

THE INDUSTRIAL TRIBUNALS AND FAIR EMPLOYMENT TRIBUNAL

CASE REF: 29056/21

CLAIMANT: Raymond Logue
RESPONDENT: Education Authority

JUDGMENT ON A PRELIMINARY ISSUE

The judgment of the tribunal is that all the claims brought by the claimant were lodged after the expiry of the relevant time limit and there are no grounds on which the time limits, or any of them, could properly be extended. The claims are therefore dismissed for want of jurisdiction.

CONSTITUTION OF TRIBUNAL

President (sitting alone): Mr N Kelly

APPEARANCES:

The claimant appeared in person

The respondent was represented by Mr M Corkey, Barrister-at-Law, instructed by the Education Authority Solicitors.

BACKGROUND

1. The claimant has been employed by the respondent as a part-time Catering Assistant from 21 January 2014 for ten hours per week. He had temporarily “acted up” as a cook between 2018 and January 2020 for 25 hours per week and reverted back to his substantive role for ten hours per week in February 2020. His employment continues.
2. The claimant had been on sick leave from 12 December 2019 to 13 January 2020 and then from 27 January 2020 to 12 April 2021. He had therefore, with the exception of a two week period, been absent from work for some 16 months.
3. The claimant lodged a tribunal claim on 13 April 2021 which contained three claims:
 - (a) A claim of unauthorised deduction from wages on the basis that, during a period between 2018 and January 2020, he had temporarily occupied a post as a cook in Oakgrove Primary School for 25 hours per week. He had since

found out that the respondent had “*allocated*” 30 hours per week for this post and argued he had been contractually entitled to an additional five hours work per week.

- (b) A claim that a flexible working request initially made on 6 January 2020 had not been properly actioned by the respondent.
 - (c) A claim of disability discrimination in relation to his treatment at Oakgrove Primary School up to January 2020.
4. The claim raised several other allegations which were not part of the statutory claims before the tribunal.
 5. At a CMPH on 8 April 2022, the tribunal directed the current Preliminary Hearing to determine whether the three claims were within the relevant statutory time limits and, if not, whether time should be extended.
 6. The claimant suffered from mental health issues, including depression. At a **Galo** adjustment hearing, the claimant was told that at a hearing, he could have extra breaks as required and additional time to answer questions as required. In the event, the claimant was given a 15 minute break after the end of the respondent submissions before he made his own. The claimant was reminded that he should ask for further breaks if required but none were required and none were granted.

RELEVANT LAW

Unauthorised Deduction from Wages

7. Article 55(2) of the Employment Rights (Northern Ireland) Order 1996 provides that:
 - “(2) *Subject to paragraph (4), an industrial tribunal shall not consider a complaint under this Article unless it is presented before the end of the period of three months beginning with—*
 - (a) *in the case of a complaint relating to a deduction by the employer, the date of payment of the wages from which the deduction was made, -”*
8. Under Article 55(4) of the 1996 Order, a tribunal may consider a complaint presented:

“Within such further period as it considers reasonable in a case where it is satisfied that it was not reasonably practicable for a complaint to be lodged before the end of the period of three months.”

Flexible Working

9. Regulation 15(2) of the Flexible Working (Procedural Requirements) Regulations (Northern Ireland) 2003 provides:
 - “(2) *A tribunal shall not consider a complaint under this Regulation in relation to a failure or threat unless the complaint is presented –*

- (a) *Before the end of the period of three months beginning with the day of the failure or threat or*
- (b) *Within such further period as a tribunal considers reasonable in a case where it was satisfied that it was not reasonably practicable for the complaint to be presented before the end of the period of three months."*

Reasonably Practicable

10. In ***Palmer v Southend of South Borough Council [1984] ICR 372***, the Court of Appeal (GB) considered that the "reasonably practicable" test for an extension of the statutory time limit would be best read as:

"Was it reasonably feasible to present the complaint to the Industrial Tribunal within the relevant three months?"

Disability Discrimination

11. Schedule 3(3)(1) of the Disability Discrimination Act 1995 provides that:

"3.1 An Industrial Tribunal will not consider a complaint under Section 17A of 25(8) unless it was presented before the end of the period of three months beginning when the act complained of was done -"

12. Under Schedule 3(3)(2) of the 1995 Act, a tribunal may extend this time limit if, in all the circumstances in case it considers it is just and equitable to do so.

Just and Equitable

13. The power to extend the time limit on just and equitable grounds is a broad discretion to be exercised on the part of the tribunal. There is no presumption in favour of an extension of time. The onus in each case remains on the claimant to persuade the tribunal that it is just and equitable to extend time in all the circumstances of the case and in particular in the context of legislation where time limits are meant to be observed.

14. Langstaff J stated in ***Abertawe Bro Morgannwg University Local Health Board v Morgan UKEAT/0305/13*** that:

"The first question in deciding whether to extend time is why it is that the primary time limit has not been met; and, insofar as it is distinct, the second is the reason why after the expiry of the primary time limit, the claim was not brought sooner that it was."

15. In ***British Coal Corporation v Keeble [1997] IRLR 336*** the EAT concluded that a tribunal should consider the hardship and prejudice that each party would suffer as a result of either granting or refusing an extension and to regard to all the relevant circumstances, in particular:

"(a) the length and the reasons for the delay;

- (b) *the extent to which the cogency of the evidence likely to be affected by the delay;*
- (c) *the extent to which the parties sued and co-operated with any requests for information;*
- (d) *the promptness with which the claimant acted once he knew of the facts giving rise to the cause of action; and*
- (e) *the steps taken by the claimant to obtain appropriate professional advice once he knew of the possibility of taking action.”*

16. In ***Adedeji v the University Hospitals of Birmingham NHS Foundation Trust [2021] EWCA Civ 23***, the Court of Appeal cautioned against a “*rigid adherence to a checklist*” and warned that this could “*lead to a mechanistic approach to what is meant to be a broad general discretion.*” He stated that the best approach for a tribunal in considering the exercise of a just and equitable discretion is to assess all the factors in a particular case that it considers relevant, including, in particular the length of and the reasons for the delay.

RELEVANT FINDINGS OF FACT

17. In a diary entry on 3 March 2020, the claimant stated that:

“So I have decided to email the Belfast Law Centre for some free legal advice, I don’t know how much detail to put in my official complaint letter or how far back in time it is allowed. This could be a total waste of time.”

18. In a diary entry on 4 March 2020 the claimant recorded:

“Must get on with complaint letter. Apparently it must be within three months.”

19. The claimant confirmed that he had about this time sought advice from the Law Centre but alleged that he had been unaware that there was a three month time limit for lodging a tribunal claim. Nevertheless it is clear from the content of the diary entries that the claimant had been alerted by the Belfast Law Centre to the importance of time limits and that while he appears to have applied that to the grievance letter rather than to the Industrial Tribunal claim, it is highly improbable that the correct advice was not given at that time by the Belfast Law Centre and indeed by the Labour Relations Agency with whom the claimant had also been in contact. I therefore conclude that the claimant had sought advice in or around March 2020 and that, on the balance of probabilities he had been advised of the three-month time limit in relation to tribunal claims.

20. The claimant submitted a formal letter of grievance on 17 March 2021 in which he set out, over some 28 pages, allegations in relation to the period between November 2019 and February 2020.

21. It is clear from evidence presented by his GP and by Calms that the claimant has suffered from mental illness including depression and that he receives medication in

that respect. Nevertheless, an occupational health report from a Dr David Poots on 6 October 2020 was clear that the claimant at that point *“does not have an underlying mental health condition that prevents him from working as a cook. From a medical perspective Mr Logue can return to work and can carry out his full duties. Having said that I do not expect his perception about work relationships and Christmas will change. Essentially this is an employment dispute, not a medical matter. Mr Logue can attend meetings with management and I recommend continuing dialogue trying to resolve this matter.”*

22. I therefore conclude that, while he suffered mental ill health, he had not been incapacitated and therefore prevented from lodged a tribunal claim or deterred from doing so. He had been capable of seeking advice in March 2020 from the Belfast Law Centre and from the Labour Relations Agency. He had been capable of preparing a 28 page letter of grievance which he submitted on 17 March 2021, almost a month before he lodged his tribunal claim. He had been advised of the importance of time limits.
23. Nevertheless, the claimant did not lodge a tribunal claim until 13 April 2021.

DECISION

Unauthorised Deduction from Wages

24. The claimant last worked in Oakgrove Primary School as a Cook in January 2020 and received his final pay in respect of that employment in February 2020. His claim was lodged some 14 months after the date of that payment. He had worked for 25 hours per week from 2018 to January 2020 by agreement and had been paid on that basis. He alleged that he only realised that he had been contractually entitled, according to his argument, to 30 hours per week when notified by payroll at the point when his sick pay had run out. That appears to have occurred on 19 October 2020 when a Ms Sarah Johnston emailed the claimant to state:

“We currently have you on the system as Cook at Oakgrove Integrated Primary School and your hourly rate for this post is £10.09 per hour and you are currently employed to work 30 hours per week.”

The claimant argued and indeed clarified during the course of the Preliminary Hearing, that the entire substance of his unauthorised deduction from wages claim related to the fact that he had worked and was paid for only 25 hours per week rather than 30 hours per week at Oakgrove Primary School and that he had not realised that he had not been allowed to work what he now regarded as the contractual number of hours until he had been notified by payroll branch on 19 October 2020 that 30 hours had been *“allocated”* to the post. There is of course a question as to whether or not there had been any contractual right to 30 hours work per week but that is not an issue for the present Preliminary Hearing.

25. Almost six months had elapsed after 19 October 2020 before the claim alleging unauthorised deduction from wages was lodged. There was no medical evidence suggesting that the claimant had been unable at that point to formulate a claim. He had clearly been capable of taking advice from the Belfast Law Centre and indeed from the Labour Relations Agency in March 2020 and had been capable of querying his position with the Payroll Department in October 2020.

26. I can only conclude that the tribunal claim for unauthorised deduction from wages was lodged by the claimant significantly after the expiry of the statutory three-month time limit and that he has not shown that it had not been reasonably practicable for him to have lodged his claim within that three-month time limit or indeed at any point before he eventually lodged it on 13 April 2021.
27. The claim alleging unauthorised deduction from wages must therefore be dismissed for want of jurisdiction.

Flexible Working Requests

28. It is clear that the claimant presented a statutory request on 6 January 2020. The claimant asked for reduction in working hours in the month of December (this was now January). He had complained of exposure to what he regarded as excessive Christmas type music at this time of year and argued that this affected his mental health. That position ended shortly thereafter. On that basis, the statutory request was not actioned. It would have made absolutely no sense to have considered a flexible working hours request for a temporary post which no longer existed. The claimant alleges that he resubmitted that request on 19 February 2020 and on 10 August 2020 but was unable to explain why he would have done so when the temporary post no longer existed.
29. Even if that were correct, then a meeting should have taken place within 28 days of the request. That is the alleged procedural breach complained of and the claim is therefore more than six months out of date.
30. For the reasons set out above, the claimant has not discharged the onus placed upon him to show that it had not been reasonably practicable to have presented his tribunal claim within that three-month statutory period or at any stage thereafter before he eventually did lodge his claim on 13 April 2021.
31. Therefore, I have to conclude that the claim was lodged outside the relevant statutory time limit and that there are no grounds upon which that time limit can be extended. The claim is therefore dismissed for want of jurisdiction.

Disability Discrimination

32. As indicated above, the matters raised in the claim in relation to disability discrimination were matters which at most spanned the period between November 2019 and February 2020. The claim was not lodged until over one year later.
33. There was a significant delay on the part of the claimant in lodging a tribunal claim alleging disability discrimination and that delay has not been satisfactorily explained by the claimant. Even if it were the case that the claimant had not realised until 19 October 2020 that he had a cause of action, he continued to delay until 13 April 2021.
34. For the reasons set out above, I can only conclude that the claim was made outside the statutory time limit of three months and the claimant has not discharged the onus to establish that it could be just and equitable to extend that time limit.

Therefore the claim for unlawful disability discrimination is dismissed for want of jurisdiction.

SUMMARY

35. All the claims brought by the claimant are therefore dismissed for want of jurisdiction.

President:

Date and place of hearing: 28 June 2022, Belfast.

This judgment was entered in the register and issued to the parties on: