



EMPLOYMENT TRIBUNALS

Claimant: Mr V Gardner

Respondent: Homebase Care UK Ltd

Heard at: Birmingham **On:** 7 December 2017

Before: Employment Judge Findlay

Representation

Claimant: Mr Tsiotsias, lay representative

Respondent: Mr P Holmes, Consultant

JUDGMENT having been sent to the parties on 11 December 2017 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

1. The claimant made three claims; (constructive) unfair dismissal, holiday pay under the Working Time Regulations, and breach of contract/notice pay. Mr Tsiotsias clarified that the claimant does not intend to pursue a claim for redundancy pay.
2. The Issues : this hearing was listed, on 7 September 2017, to consider if the claims were made in time, and if not, whether time should be extended or the claim dismissed, and to give any further case management directions that may be required.
3. The Law: The relevant time limits are, respectively, in regulation 30(2) of the Working Time Regulations 1998, section 111(2) of the Employment Rights Act 1996, and regulation 7(c) of the Employment Tribunal (Extension of Jurisdiction) (England and Wales) Order 1994.
4. All parties agreed that the test is the same for all three claims, i.e. whether the claims were presented within the primary 3 month time limit (as extended by, for example, s111(2A)) and ,if not, whether it was (or was not) reasonably practicable for the complaint(s) to be presented before the end of the three-month time limit (as extended by the Early Conciliation regulations). If it was not reasonably practicable for a claim to be presented in that period, I should go on to consider within what further period it would be reasonable to expect the claimant to present the

- claim(s). If he has not presented them within that period, I have no jurisdiction to consider the claims.
5. Regarding the breach of contract and unfair dismissal claims, the primary time limit expired, at the latest, on 21 August 2017, whether the effective date of termination was the 8th or 9 May 2017. In other words, the claim was presented, in respect of those complaints, two weeks and one day late. Both parties agreed that the breach of contract and unfair dismissal claims were made outside the primary time limit.
 6. Regarding the holiday pay claim, it was agreed that the date when any outstanding holiday pay should have been paid, under regulation 14 of the 1998 Regulations, was the claimant's final pay date - 31 May 2017. Time runs, in relation to the holiday pay claim, from the claimant's final pay date after resignation, when compensation under regulation 14 should have been paid. The new limitation date for the holiday pay claim is therefore the 8 September 2017, and so that claim is in time – see regulations 14 and 30(2)(a) of the Working Time Regulations 1998. Mr Holmes conceded this point when I pointed it out to him.
 7. Submissions regarding unfair dismissal and breach of contract claims: Mr Tsiotsias chose not to call the claimant to give evidence, but made the following points:
 - 7.1 . It took the claimant, a "long time" to get legal advice;
 - 7.2 The claimant had been to the citizens advice bureau, and as a result, wrote to the respondent asking for a copy of his contract. The respondent did not reply;
 - 7.3 Mr Tsiotsias submitted that the claimant had misunderstood the situation and thought that he needed a copy of his contract to proceed with his claim (but, as I have said, did not call the claimant to give evidence about this);
 - 7.4 Mr Tsiotsias said that the claimant had difficulty following written communication and understanding the process required- but no evidence to that effect was produced, no particular documents or written communications were referred to, and from what his representative told me, Mr Gardner had the ability to seek evidence from no fewer than three sources -the citizens advice bureau, a legal advice centre and, now, the pro bono unit.
 - 7.5 Mr Tsiotsias said that the claimant had thought ACAS was dealing with his claims (again, no evidence of this was produced);
 - 7.6 I was told that the claimant realised or was told " about two weeks" before 5 September that he needed to make his claim as soon as possible. I was not given any reason for the claimant's subsequent delay in presenting his claim.
 8. Mr Holmes made written submissions which he supplemented orally. I have read the written submissions and case law referred to. He pointed out that the claimant contacted ACAS by 12 July and had a certificate by 21 July.
 9. Application of law to facts: looking at the points made by the claimant's representative in the round, and bearing in mind that the claimant has not been cross-examined and has not produced any documents, I am unable to find that it was not reasonably practicable for Mr Gardner to bring his claims of unfair dismissal and/or breach of contract in time.
 10. Mr Gardner has not suggested, or produced any evidence, that either the Citizens Advice Bureau or ACAS, misled him. He had plenty of

Case NO. 1302179.2017

opportunities to find out his rights, as he had contact, as I have said, with the citizens advice bureau, and later with a legal advice centre.

11. Eventually, ACAS even sent him a copy claim form, and it was part of his case that he knew he must submit his claim form “as soon as possible” . two weeks before he actually did so. The subsequent delay in submitting claim is unexplained.
12. I find it hard to believe, as a matter of common sense that neither ACAS, nor the citizens advice bureau told him that there was a time limit for bringing these claims (and indeed, in the case of the citizens advice bureau, how long it was) . He has produced no evidence that would satisfy me that he was misled, or to support a claim that any confusion he experienced was reasonable in the circumstances. I find that it would have been reasonably practicable for him to have presented both claims within the applicable time limit.
13. In any case, even if it could be said that it was not reasonably practicable for the claimant to claim in time, I find that the claimant did not make his claims for breach of contract and notice pay within a reasonable period once, on his own admission, he was aware of the time limit –or, at least, the need to submit the claim as soon as possible. A delay of two weeks (in the circumstances set out above) is not, in my view, reasonable. If he knew of the need to submit the claim urgently around two weeks before 5 September 2017, he may even have been in time had he acted promptly.
14. The claims for unfair dismissal and breach of contract were presented, as it was accepted before me, outside of the primary time limit, and were not presented within a further reasonable period, so that I do not have jurisdiction to consider them and they are dismissed.

Employment Judge Findlay
16 January 2018