court upheld the original Tribunal decision in February 2021. Although in the absence of any evidence from Uber London, I am not able to make any decisions as to the extent to which the implications of these decisions were known or understood by other Uber drivers, it is a reasonable inference that the outcome of the litigation would have been widely known not just by those with legal claims, but also would spread by word of mouth to others within the minicab community.

9. Mr Kibrom states and I accept that he personally did not know that he had the potential right to complain to the employment tribunal about a breach of his employment rights until 2023. His evidence as to when this came to his attention was unclear. It was bound up with an approach from a law firm in relation to settlement discussions. I made it clear that settlement discussions were generally confidential and I was not to be told about what may have been said in the course of those discussions.
10. The relevant statutory time limit is one of three months from when the legal right has been breached. All of the statutory provisions are expressed in the same terms. The language of Section 111(2) Employment Rights Act 1996 is essentially replicated in other statutory provisions:

An employment tribunal shall not consider a complaint under this section unless it is presented to the employment tribunal:

- (a) Before the end of the period of three months beginning with the effective date of termination
- (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 the period of three months

11. Therefore, even assuming that employment ended at the end of May 2019, the latest date on which the three-month time period could have started would have been at the end of May 2019. It would have expired at the end of August 2019. Therefore, proceedings in respect of the complaint of unfair dismissal, unauthorised deduction from wages and failure to pay accrued holiday pay have been issued outside the statutory time period.
12. The next question is whether time should be extended, notwithstanding the failure to comply with the primary three-month time limit. The circumstances in which time can be extended are limited by the wording of Section 111(2)(b). 'Reasonably practicable' has been interpreted in the caselaw as "reasonably feasible". The focus is on the Claimant's ability to bring Tribunal proceedings. This section (and its equivalents) should be given a liberal construction in favour of the employee – *Dedman v British Building and Engineering Appliances Limited* 1974 ICR 53. What is reasonably practicable is a question of fact for the Tribunal (*Walls Meat Co Limited v Khan* [1979] ICR 52). The onus of proving that presentation in time was not reasonably practicable rests on the claimant. Whilst complete ignorance of the right to bring certain claims may make it not reasonably practicable to present a claim in time, the claimant's ignorance must itself be reasonable.
13. Here Mr Kibrom ought to have known of the potential to bring a claim when his time as an Uber driver was terminated. He was dissatisfied with the way he had been treated. He ought to have considered whether he had the ability to bring employment tribunal proceedings at that point. If he was uncertain about whether he had the legal right to do so, he ought to have proactively investigated his rights as an Uber driver. Had he done so, he would have discovered that an Employment

Tribunal had held that Uber drivers did have the legal right to complain about underpayment and lack of holiday entitlement. He would also have discovered that the status of Uber drivers was being considered by higher Courts and there was a real possibility that it would be authoritatively decided that Uber drivers did have the legal rights that applied to those with 'worker' status. Therefore, it was reasonably practicable for him to have issued proceedings within three months of the end of his engagement. His ignorance of his legal rights was not reasonable. The Tribunal has not been provided with any evidence specific to Mr Kibrom explaining why it would be more difficult for him in particular to have been aware of his legal rights.

14. In any event, Mr Kibrom ought to have known of his right to bring claims relying on worker status shortly after the Supreme Court judgment in February 2021. The outcome of the Judgment for Uber drivers past and present was widely publicised. At that point, if not before, it was reasonably practicable to issue ET proceedings. Mr Kibrom still delayed for a period of more than two years thereafter before contacting ACAS to start Early Conciliation. He says that the reason why he then issued proceedings is that he had been contacted by a law firm who had alerted him to his potential legal rights. His evidence on this front was vague. It appeared to relate to ongoing discussions with Uber drivers who had not issued proceedings by that point offering a financial sum reflecting the extent to which their legal rights had not been respected.
15. Notwithstanding his apparent ignorance of his legal rights, I do not consider that the delay from February 2023 until 1 April 2023 amounted to him bringing proceedings within a reasonable period after it became reasonably practicable to do so. He ought to have proactively investigated the position.
16. All of these claims therefore fall outside the time period required by statute to issue proceedings. The result is that the Tribunal has no jurisdiction to consider any of the three different types of complaint. They will therefore be dismissed.

Employment Judge Gardiner

Dated: 15 December 2023