



EMPLOYMENT TRIBUNALS

Claimant: Mr E Graham
Respondent: Care UK Community Partnership Ltd

Heard at: London Central (by CVP)

On: 20/5/2025
Before: Employment Judge Mr J S Burns

Representation

Claimant: in person
Respondent: Ms. K Walmsley (Counsel)

JUDGMENT

The claim is struck out

REASONS

1. The hearing was listed to decide whether the tribunal had jurisdiction over this claim of unfair dismissal, given the time when it was presented.
2. The primary time limit in which to present a claim for unfair dismissal arising under Section 94 Employment Rights Act 1996 is set out in Section 111 Employment Rights Act 1996. Ordinarily, it is "*before the end of the period of three months beginning with the effective date of termination*" (Section 111(2)(a) ERA 1996).
3. Alternatively, the claim must be presented to the Tribunal "*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*" (Section 111(2)(b) ERA 1996).
4. Section 111(2A) qualifies that the time limit referred to above, is subject to any extensions of time afforded by Section 207B ERA 1996 (i.e. allowing for any period of ACAS Early Conciliation).
5. I was referred to a PH bundle of 70 pages including a witness statement from the Claimant, who was cross-examined.
6. On 11/3/25 EJ Nicklin had adjourned the hearing to today and in so doing gave detailed directions that the Claimant should by 22/4/25 serve a witness statement with a full explanation and disclose all documents he wished to rely on. In response the Claimant

served a short witness statement and limited medical documents. In oral evidence he referred to several matters not included in his witness statement and to various other claimed relevant documents which he said were in his possession but which he had failed to disclose.

7. The Claimant worked for the Respondent from October 2017 and by the time of his dismissal he was a "Team Leader Care Assistant" working in a care home for elderly persons.
8. He was suspended from work on 17/2/24, the effective date of termination (EDT) was 13/3/24; the period of 3 months starting with the EDT expired on 12/6/24, the ACAS certificate states that ACAS was notified on 10/9/24 with the EC Certificate issued on 16/9/24. The claim was presented on 11/10/24.
9. The Claimant stated in his witness statement and orally today that "*On March 16, 2024, I contacted ACAS to seek guidance on filing my case following my dismissal*". The Claimant stated orally that he had received an email from ACAS in March 2024. However, he had not disclosed this claimed email. There is no objective evidence of that earlier claimed contact and the EC certificate states 10/9/24 as the EC contact date. I regard that as the best evidence of the date of ACAS notification for purposes of early conciliation, and proceed on that basis.
10. The Claimant had a telephone consultation in March 2024 with Lawrence and Associates Solicitors who on his behalf drafted and sent to the Respondent a lengthy letter of appeal entitled "*Claim against Wrongful Dismissal Edward Graham*" setting out details of the Claimant's account of the workplace events, and culminating in a submission that the dismissal was unfair and request that the Claimant be reinstated (if necessary with training) into his employment.
11. The Claimant wrote in his witness statement "*I am acutely aware of the importance of adhering to the tribunal's deadlines and the potential consequences of failing to do so.*" He confirmed today in oral evidence that he had had that knowledge from March 2024. He clearly had it when he presented his ET1, because in it he made a comment on the fact that it was being presented late.
12. The Claimant's internal appeal against dismissal took place (by video) on 1/5/24. The Claimant was accompanied by a work colleague but represented himself. The appeal failed and was dismissed by letter dated 15/5/24.

13. The Claimant relied on his claimed poor physical and mental ill-health since his dismissal as the reason for the delay in presenting his claim.
14. In summary the disclosed medical documents show the following:
 - On 9/2/24 the Claimant had a telephone appointment with an NHS Clinical infection Unit and on 9/2/24 was invited to an outpatient appointment with the same unit on 26/7/24 which was then rescheduled to 13/9/24, on which date another was arranged on 27/2/25.
 - On 10/6/24 he spoke to a doctor on the telephone about his enlarged prostate.
 - On 17/9/24 C was referred to a counselling psychologist and in October 2024 he attended a clinic where his answers given in response to questionnaires indicated a severe level of depression with the Claimant reporting that his mood had deteriorated since he had been unable to work, he found it hard to leave the house and he felt his PTSD symptoms had worsened.
 - On 16/12/24 he was referred by his GP for an urgent "ECG, bloods and CXR" following complaining about "left-sided chest heaviness intermittently since March...mostly coinciding with times of feeling anxious and stressed following dismissal at work"
 - On 30/1/25 the Claimant's GP confirmed by letter that C's mental and physical health had deteriorated subsequent to his dismissal, including being diagnosed with type 2 diabetes, high cholesterol, weight gain, mental health concerns and sleep issues associated with anxiety and depression.
15. The Claimant told me today that in 1999 his parents were murdered in front of him in Sierra Leone and that after he moved to the UK he was attacked in his flat in 2014 and that these events having caused him to suffer from PTSD; that he was prescribed and took mirtazapine (an antidepressant) 5mg per day from 2014, which was increased to 20 mg per day from 2016 and 30 mg per day from February 24 (after his suspension from work).
16. The medical and other documentation disclosed does not include any professional diagnosis of PTSD. However, if he had it, it was a long-standing condition which did not incapacitate him from working as a care worker.
17. The disclosed medical and other documentary evidence does not indicate that the Claimant was incapacitated from working or unfit for work at any time since dismissal by any of his medical conditions. There are no fit notes, letters from the job/benefits centre etc. In submissions the Claimant stated that the reason he has not obtained another job since dismissal was because of DBS issues caused by the Respondent having notified the police about an allegation against him (which was subsequently not pursued but reference to which remains on his record). It is also notable that the solicitors' appeal letter in March 2024 made no reference to the Claimant being too ill then to work or requiring a delay before the requested re-instatement.
18. During the primary limitation period the only medical event shown by the documents is the Claimant having a telephone conversation about his enlarged prostate which culminated in

his decision then to wait with active surveillance rather than submit to more invasive investigations.

19. The Claimant was not admitted to hospital at all in 2024 but more recently in 2025, long after the relevant period, he has been hospitalised for prostate surgery and kidney problems.
20. There is evidence that the Claimant had reactive depression and anxiety and worsening mental ill health caused by his suspension and dismissal but there is a lack of evidence that these conditions made it not reasonably practicable for him to claim in time. Notwithstanding these and other continuing conditions such as weight gain, high blood pressure/cholesterol kidney issues he was nevertheless able to present his claim in October 2024. The act was within his capacity, and the delay is not adequately explained
21. The Claimant wrote in his witness statement "It was only in September 2024, after several months of concerted effort and ongoing medical care, that I was able to regain a modicum of stability in my health, allowing me to gather the necessary information and documentation for my case". However as already stated, the documents produced by the Claimant both prior to and after September 2024 are few in number.
22. The ET1 when it was finally presented is a simple and straightforward document making reference to facts and allegations which the Claimant had at his disposal during the primary limitation period and not requiring additional information and documentation.
23. Even after his ACAS certificate was issued on 16/9/24 there was a further delay of over three weeks before the ET1 claim was presented on 11/2/24. The Claimant stated in final submissions (although not before) that this delay was because he had failed to notice that the ACAS email had lodged in his spam folder.

Conclusion.

24. The Claimant had access to and obtained legal advice about his claim at an early stage. He was fit enough during the primary limitation period to seek immediate re-instatement in his employment and represent himself at his internal appeal, and to discuss and plan his treatment for his prostate with his doctor.
25. Despite the production of some limited medical documents including a GP summary letter, there is a conspicuous lack of objective evidence that he was incapacitated from either working or carrying out the far less demanding task of presenting his claim in time. I am not satisfied that it was not reasonably practicable for the Claimant to present his claim in time.

There was also an unreasonably long (four month) and unexplained delay after the initial three-month period had expired.

26. The claim is therefore outside the jurisdiction of the Tribunal and must be struck out.

Employment Judge J S Burns
20/5/2025
For Secretary of the Tribunals

Date sent to parties
21 May 2025
