



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant
Mr B Blake

Respondent
P Flannery Plant Hire (Oval) Ltd

REASONS MADE FOLLOWING A PRELIMINARY HEARING

EMPLOYMENT JUDGE Hughes

Representation

For the Claimant: Miss T Sandiford, Counsel

For the Respondent: Mr D Gray-Jones, Counsel & Miss V Dass, Solicitor

REASONS

1 At a Preliminary Hearing on 30 January 2024, I decided that the Employment Tribunal has no jurisdiction to hear the claimant's claims for unfair dismissal and for wrongful dismissal in breach of contract because it was reasonably practicable for them to be presented in time. Those claims were dismissed and a judgment was issued.

2 I also decided that the claim for a redundancy payment was presented in time and made a separate case management Order. That claim has since been withdrawn.

3 Oral reasons were given on the day. A request for written reasons was made by the claimant on 1 February 2024. Unfortunately, due to ill-health I was absent from work, but am now preparing the reasons as requested.

4 The statement of agreed facts is as follows:

4.1 On 7 May 2021 the claimant commenced employment with the respondent as a Fitter/Service Engineer.

4.2 On 21 October 2022 the claimant ceased to work for the respondent. [Judge's note: there is a factual dispute about whether he was dismissed or resigned, which is not material for the purpose of deciding the time point].

4.3 On 27 October 2022, he was issued with a P45 and accompanying documents.

4.4 On 15 January 2023 the claimant commenced new employment.

4.5 On 19 February 2023 the claimant contacted ACAS. An Early Conciliation certificate was issued on 21 February 2023.

4.6 On 5 March 2023 the Employment Tribunal claim form was presented.

The issue

5 The primary limitation period expired on 20 January 2023. The claimant did not approach ACAS within the primary limitation period and so no extension of time to reflect early conciliation occurred. Therefore, the issue was whether it was not reasonably practicable for the claimant's claims for unfair dismissal and for wrongful dismissal in breach of contract to be presented in time and, if not, whether they were presented within such further period as was reasonable in the circumstances.

The claimant's evidence

6 The claimant confirmed that the date his employment ended was 21 October 2022. He said that at that point in time, he and his partner were preparing to foster their grandchildren because their mother was not able to care for them. He said that he was notified by email of a training course for foster parents that day. He said that he did not put in an Employment Tribunal claim because of the ongoing fostering process and trying to sort out the house and garden for when the children (which was to include a newborn baby) came to live with him and his partner. The baby came to them on 28 December 2022 at three weeks' old. The other children came in January 2023.

7 The claimant told me that when he took his P45 to the Job Centre, he was informed that it looked as if he might have been unfairly dismissed from his employment. He said that he came by that information a week or so after his employment ended because he went on a pre-booked long weekend in Blackpool prior going to the Job Centre.

8 The claimant said that he contacted Which Legal (an offshoot of Which consumer magazine) by telephone at the beginning of January 2023 to see whether he had a claim against the respondent in respect of unfair dismissal and wrongful dismissal without notice (breach of contract). He said that they verbally advised him that he could bring a claim in the Employment Tribunal and advised on the merits. He confirmed they told him there were time limits to do so and that

it was possible to apply for an extension of time. During cross-examination the claimant said that after contacting Which Legal he did not take any further steps. He agreed there was nothing to prevent him from doing research on the internet or contacting a solicitor or the Citizens Advice Bureau earlier, in order to progress the case.

9 The claimant was cross examined about his reasons for not taking further action despite knowing there were time limits. He confirmed that he was not unwell at the time. He accepted that he could have researched time limits on the internet but did not do so. His case was this was because he did not have time. The reasons he gave were: his first priority was the children; they had complex needs and could be a handful, which was very stressful; he needed to sort out the house and garden; he was the primary child carer because his partner was working additional hours; he was undergoing a fostering training course; he was seeking alternative employment; and that he needed to build up the amount of money in his bank account. He also confirmed that one child attended school and the other attended nursery, so he was not their carer during the day.

10 The claimant accepted that it was not until after he obtained new employment on 15 January and completed the fostering qualification course on 15 February 2023, that he contacted ACAS to commence early conciliation with a view to bringing a claim, by which point the claim was already over three weeks' out of time.

11 I accepted the claimant gave truthful evidence.

Findings of fact

12 In addition to the agreed facts, I found the following:

12.1 The claimant was aware of the potential claim approximately one week after his employment ended.

12.2 The claimant was aware of time limits since early January 2023 which was within the primary time limit.

12.3 The claimant engaged in a substantial amount of activity during that time.

12.4 The claimant could have researched time limits and bringing a claim at any point. Instead he prioritised other activities, predominantly the welfare of the grandchildren. Put another way, there was sufficient time to claim in time, but he chose not to.

12.5 The Early Conciliation Certificate was issued on 21 February but the claim form was not presented until 5 March 2023.

The Law

13 The law on time limits in relation to these complaints is well established. The statutory provisions are section 111 of the Employment Rights Act 1996 in respect of the unfair dismissal claim and Article 7 of the Employment Tribunals (England and Wales) Extension of Jurisdiction Order 1994. The first question is whether it was reasonably practicable to bring the claim in time. If not, the next question is whether the claim was presented within such further period as was reasonable in the circumstances of the case.

14 I shall briefly summarise the case law. It has been held that “reasonably practicable” is to be taken to mean “reasonably feasible” – for example see Palmer and Saunders v Southend on Sea Borough Council [1984] IRLR 119 CA. The burden of showing that it was not reasonably practicable is on the claimant - for example see Porter v Bandridge Ltd [1978] ICR 943. It has been repeatedly emphasised that this is a strict test and must be rigidly applied – for example see London Underground v Noel [1999] ICR 109 CA in which it was stated that the statutory test is not what would be just and equitable, and would not be satisfied just because it was reasonable not to do what could be done. In Walls Meat Company Limited v Khan [1978] ICR 52, consideration was given to impediments that could reasonably prevent or interfere with or inhibit a presentation in time (these were also discussed in Palmer - see above reference). Examples were given of physical impediments such as illness or a postal strike; or mental impairments, such as the claimant's state of mind. As regards state of mind, the Judge held that it would not be reasonable to rely on ignorance or a mistaken belief about time limits if the claimant had failed to make such inquiries as were reasonable in the circumstances, or if any legal advice he was given was at fault. It was also held that if the claimant knew of the right to claim, it may be difficult to satisfy the Tribunal that he behaved reasonably in not making enquiries about time limits. As regards both mental and physical impairments, it is for the claimant to show that they were such that it meant that it was not reasonably practicable to present the claim in time – see Cygnets Behavioural Health Ltd v Britton [2022] IRLR 906.

15 The respondent's representative submitted that case law supports the proposition that stress or preoccupation with other matters (even matters connected to dismissal) cannot, without more, overcome the not reasonably practicable test. In particular, reliance was placed on Asda Stores Ltd v Kauser EAT(S)/0165/07 in which it was held by the EAT that stress arising from a criminal investigation did not mean it was not reasonably practicable to present the claim in time. The respondent relied upon a quote from Lady Smith: “It cannot be sufficient for a claimant to allow it to statutory time limit that he or she points to having been ‘stressed’ or even ‘very stressed’.”

16 The claimant's representative said that it was accepted that the claim was out of time. She argued it was not reasonably practicable to present the claim in time because: the claimant was unrepresented during the limitation period and at the time when he submitted the claim form; as from December 2022 he was fostering his grandchildren; he was studying to obtain a fostering qualification from 21 October 2022 to 15 February 2023; and he was looking for alternative work. The claimant's representative confirmed that the claimant was not relying on the proposition that he had a mental or physical impairment during the limitation period, but argued that they are merely examples, and there could be other factors relevant to the question of reasonable practicability. She also submitted that it was in the interests of justice for the case to be heard because there was a core dispute of fact about how the claimant's employment ended.

Conclusions

17 It was very clear from the claimant's evidence that his key priority was fostering his grandchildren. He spent periods of time tidying the house and the garden to make sure that they had a safe and welcoming environment, and at a later point he was the primary carer. He also prioritised gaining the fostering qualification and seeking alternative employment. The timing of contacting ACAS (i.e. after commencing alternative employment and securing the qualification) confirmed the way he prioritised. The claimant was not unwell. He did not rely on medical evidence. He was aware of a potential claim from the point when he went to the Job Centre, and of the existence of time limits from early January 2023. It was feasible for him to research time limits on the internet – a point which he accepted. The research would not have taken long because, as the respondent's representative correctly pointed out, there is a huge amount of information available if a google search is undertaken. I did not accept that the claimant had no time available to research time limits, or the steps required to bring a claim.

18 I concluded that the claimant made choices about prioritising the activities he undertook. It is fair to say that after being dismissed, most claimants will have to seek alternative employment. Many claimants have childcare responsibilities. Some are single parents. Some will undertake training courses. Most will be under stress. They are expected to adhere to the applicable time limits unless they can demonstrate it was not reasonably practicable to do so. I am not aware of a reported case where a combination of childcare responsibilities and the need to find work and/or to engage in training were sufficient to overcome the strict reasonable practicability test. In my judgement, there was no evidence that it was not reasonably feasible for the claimant to present a claim in time. Indeed, the fact that he did engage in many other activities demonstrates that failing to present the claim in time was a matter of choice, not practicability.

19 I did not accept that the fact that the claimant was unrepresented was material in this case – he had received advice about a potential claim and time

limits – he chose not progress the case until it was too late. Nor did I accept that a core dispute of fact about whether the claimant was dismissed or resigned was material to the limitation issue. The law is very clear, and it is very strict. The test is reasonable practicability - it is not whether it is just and equitable for the case to be heard, or whether it was reasonable for the claimant to defer taking steps to progress his claim outside the primary limitation period. Applying the correct test, and for the reasons set out above, I was satisfied that the claimant failed to establish that it was not reasonably practicable for the claim to have been presented in time. Therefore, the Employment Tribunal has no jurisdiction to hear the complaints of unfair dismissal and breach of contract (wrongful dismissal).

20 Given the above conclusions, it is not necessary for me to consider whether the claim was issued within such further period as was reasonable in the circumstances. If the claimant had established it was not reasonable practicable, there was no explanation from him for the delay between the certificate being issued and the presentation of the claim (see 12.5 above).

21 I wish the claimant and his family well for the future. It is admirable that he has taken on responsibility for bringing up three children in very difficult circumstances.

**Employment Judge Hughes
10 October 2024**