



EMPLOYMENT TRIBUNALS

Claimant: Mr A Watts

Respondent: C&D Cleaning Services Limited

Heard at: Nottingham

On: 13 December 2023

Before: Employment Judge Omambala KC

Representation

Claimant: In person

Respondent: Mr F Mortin, Counsel

JUDGMENT

- (1) The claims under case numbers: 2600986/2023 and 2602079/2023 were not presented within the applicable time limit in section 111(2) of the Employment Rights Act 1996;**
- (2) It was reasonably practicable to present each of the claims in time;**
- (3) The employment tribunal does not have jurisdiction to hear the claims and they are therefore dismissed.**
- (4) The Respondent's application for costs pursuant to rule 76(2)(a) and/or (b) in the sum of £3,480.00 is refused.**

REASONS

1. This open preliminary hearing was listed to determine the following issues:
 - 1.1 Were the two unfair dismissal claims brought by the Claimant made within the time limit set out at section 111 of the Employment Rights Act 1996 ("ERA")?
 - 1.1.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the effective date of termination?
 - 1.1.2 If not, was it reasonably practicable for the claims to have been made within the time limit for doing so?

- 1.1.3 If not, did the Claimant make his claims within a further reasonable period?

Background

2. The Claimant was employed by the Respondent as a cleaning operative. It is agreed that he was employed from 6 August 2021 until 12 December 2022. His last working day was Saturday 10 December 2022.
3. The Claimant has sought to bring two claims of automatically unfair dismissal. He filed an early conciliation notification ("EC") in relation to his first claim on 10 March 2023 and received an EC certificate on 27 March 2023. His first claim form was filed on 11 May 2023 under case number 2600986/2023. In relation to his second claim, the Claimant filed an EC notification on 25 August 2023, received a certificate on 29 August 2023 and filed his second claim form on 28 September 2023 under case number 2602079/2023.
4. There have been two closed preliminary hearings in this matter to date. The first on 15 August 2023 listed this open preliminary hearing and also gave directions in preparation for a final hearing. The second on 1 November 2023 ordered the consolidation of the two Claimant's claims and addressed issues between the parties about the hearing bundle.

Procedure, Documents and Evidence Heard

5. In order to assist the Tribunal to decide the issues in relation to time it has been provided with an agreed bundle of documents which runs to 287 pages. It has also received two witness statements from the Claimant, both dated 15 November 2023, an exhibit bundle and a letter dated 12 December 2023. The Respondent produced written submissions.
6. The Tribunal heard oral evidence from the Claimant and closing arguments from both parties.

Findings of Fact

7. In relation to **case number 2600986/2023** the claim details are as follows:
 - The claim was presented on 11 May 2023
 - Early conciliation day A was 10 March 2023
 - Early Conciliation day B was 27 March 2023.
8. The primary time limit in relation to the first claim was 11 March 2023. By reason of the EC extension provided by section 207B(4) the time limit for bringing this claim was 27 April 2023.
9. In relation to **case number 2602079/2023** the claim details are as follows:
 - The claim was filed on 28 September 2023
 - Early conciliation day A was 25 August 2023
 - Early conciliation day B was 29 August 2023.
10. The Claimant contacted the ACAS helpline on 19 December 2022 and was advised of the change to the qualifying period for unfair dismissal claims from

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one to two years. He had previously dealt with ACAS in about 2003. ACAS sent the Claimant an email with links to relevant information to assist him in bringing a claim. The Claimant explored the links provided and, as he confirmed in his oral evidence, they included information about the time limits for bringing a claim.

11. The Claimant looked at a number of different websites to find information. He said that there was “a fair bit” of information available.
12. By 22 December 2022, the Claimant had characterised his concerns as “a health and safety related constructive dismissal” in correspondence with his former employer. In a letter of that date, he noted that “the time allocated up to an employment tribunal is three months.” In oral evidence he confirmed that at the time, it was his understanding that he had three months from the date of his resignation by letter dated 12 December 2022 to submit his claim to the employment tribunal.
13. The Claimant had access to the internet and was able to conduct his own research. He was aware of ACAS and had made contact with the ACAS helpline in December 2022 and again on 10 March 2023 when he was advised to complete the EC notification form.
14. The Claimant could have begun to fill out his claim form on or shortly after 10 March 2023 so that by the time he received his EC certificate he could submit it straightaway. He did not do so.
15. The Claimant received his first EC certificate on 27 March 2023. He began to fill in his first form ET1 online but did not submit it. He explained that he wanted to submit a second claim at the same time and was not sure how he could do this. He told the Tribunal, and it accepts, that he spent a considerable amount of time looking for information about how to submit two claims. This was the reason for the delay in submitting the first claim. He explained that he thought he had some time to spare, and he was focussed on making a joint claim.
16. The Claimant received three telephone calls from two different people who he believed were employees of ACAS. In the second of those calls he was told that he had three months from the date of receiving an EC certificate to submit his claim to the employment tribunal. He did not check this information or seek to confirm its accuracy. The Claimant find out until about 8 May 2023 that this information was incorrect. He attempted to submit his claim on 9 May 2023 but was unable to upload all his documents. He was eventually successful in uploading his form ET1 and particulars of claim document on 11 May 2023.

Law

Early Conciliation

17. The EC provisions in section 18A of the Employment Tribunals Act 1996 require only one mandatory EC process for proceedings relating to any matter. A second certificate relating to the same matter has no impact on the limitation period: *HMRC v Serra Garau* [2017] ICR 1121 EAT.

Reasonably Practicable

18. The burden lies on the Claimant to establish that it was not reasonably practicable to lodge his claim in time.

19. The question is whether it was reasonably feasible for the Claimant to present his complaint to the employment tribunal within the relevant time limit.

Conclusions

20. The second claim relies on the Claimant's dismissal on 12 December 2022 and sets out the same or materially similar allegations as the first claim but asserts different reasons for the dismissal. The second claim falls within the ambit of "proceedings relating to any matter" within the meaning of section 18A(1) Employment Tribunals Act 1996. The scope of those words is broad, and their effect means that Claimants are not required to undertake early conciliation again where they are applying to add a new claim but have previously obtained an EC certificate: *Science Warehouse Ltd v Mills* [2016] IRLR 96.
21. Any further certificates issued in relation to the same matter are voluntary and do not affect the running of the limitation period: *Garau* §18-21. Thus, the second EC process had no effect on the running or expiry of the primary limitation period for the second claim. The limitation period for the second claim, being proceedings in relation to the same matter, expired on 27 April 2023.
22. Both claim forms have been presented outside the time limit in section 111 (2)(a) ERA.
23. The Tribunal has found that the Claimant's understanding of the position in relation to time limits was drawn from information that ACAS had provided to him and from his own research online. By 22 December 2022 the Claimant was aware that there was a time limit for bringing his claims in relation to his dismissal and that the time limit was three months less a day from the date of his dismissal.
24. The Tribunal considers that it was reasonably practicable for the Claimant to have obtained further advice, clarification and information about his claims and the time limit for bringing them. The Claimant was aware of sources of advice and support for bringing employment tribunal proceedings. There were opportunities available to the Claimant which he did not take. For example, he chose not to make an appointment with the Citizen's Advice Service because he wanted to be available for agency work if he was called by a prospective employer and was worried that he might not be able to keep any appointment he made.
25. The Claimant had contacted the ACAS helpline and had been provided with links to information that would have helped him to submit a claim in time. In these circumstances, the Tribunal rejects any suggestion that the Claimant was ignorant of the time limit or made a mistake about it. It concludes that it was reasonably practicable for the Claimant to have submitted each of the Claim Forms in time.
26. The Tribunal has concluded that the reason the Claimant did not bring his first claim in time was because he became pre-occupied with lodging two claims with the Tribunal on the same form. That was his focus. He told the Tribunal that once he gets locked into something he becomes "absorbed." Here he was absorbed in trying to find out how to submit two claims joined together. That

pre-occupation caused him to miss the primary and secondary time limits for the submission of his claims.

27. Thereafter it took the Claimant until 25 September 2023 to submit his second claim. The explanation offered by the Claimant for the further delay was that it was not until after a case management hearing on 15 August 2023 that the Claimant was informed by a manager in ACAS that he could bring a second claim and ask for the two claims to be heard together. He also said that most of his spare time was taken up with managing his first employment tribunal claim.
28. The Tribunal has found that there is no further extension of time in connection with the issuing of a second EC certificate. It has also found that the Claimant had all the information necessary for him to submit his second claim at the same time as he submitted the first. It was therefore reasonably practicable for him to have done so.
29. For the avoidance of doubt, the Tribunal is satisfied that the Claimant should reasonably have known of his right to bring a claim and the time limit for bringing a claim.
30. The Claimant had written detailed letters to his employer raising his concerns about their employment practices and procedures, on occasions replying on the same day to correspondence. He has shown himself capable of significant internet research and processing relatively complex information. The Claimant had all of the information which was necessary to bring his claims by the expiry of the extended time limits. The subsequent further delays were not reasonable. Accordingly, even if the Tribunal had found that it was not reasonably practicable to bring his claims within the primary or secondary time limits, it would not have exercised its discretion to extend time so that these claims could proceed.

Costs

31. In written submissions the Respondent made an application for costs pursuant to Schedule 1 rule 76(1) (a) and (b) of the Employment Tribunals (Constitution and Rules of Procedure) Regulations. In oral argument Mr Mortin primarily focused his submissions on the first ground and contended that the Claimant has acted unreasonably in bringing these proceedings out of time and in persisting with them in the face of costs warnings from the Respondent. Mr Mortin also pointed to the Claimant's conduct in relation to agreeing a bundle for the full merits hearing as being unreasonable, submitting that the Claimant's conduct necessitated an urgent preliminary hearing on 1 November 2023.
32. Mr Mortin sought costs in the sum of £6,670 exclusive of VAT. That sum was supported by a costs schedule from 25 July 2023 to date and a costs spreadsheet. In response to questions from the Tribunal Mr Mortin indicated that the costs schedule included costs other than those related to the this and the 1 November 2023 preliminary hearing. He rightly conceded that any application for costs should be restricted to those costs. A revised costs figure was identified in the sum of £3,480.
33. The Claimant resisted the application against him. He told the Tribunal that he was not currently working. He undertakes agency cleaning work for 15 hours a

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week and is paid the national minimum wage. He was last employed in November 2023. He is registered for Universal Credit but has yet to receive a benefit payment. He said that he understood that the Employment Tribunal process was free and noted that the Respondent had sought to use the threat of a costs award against him as a deterrent.

34. The Tribunal must first consider whether the criteria for making an order have been met. If it considers that the relevant threshold has been met, it has a discretion to make a costs order, but it is not obliged to do so. Each case will turn on its own facts.
35. The Tribunal reminds itself that the general rule is that this is a “no costs jurisdiction.” It should take something out of the ordinary to warrant a costs order being made. It also has in mind that the conduct of a litigant in person may not be judged against the same standard as that applied to a professional representative.
36. In the Tribunal’s judgement bringing these claims and pursuing them to this preliminary hearing does not constitute unreasonable conduct within rule 76(1) (a). The Claimant was entitled to have his arguments in relation to the reasonable practicability of bringing his claims in time determined by the Tribunal.
37. To address a point made in submissions on behalf of the Respondent, the Claimant’s claims have not been struck out because they had no reasonable prospect of success. The Tribunal has concluded that it has no jurisdiction to hear them.
38. Further, I do not consider that the Claimant’s actions in relations to the Respondent’s preparation of a trial bundle ought to sound in costs. There was a dispute about the bundle contents, the Claimant properly asked for a preliminary hearing so that matters could be resolved before this open preliminary hearing. In fact, issues in relation to the bundle were resolved shortly before the November preliminary hearing. That hearing also gave necessary directions for the consolidation of the Claimant’s claims so that the time points that arose in each case could be considered and determined at this preliminary hearing. That was an effective and proportionate use of Tribunal time and parties’ resources.
39. Had the Tribunal concluded that the threshold for a costs award had been met, it would not have exercised its discretion to make an award of costs in all the circumstances of this case. The Tribunal had no reason to doubt that the Claimant brought his claims in good faith, believing that he had been unfairly treated and seeking redress. The Tribunal also had regard to the Claimant’s limited means and to his personal circumstances which included a number of health conditions.

Employment Judge **Omambala KC**

Date: 14 December 2023

JUDGMENT & REASONS SENT TO THE PARTIES ON

...20 January 2024.....

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FOR THE TRIBUNAL OFFICE

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing, or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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Recording and Transcription

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved, or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>