



EMPLOYMENT TRIBUNALS

Claimant: Mr S Gumus
Respondent: Uber Britannia Limited
Heard at: East London Hearing Centre
On: 18th June 2024
Before: Employment Judge M Yale
Representation:
Claimant: In Person
Respondent: Kerensa Davis, Counsel

JUDGMENT

1. The Claimant's claim for unfair dismissal is dismissed.

REASONS

PRELIMINARIES AND CLAIMS:

1. The claimant brought a claim (3200067/2024) for unfair dismissal against the respondent. The respondent raised two preliminary points, namely:
 - a. Whether the claim was brought in time
 - b. Whether the claimant was properly described as an employee of the respondent
2. The purpose of the hearing today was to determine the first of those two points, as to whether the claim had been brought within time.
3. The relevant chronology is as follows:
 - a. 10th September 2023: Claimant says relationship terminated
 - b. 1st October 2023: Respondent says relationship terminated

- c. 13th November 2023: ACAS notification
- d. 15th November 2023: ACAS Certificate
- e. 9th January 2024: ET1 Claim Form lodged

4. As set out above, the claimant and respondent disagreed as to the date of termination of the working relationship. The respondent suggested that may have been because the respondent froze the claimant's work account (so he could not work for them) pending an investigation in September but they actually terminated the working relationship on 1st October 2023, meaning any claim should have been brought by 2nd January 2024. The latter was evidenced in a letter in a bundle provided to me. The respondent's date of 1st October 2023 was actually more favourable to the claimant than the date the claimant suggested and I therefore decided to use that date if it became relevant.

5. Before the hearing commenced, my clerk told me the claimant had his nephew, Mr Mendil, with him, who intended to assist if the claimant had any difficulties understanding proceedings, as his first language was not English. At the start of the hearing I confirmed with the claimant that he did not need an interpreter and was happy to continue. He said his English was good and his nephew was only there if he needed him. All the evidence suggested his English was very good and there was no objection to his nephew assisting if needed. Therefore, the hearing was able to proceed.

6. I invited the claimant to give evidence, which he did, having affirmed. In the absence of a witness statement from him, I asked him questions to ensure he presented his case effectively. It was clear he had not come prepared with relevant dates and therefore, after half an hour, I took a break for half an hour for him to gather those dates from e-mails on his telephone. After that half an hour break, his evidence continued but he had not collated any dates from his e-mails.

7. On returning from the break, and before his evidence resumed, the claimant asked for a postponement to obtain legal representation. He said he thought ACAS were arranging representation for him and he did not know he was not represented until he arrived today. He said nothing ACAS had said gave him the impression they would find him a lawyer but he thought they would. He accepted he had never had any sort of conference with a lawyer but said he thought the letters he received from the Tribunal were from his solicitor.

8. The application to postpone was opposed by the respondent. They said the claimant had known about the hearing since 17th April 2024, he has not suggested ACAS said they would find him a representative (and they would not normally do that), they pointed out all had attended today and a postponement would involve further costs. They also submitted that a postponement would cause further delay and the issues were simple.

9. I refused the application to postpone. The application to postpone was made less than 7 days before the hearing, the hearing had, in fact started. Therefore, Rule 30A of the Employment Tribunal Rules applied. The claimant had had ample time to prepare for this hearing, the issues for the hearing were straightforward (even bearing in mind his first language was not English), he had the assistance of Mr Mendil, I could ensure the law and procedure was explained to the claimant in a way he could understand (he worked as an Uber driver for a number of years) and the Employment Tribunal was intended to be an

informal forum where litigants in person could effectively present their case. There were therefore no exceptional circumstances that would allow me to postpone the hearing.

FACTS:

10. The claimant's evidence as to the timing of his claim was that he contacted Citizens' Advice. After an initial appointment, they gave him a second appointment, at which they told him to bring documentation (such as bills and correspondence from the respondent), after which they referred him to ACAS.

11. The claimant said the second appointment was a week after the first and, having been given the contact details for ACAS at that meeting, he called ACAS the following morning.

12. The claimant said that, when he spoke to ACAS, he gave them his e-mail address and details. He said he could not remember any of the dates (which is why I gave him the opportunity to check his e-mails). The claimant said he was waiting three weeks for a response from ACAS and called them again. He said that ACAS had provided him with an e-mail with some links but he could not remember what those links were.

13. Later in the claimant's evidence it transpired that ACAS had, in fact, contacted him by e-mail within that three week period but the claimant accepted he did not check his e-mails. The claimant said it was when he called them back that he first became aware of the time limit. He said they explained what happened next and gave him a form to fill in with his nephew but he was unable to tell me much about that form and its purpose.

14. Given the dates in mid-November 2023 on the ACAS Certificate, this must all have been happening around that time, a month and a half or so after the date of termination given by the respondent.

15. The claimant accepted he had done no research of his own into Tribunal procedure, he had not looked on the Internet, he did not ask anyone to do it for him, he did not contact a lawyer. He said he was waiting for a solicitor to contact him. He did not know what ACAS were doing. He did nothing to chase it up.

16. In my judgment, this does not adequately explain why the claimant was unable to lodge a claim during that period. He had contacted Citizen's Advice Bureau twice, ACAS twice and had done nothing else to try and understand his obligations when bringing a Tribunal claim.

17. The claimant then gave evidence about the period from 15th November 2023 (the date of the ACAS Certificate) to 9th January 2024 (the date of submission of the claim). He said he did not submit the claim earlier during that period because he was waiting for ACAS. He said he was waiting for an e-mail from ACAS but then conceded "I never check my e-mails". He said he did not chase them up or ask what was going on.

18. The claimant maintained that when he received the hearing notices from the Tribunal he thought this was correspondence from his solicitor. In my judgment, it is quite clear these are letters from the Tribunal. The claimant said he did not really read the letters. He looked at the date for his next hearing and did not read them further because English was not his first language. He was asked whether he could have shown them to Mr Mendil. He said

he showed at least one to Mr Mendil but Mr Mendil did not read it because he told Mr Mendil it was just his next hearing date.

19. The claimant accepted that, if he received letters or e-mails he did not understand, he could have taken them to Mr Mendil for Mr Mendil to assist. Again, during this period, the claimant conducted no research himself and did not ask for assistance.

20. When pressed as to whether there was any other reason for not submitting the claim in time, the claimant said that when his Uber account was locked in September, he told his wife that he was under investigation and she told him to leave. He said when she told him to leave, he attempted suicide. He said a couple of weeks later they reconciled, although the relationship has not been the same since. He said his relationship had also broken down with his daughter and she was still not speaking to him.

21. The claimant said he sought no professional help when he attempted suicide but his friends tried to help him, talked to him, talked to his wife and managed to get them back together.

LAW:

22. Section 111 of the Employment Rights Act 1996 states:

(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.

23. The following provisions of the section are not relevant to any aspect of this case.

CONCLUSIONS:

24. The claimant did not satisfy me that it was not reasonably practicable to bring the claim within the initial three-month time limit.

25. In my judgment the claimant did not take reasonable steps to ensure he submitted any claim he wished to make in time. Between 1st October 2023 and 13th November 2023, he contacted the Citizens Advice Bureaux twice and ACAS twice. He conducted no research of his own to establish the role of these organisations and the reasonableness of any belief he had that ACAS would instruct a legal representative for him.

26. There were considerable delays at this stage and, even if the claimant did believe ACAS were arranging legal representation for him (although there was no evidence of a reasonable basis for that belief), he did little to chase it up. On the one occasion he did chase ACAS it transpired that they had already responded to him but he had not checked his e-mails. The claimant knew ACAS were likely to be contacting him by e-mail, as he had

provided his e-mail address, so it was not reasonable for him not to regularly check his e-mails.

27. Even taking into account that the claimant's first language was not English, albeit his English was very good, these failures were not reasonable, especially as the claimant clearly had his nephew, Mr Mendil, upon whom he could have called for help but, for some reason, chose not to. Mr Mendil attended the hearing today to assist and the claimant provided no explanation as to why he could not have engaged Mr Mendil's assistance more often throughout the course of these proceedings.

28. Further, in the period after consultation with ACAS, it was not reasonable for the claimant to not read correspondence and assume, without reading it, that letters from the Tribunal were letters from his solicitor. He had not been told a solicitor had been engaged, he had not had a conference with a solicitor acting for him and the letters, on their face, were clearly from the Tribunal, not a solicitor. Again, the claimant did not avail himself of the assistance of Mr Mendil, did not conduct any research of his own and did not ask anyone else to do it for him.

29. Whilst the claimant's separation from his wife, suicide attempt and breakdown of the relationship with his daughter were very sad and, in some circumstances, may have allowed some leeway, particularly if, for example, residential medical treatment had been required, at least two of these events appear to have been before the formal dismissal even took place. The claimant accepted he did not receive professional help. Further, the claimant did not really seem to rely on this in his evidence. His evidence focussed on his interactions with the Citizen's Advice Bureau and ACAS. It was only after some probing from me when he mentioned on one occasion in passing that he had "a lot going on" that he explained this situation. Whilst I accept these topics may have caused embarrassment and may have been difficult to talk about, the events occurred at a very early stage in these proceedings and, even if forcefully pressed by the claimant, were unlikely to have sufficiently explained the entirety of the delay.

30. In all the circumstances, I am not satisfied on the balance of probabilities that it was not reasonably practicable for the claimant to have brought his claim within time and his claim for unfair dismissal is dismissed.

**Employment Judge M Yale
18 June 2024**