



EMPLOYMENT TRIBUNALS

Claimant: Mr Hassan Mahmoud Ali
Respondent: STM Group UK Limited
Heard at: East London Hearing Centre
On: 17 January 2024
Before: Tribunal Judge D Brannan, acting as an Employment Judge

Representation

Claimant: Representing Himself
Respondent: Miss Bowen instructed by Ashfield Solicitors

JUDGMENT having been sent to the parties on 19 January and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013.

REASONS

1. I gave judgment and reasons orally at the hearing. This statement of written reasons is provided following the claimant's request on 29 January 2024.

Procedural Background

2. The claimant brought his claim for breach of the Working Time Regulations 1998 ("WTR") on 4 August 2021. He did not specify when the breach happened. The Tribunal accepted the claim. The Respondent presented an ET3 in time.
3. From there the procedure did not go well. There were multiple attempts to have hearings at which the claimant or both parties did not attend. There was extensive correspondence as well. Coming from these were various directions. It is particularly notable that:
 - (a) In a record of a preliminary hearing on 15 August 2022 Employment Judge Fowell directed at paragraph 9:

“If Mr Mahmud Ali intends to give evidence as to why the claim was not submitted earlier he needs to provide a witness statement in advance. That should include everything relevant he can tell the Tribunal, it should be typed if possible, and have paragraph numbers and page numbers. It must set out events following his dismissal in the order they happened. He must send a copy to the Tribunal and the company by 23 September 2022

- (b) in a record of a preliminary hearing on 30 August 2023 Employment Judge B Beyzade directed at paragraph 17:

“Furthermore, by not later than 4 PM on 29 September 2023 the claimant shall send to the Tribunal copied to the respondent:

...

17.3 After further witness statement confirming:

...

(ii) Whether the claimant agrees that he was employed by the respondent between July 2017 and May 2018 for a period of just under 10 months, and if not, the claimant must set out the dates of his employment during which he says he worked for the respondent (together with relevant dates that relate to his claim).

(iii) Why his claim was not submitted within the relevant statutory time limit set out in Reg 30(2)(a) of the WTR 1998.

(iv) Whether he accepts that his claim (under case number 3205320/2021) was included in his earlier claim (3200492/2019). If the claimant believes that his claim (under case number 320 5320/2021) was not included in his earlier claim (3200492/2019), the claimant must explain why this was not included in his earlier claim (3200492/2019)..

4. Neither set of directions set out explicitly what the time limit was. The direction of Judge Fowell referred to the date of dismissal as being relevant, when it now seems it was not. In any case, the claimant did not comply with the direction of Judge Fowell. He did provide an email on 25 September 2023 explaining the points raised in the directions of Judge Beyzade. In this he denied the existence of case number 3200492/2019 and said:

“(iii) I Hassan confirm I have submitted my claim of breach WTR 1998, (there no time limit like this claim), that why ET east London office accepted my claim and I reiterate to deal my claim fairly and lawfully.”

5. The hearing before me was the first where both parties attended. It was consequently the first time that it was possible to discuss the claimant’s claim with him. I am very grateful to the claimant for explaining his position and to Miss Bowen for explaining the position of the respondent.

The Claimant's Complaint

6. It is undisputed that the claimant last performed work for the respondent on 13 May 2018. He said at the hearing that his complaint definitely related to the period from September 2017 to January 2018 and might relate to a period after that.
7. The claimant identified his claim as relating to being made to work more than 48 hours per week, being denied rest breaks during shifts, being denied time off during the week and, possibly, detriment for challenging these things.
8. It is not claimed that any of these things happened after 13 May 2018. Therefore the latest possible date from which time started to run in this case is 13 May 2018.

Time Limits

9. The claimant has consistently said that his claim is under the WTR. Miss Bowen drew my attention to two points in relation to this.
10. First she said that there was no jurisdiction to consider a complaint about being made to work in excess of 48 hours per week under the WTR.
11. Second she said that it was possible for the claimant to make a complaint about detriment in relation to working time cases under section 45A of the Employment Rights Act 1996 ("ERA").
12. The time limit for a claim under the WTR is set out in regulation 30. It says, as relevant:
 - (2) An employment tribunal shall not consider a complaint under this regulation unless it is presented—
 - (a) before the end of the period of three months ... beginning with the date on which it is alleged that the exercise of the right should have been permitted (or in the case of a rest period or leave extending over more than one day, the date on which it should have been permitted to begin) or, as the case may be, the payment should have been made;
 - (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.
13. The time limit under the ERA is in section 48. It is effectively the same. The only difference is that under the WTR you cannot look at a series of breaches and make a claim within three months of the end of these whereas under the ERA the claimant can.
14. As the last possible day when any breach could have happened was 13 May 2018, the last possible deadline for bringing a claim was 13 August 2018 unless an extension of time was granted. The claimant brought his claim on 4 August 2021. That is nearly 3 years late.

15. The burden is on the claimant to show that it was not reasonably practicable to bring the claim within three months and that it was brought within such further time as was reasonable thereafter.

Claimant's Explanation

16. The claimant's explanation for the delay in bringing his claim has two components.
17. First, he says that he did not know there was a time limit for bringing a claim. Second, he says that ill health prevented him bringing the claim.
18. It is unfortunate that the time limit for bringing the claim was not explicitly explained to the claimant prior to this hearing. The claimant mentioned that he did not think there was a time limit in his email of 25 September 2023. He told me during his witness evidence that this came from advice from Battersea Law Centre. He said he had consulted them a few months before he brought his claim. That would be in early 2021.
19. The claimant was reluctant to talk about his ill-health. I understand he suffered a stroke which incapacitated him from work on 13 May 2018. He said that he was in hospital for 11 or 12 days from 14 May 2018. His recovery then took some time. He was not specific about how quick his recovery was.

Analysis

20. Although I have no medical evidence, I do not doubt the sincerity of the evidence from the claimant regarding his ill-health. It chimes with the claimant ceasing to work for the respondent. That could mean it was not reasonably practicable for the claimant to bring his claim by 13 August 2018.
21. However, even if that was the case, the claimant's claim that he brought his claim within a reasonable time thereafter is unsustainable. This is because the claimant did bring a claim against the respondent on 1 March 2019. Contrary to his written submission, he accepted at the hearing that he did so when questioned under oath. That claim has reference 3200492/2019. It was ultimately struck out for failure to pay a deposit. The claimant has been at pains throughout these proceedings not to bring that claim into this one. However it is absurd to suggest that the claimant was able to bring **a** claim in 1 March 2019, but was unable to bring **this** claim on that date. The claimant was unable to provide any reason, let alone a good reason, why that was the case. It is also notable that even during that claim, the claimant did mention working time, for example at the hearing with Employment Judge Burgher on 27 January 2020. Working time was in the claimant's mind in the earlier claim and he chose not to bring this claim then. His lack of enquiry into time limits for a working time claim was itself unreasonable. Enquiry a year later to Battersea Law Centre is immaterial to the failure in 2020. Therefore even if it was not reasonably practicable for the claimant to bring his claim by 13 August 2018, I would extend time only to 1 March 2019 when a claim was in fact brought.
22. It would be unreasonable to extend time beyond that date.

Other Matters

23. The claimant has been very clear in his desire to be placed on an equal footing with the respondent in these proceedings. Time limits exist for a reason: they allow people and employers to carry on their lives and businesses knowing their legal rights and obligations without the possibility of unexpected litigation hanging over them years later. It becomes more and more difficult to resolve disputes as time passes because the personnel at an employer change and memories fade. The claimant had an opportunity to bring a claim and he did bring one. That claim was unsuccessful.
24. The Tribunal has no jurisdiction to consider a further claim made after the previous one was dismissed because the later claim is out of time. This has nothing to do with the conduct of the respondent and it is unfortunate that the claimant was unaware of the simplicity of the time limits point in this case before the hearing before me.
25. I have reviewed the ET1 and I note that in it he did not say when the acts he complained of took place. Had he done so, I suspect his claim would have been rejected. Instead he was asked to complete the rest of his ET1 and it was at that point he said he was dismissed in February 2020. The claimant has disputed the authenticity of the ET1 where he said this. However I am satisfied that it is authentic because the original email in electronic form was found by my clerk. It was sent from gureey@hotmail.fr to eastlondon@justice.gov.uk and guy@stmgrouppltd.com on 11 March 2022 with a message saying:

Dear Sir/Madame

This letter is to legal officer K Bennet who asked me (claimant) to repond and to complete section 5,6 and 7 of the ET1 claim form.to confirm I have complied and enclosed to the other side respondent.It shows very clear respondent breached what we have signed and agreed to limit my hours of work to weekly average of 48 hours.the prove is my payslips.Many thanks

H.MAHMOUD ALI

26. Attached to it was a photo in jpg format of a page of an ET3 form showing boxes 2.8 to 5.2. At 5.1, in answer to the question "If your employment has ended, when did it end?" was handwritten "Feb 2020". That is a statement provided by the claimant which he now says is a fabrication by the respondent. I reject that assertion for the above reasons.
27. In any case, the date employment ended is and always was a red herring. The reality was his complaint related to a period before 13 May 2018. Had that been clear, his claim would probably have ended long ago. I am very grateful to him for participating in explaining his case effectively. The facts are now clear. But the problem remains for his case that the law does not allow it to proceed. The Tribunal has no jurisdiction to consider his complaint.
28. When the claimant asked for written reasons he referred to other allegedly fabricated documents. We did discuss these at the hearing. They are immaterial to the point about jurisdiction which I decided. I did not decide

whether other documents were or were not genuine, but I did look at them and note that the content was the same, with the only apparent difference being the date of signature. There is no separate cause of action in the Tribunal relating to this.

**Tribunal Judge D Brannan acting as an
Employment Judge**

Dated: 31 January 2024