



EMPLOYMENT TRIBUNALS

Claimant: Mr C Cule

Respondent: Monmouthshire County Council

Heard at: Cardiff Employment Tribunal

On: 09/12/2024

Before: Employment Judge Lloyd-Lawrie

Representation

Claimant: In person

Respondent: Mr. Edwards, Solicitor

JUDGMENT having been sent to the parties on 10/12/2024 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

The Judgment of the Tribunal is that:

1. The claim for unfair dismissal (constructive unfair dismissal) was not presented within the applicable time limit. It was reasonably practicable to do so.
2. The claim is therefore dismissed.

Reasons for Judgment

3. The claimant was employed from 1/08/2020-6/11/2023. The Claimant resigned, giving notice, on 12/09/2023.
4. The standard limitation period for presenting a claim of unfair dismissal is 3 months less 1 day from the last date of employment, otherwise known as the effective date of termination. In this case, that date therefore was 05/02/2024.
5. A Claimant must now apply for an early conciliation certificate from ACAS as a condition of submitting a Tribunal claim for unfair dismissal, among other types of claims, as set out in s 18A Employment Tribunals Act 1996. Properly engaging with ACAS allows for extensions to be

given to the time limits, however, that is only the case where the early conciliation period commences during the primary limitation period. It was made clear by the EAT in the case of Pearce v Bank of America Merrill Lynch and ors EAT 0067/19, that section 207B(4), which deals with extensions of times for ACAS early conciliation does not apply where the limitation period has already expired before the early conciliation commences. The Claimant in this case did not contact ACAS until 13/02/2024, over a week after the primary limitation period expired. Therefore, time is not extended by his contacting ACAS.

6. The Claimant did not submit his claim until 22/04/2024, over 2 months from the expiry of the limitation period. His claim of unfair dismissal was therefore made out of time.
7. The Employment Tribunal do not have jurisdiction to hear a claim of unfair dismissal unless it is presented within 3 months, less 1 day of the effective date of termination or unless it is found that it was presented within such further period as the Tribunal considers reasonable, in a case where it is satisfied that it was not reasonable practicable for the complaint to be presented before the end of that period of 3 months. This is set out in section 111 of the Employment Rights Act. This means that there is no discretion as to whether to allow a claim when looking at the merits of a case; merits do not form part of the assessment.
8. The first question I must consider is whether it was reasonably practicable for the Claimant to have submitted the claim within the limitation period. The Claimant by way of oral submissions claims 3 things. Firstly, that he was a litigant in person and was wrongly advised by ACAS and was mistaken himself before speaking to ACAS. Secondly, that he was waiting for an internal procedure to conclude and that lastly, he was ill, having investigations into possible cancer and was suffering with his mental health.
9. I have considered the guidance from Palmer and anor v Southend-on-Sea Borough Council 1984 ICR 372, CA, Asda Stores Ltd v Kauser EAT 0165/07 and Lowri Beck Services Ltd v Brophy 2019 EWCA Civ 2490, CA when considering the test of whether it was “reasonably practicable”. To deal with the ignorance of the law issue, I find the reasons are two-fold on this. I find that firstly, from the fact that the Claimant raised 3 times in his ET1 and grounds of complaint the issue of time limits and from his letter to the Tribunal at page 53 of the bundle, that he was aware of the limitation period of 3 months less 1 day from effective date of termination. I find that the normal reading of his letter suggests that ACAS allowed him to start the process with them out of time and then told him a different time limit. However, even if I am wrong in that, I find that following the case of Porter v Bandidridge Ltd 1978 ICR 943, CA, that the Claimant ought to have known the time limits. The Claimant on his own account knew of the time limits. I find that on even a basic google search, the time limits are clear and I find that the Claimant, knowing that there was a time limit, should have checked when time started running from.

10. I find that the fact that the internal procedures were ongoing does not provide a reason that the claim could not be presented in time. Even if the internal procedures were still going on 05/02/2023, the limitation period does not extend. In any event, the grievance appeal outcome was given to the Claimant by way of letter dated 31/01/2024 and therefore, there was no internal procedure running at the end of the limitation period.
11. The Claimant raised health issues as another reason for delay. The Claimant did not provide any medical evidence to suggest that he was too unwell to manage his own affairs at that time. In any event, the available evidence demonstrates that the Claimant was working in a new role and had engaged with the internal process with the Respondent. I find that the Claimant was not therefore so incapacitated by his health so that he would be prevented from bringing a claim.
12. As I find that it was reasonably practicable for the Claimant to bring his claim in time, it follows that the Tribunal does not have jurisdiction to hear the unfair dismissal claim and therefore it must be dismissed.

Employment Judge Lloyd-Lawrie

Date 18/01/2025

REASONS SENT TO THE PARTIES ON

04 February 2025

Katie Dickson

FOR THE TRIBUNAL OFFICE