



EMPLOYMENT TRIBUNALS

Claimant: Mr. D. Kironde

Respondent: Tesco Stores Limited

Heard at: London South Croydon

On: 1 March 2017

Before: Employment Judge Sage

Representation

Claimant: In person

Respondent: Mr. Adkins of Counsel

JUDGMENT

The Claimant's claim was presented outside of the time limit set down in Section 111 of the Employment Rights Act and is therefore dismissed.

REASONS

REQUESTED BY THE CLAIMANT.

1. This hearing was listed to consider two matters, firstly whether the claim should be dismissed because it was presented outside of the statutory time limit and secondly whether the claim should be struck out on the ground that it has no reasonable prospect of success. The parties were informed of the hearing by a letter of the 6 February 2017 (sent by email).
2. The Claimant requested further time at the hearing as he suffered from a speech impediment. An adjustment was made to hearing to give the Claimant additional time to produce a witness statement dealing with the issues that the Tribunal had to consider and written submissions after hearing the Respondent's submissions.

The Issues

- a. Was it reasonably practicable to present the claim form within the primary time period from the effective date of termination of the 8 January 2016 until the 7 April 2016?

- b. If it were not reasonably practicable did the Claimant present his claim within such further period as the Tribunal considers reasonable?

Findings of Fact

3. The Claimant was dismissed on the 8 January 2016 and he confirmed that he did not go through the appeal process because the personnel manager did not send the forms to him. He confirmed that he submitted his ET1 on line from the local Library. He was asked when he started to investigate putting the claim in and he was “not sure”. It was then put to the Claimant in cross examination that he presented his claim on the 29 September 2016 and did this narrow it down for him to identify when he started his research and he replied that he “did not look”; he just filled out the form and submitted it. The Claimant accepted in cross examination that he failed to read the guidance on how to complete the form and as a result of stating wrongly that his claim was exempt from ACAS conciliation (as a result of claiming interim relief), his claim was rejected. The Claimant said he did not read the Guidance to the ET1 because he was “rushing through it”. The Claimant confirmed that when he submitted the form in September he was feeling a lot better. He told the Tribunal that he was unable to present the ET1 before September because he was too depressed, having an issue with loans, he broke up with his girlfriend in May 2016 and had a health scare.
4. The Claimant stated that in September that he was not in his right mind and that is why he filled out the form incorrectly however this seemed to run counter to his evidence that he was feeling a lot better. The Tribunal find as a fact that the Claimant was able to provide a detailed and cogent account of his claim in the ET1 form, there was no consistent evidence of being impaired in any way.
5. The Claimant was taken in cross examination to the medical documents in the bundle, the first in time being an attendance at A&E on the 1 January 2017 with a severe headache (see page 123 of the bundle). The Claimant accepted that this was the first document referring to his medical condition and he added that he also telephone the emergency services about a heart condition (but no mention was made of this in his statement). The Claimant was then taken to a later document from his GP referring to a consultation that took place on the 3 January 2017 (2 days later at page 122 of the bundle); no mention was made in the report to headaches or to heart problems. The medical evidence appeared to be inconsistent. The Claimant explained that he had moved and wasn't under the care of a GP during 2016 which is why there was no GP records before that date, however the Tribunal find as a fact that there was no consistent evidence that he was suffering from a medical condition that prevented him from issuing an on-line form or from taking advice at the relevant time.
6. The Claimant confirmed in answer to cross examination that he was able to get to the job centre on two occasions, the first in January and the second visit was “two or three weeks later”. The Claimant did not seek advice from anyone about how to pursue a claim before the employment tribunal.

The Respondent's submissions

7. The tribunal took into account the written submissions and the further oral submissions were as follows:
8. The operation of time limits does not give to Tribunals a broad discretion, the Tribunal must make findings of facts about the first three months and the time thereafter. There is a high threshold that the Claimant has to satisfy. The picture that emerges was that the Claimant had a tough time in 2016, it was not a pleasant year but having said that pages 122-3 shows a curious inconsistency about severe headaches. What the GP is saying is that the Claimant reported recently with symptoms of low mood, this is not the level that would have prevented him from presenting his claim. If it was termed as clinical depression as an in-patient or an outpatient, it may be one thing, but the evidence we have got in 2016 was that he got through without attending a GP or Hospital.
9. My submission is in respect of the first three months that the Claimant went to a job centre twice and we know he communicated with relatives. I say that is not high enough to satisfy the burden on him.
10. The second limb of the test, I invite you to consider up to the 29 September 2016 when a completed claim form was submitted. He delayed for quite a long time. It is not that he suddenly became aware of the right to claim.
11. The three-month time limit is quite tight, and at the 29 September 2016 he submitted it without the ACAS details. The Claimant said he did not know what interim relief was and did not read the Guidance. He ticked the wrong exemption category. This caused further delay. It was not reasonable not to look at the Guidelines, causing a delay of a further two months.

The Claimant's Submissions

12. The Claimant produced a written response and was given extra time to prepare this from 11.35-12.00. The submission stated as follows:
13. "I had depression and was having therapy within the home and was communicating with relatives. Being that I was going through a hard few months by not being able to work, visa issues and not being funded at the correct time by the Job Centre, all these circumstances are a hindrance to any person mentally and socially. Being that I had a relationship breakdown which has put me at a further disadvantage to think clearly on this matter. Loans still unpaid and bills still that I have to pay. The best time I found fit to proceed with the case is on the date the application was fully met. I have two clinically depressed relatives who I live with and I don't see it as necessary to burden my issues on them".

The Law

Section 111 Employment Rights Act 1996

“(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”.

Cases Referred to by the Respondent

Sterling v United Learning Trust [2015] UKEAT 0439/14
Cranwell v Cullen [2015] UKEAT 0046/14
Tesco v Kayani UKEAT/0128/16
Porter v Bandridge 1978 ICR 943 CA

Decision

14. The operation of time limits under the Employment Rights Act are strict, claims can only be considered if they are presented within the time limit set down in section 111. That section makes it clear that a Tribunal shall not consider a claim unless it is presented within that three-month period. In this case the effective date of termination was the 8 January 2016 and the primary time limit expired on the 7 April 2016. A claim can only be accepted out of time if the Claimant can show that it was not reasonably practicable to present the claim in time.
15. I have considered the reasons the Claimant gave for not presenting his claim in time. He stated that he had suffered low mood and depression, but there was no evidence of a formal diagnosis of depression in the bundle. The evidence of low mood was corroborated to some extent by the GP's letter confirming that a consultation took place on the 3 January 2017 but there was no consistent medical evidence provided by the Claimant that at the relevant time in early 2016, he was prevented by ill health from submitting his claim. The tribunal concluded that had the Claimant suffered from a serious medical condition which required medical attention he would have presented himself at A&E as he did on the 1 January 2017. It was concluded therefore that there was no consistent evidence that the Claimant was prevented from issuing his ET1 on line in time due to ill health. This conclusion was corroborated by the evidence given by the Claimant that he was able to attend the job centre on two occasions in January (or early February) 2016.
16. The Claimant also referred to the breakup with his girlfriend as a reason why he could not present his claim in time, however it was noted that his evidence was that they split up in May 2016, after the primary time limit expired so this could not have been a reason for failing to present his claim in time.
17. The Claimant was asked in cross examination when he started to

investigate the right to pursue a claim in tribunal and he stated that he “didn’t look” and failed to seek any advice during the primary time period. He confirmed that he presented his claim “when he felt better” on the 29 September 2016, however the claim form was rejected. The Claimant accepted that he failed to read the Guidance that accompanied the form. It was concluded from this evidence that the Claimant failed to take all reasonable steps to seek advice and assistance to pursue this matter in good time. There was no evidence that he took steps to research the process that had to be followed and any time limits that may apply, during the primary time period.

18. The tribunal conclude from all the evidence that it was reasonably practicable for the Claimant to present his claim in time, by the 7 April 2016.
19. Although it is accepted that the Claimant was going through a difficult period, having lost his job and suffering from low mood as a consequence, this did not make it not reasonably practicable to present him claim in time.
20. Having concluded that it was reasonably practicable to present the claim in time it was not necessary to deal with the second limb of the test.
21. The Claimant’s claim was presented out of time and is dismissed.
22. Having dismissed the claim; the Tribunal did not go on to consider whether the claim should be struck out on the ground that it had no reasonable prospect of success.
23. The Claimant indicated that he wished to appeal; this was taken to be a request for written reasons.

Employment Judge **Sage**

Date: 1 March 2017