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THE EMPLOYMENT TRIBUNALS

Claimant: Mr A Costa
Respondent: iXact Limited
Heard at: East London Hearing Centre
On: 26 April 2018
Before: Employment Judge Russell

Representation

Claimant: Did not attend and was not represented
Respondent: Ms Eleena Misra (Counsel)

JUDGMENT

1. The claim was presented out of time.
2. It was reasonably practicable to have presented it in time.
3. The Tribunal lacks jurisdiction to hear the claim.

REASONS

1. Today was listed as a preliminary hearing to decide whether the Tribunal has jurisdiction to hear the claim, specifically whether it was presented within time and, if not, whether an extension of time should be granted. The Claimant did not attend today's hearing and did not contact the Tribunal to ask for a postponement or explain his absence. The Tribunal waited until 10.30am but still the Claimant did not attend or contact the Tribunal. On reviewing the file, I found that the Notice of Hearing was sent to the Claimant on 12 March 2018. By email sent on 21 March 2018, the Claimant set out his grounds for opposing the Respondent's application to strike out his claim. I was satisfied that the Claimant was aware that the hearing was listed for today and the issues to be decided. In the circumstances, I decided to proceed with the hearing and take into account the Claimant's written representations when reaching my decision.

2. The Claimant was employed by the Respondent as a road sweeper from 1 February 2012 until the termination of his employment. The effective date of termination is the issue in this case and is the basis of the time argument.

3. What is not in dispute is that the Claimant attended a disciplinary hearing on 21 August 2017. He and his trade union representative left the meeting before the decision to dismiss was communicated to them. The Respondent relies upon a letter dated 22 August 2017 sent by Mr Goyal (the Operations Director) informing the Claimant that his employment had terminated. The Claimant's submissions assert that he did not receive the outcome letter at that time.

4. The Claimant's trade union representative informed the Respondent that he had not yet received the decision and a further letter was sent on 31 August 2017. The content of the letters on 22 and 31 August 2017 is the same; both inform the Claimant that he has been dismissed with the last day of service recorded as 21 August 2017. Both letters were addressed to 67 Richmond Road, London E8 3AA, the address given by the Claimant in these proceedings. The Respondent has however, produced no evidence to show proof of posting. In his email of 21 March 2018, he Claimant asserted that he had not received this letter until it was posted through his letterbox on 9 September 2017.

5. As the Claimant is absent today and as the time point could lead to his claim being struck out, I have taken the Claimant's case at its most favourable. In considering time, I have worked from the latest possible date for dismissal which I find occurred by 9 September 2017.

6. If dismissal occurred on 9 September 2017, the primary three month time limit would expire on 8 December 2017. The Claimant complied with the requirement to attempt early conciliation with ACAS. The conciliation period started on 14 November 2017, which is therefore "Date A" for the purposes of the relevant legislation. The conciliation period terminated on 24 November 2017, which is therefore "Date B" for the purposes of the relevant legislation.

7. Section 207B(3) of the Employment Rights Act 1996 provides that in working out when time expires, the period of time between Date A and Date B should be disregarded. If, however, the primary time limit would expire during the period starting with Date A and ending one month after Date B, then the time limit expires at the end of that period, see s.207B(4) ERA. The provisions apply sequentially and do not provide for alternative time limits, **Luton Borough Council v Haque** UKEAT/0180/17.

8. Applying those provisions to this case, the time limit for presenting the claim is extended by 11 days under s.207B(3) due to period of time spent in early conciliation. This extended date would be 19 December 2017. This extended date falls within the period 14 November 2017 and 24 December 2017 (starting with Date A and ending one month after Date B). The Tribunal claim form was in fact presented on 16 January 2018. It was therefore presented out of time.

9. Dealing with whether it was reasonably practicable for the Claimant to have presented his claim in time, I had regard to the claim form in which he

asserts that employment terminated on 21 October 2017. It is not clear to me where this date arises from as it is not relied upon in the Claimant's email dated 21 March 2018. The Claimant did unsuccessfully appeal against his dismissal but the claim form appears to give 13 October 2017 as the date of the decision. In any event, it is settled law that the exercise of an appeal does not affect the date of termination. An extension of time in an unfair dismissal claim is available only where the Tribunal is satisfied that it was not reasonably practicable for the claim to have been presented in time and it has been presented within a reasonable time thereafter. The existence of an internal appeal alone does not render it not reasonably practicable to present a claim in time. Here, the Claimant appears to have had the benefit of a trade union representative and there is no evidence of any other factor which meant it was not reasonably practicable to have presented a complaint in time.

10. In conclusion, the claim was presented out of time. I have declined to extend time. The Tribunal is deprived of jurisdiction and the claim is struck out in its entirety.

11. *Post scriptum.* The hearing concluded at 10.50am after the Judgment and Reasons above were given orally. I was informed by my clerk at 10.55am that the Claimant had just arrived at the Tribunal offices. I enquired as to whether Ms Misra and the Respondent were still in the building. They were not. On my direction, the clerk informed the Claimant that the hearing had concluded and Judgment been given but that he can write to request a reconsideration. If the Claimant chooses to do so, he must apply in writing within 14 days of the date on which this Judgment is sent to the parties. The application must set out a full explanation of his failure to attend at the time listed and of his failure to contact the Tribunal to advise them of any delay. Any evidence relied upon in support (for example train tickets or details of traffic jams) must be provided to the Tribunal at the same time. The application and supporting evidence must be copied to the Respondent who will then have an opportunity to comment.

Employment Judge Russell

23 May 2018