



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr N Duha

v

Rowlands Pharmacy

Heard at: Cambridge

On: 3 January 2018

Before: Employment Judge GP Sigsworth

Appearances

For the Claimant: In Person

For the Respondent: Mr Z Hussein, Consultant

JUDGMENT

1. The judgment of the Tribunal is that the claim is struck out as it is brought out of time and the Tribunal has no jurisdiction to hear and determine it.

REASONS

1. The case was listed for hearing today to determine the Respondent's application to strike the claim out as it has been brought out of time. At the hearing today, the Tribunal heard oral evidence from the Claimant on oath. The Claimant had very little documentation with him, and no witness statement. He had brought with him originals of medical evidence, some three documents in total. On his mobile phone he had an email from his solicitor of 27 July 2017 which he was able to show the Tribunal and Mr Hussein. Copies were made of his documents.

Findings of Fact

2. The essential facts for the purposes of today's hearing are these:

- 2.1 The Claimant was dismissed on 24 February 2017. The primary limitation period therefore expired on 23 May 2017. The Claimant contacted ACAS and obtained an early conciliation certificate on 28 July 2017. He presented his ET1/claim form to the Tribunal on 16 August 2017. The Claimant was therefore two months beyond the primary limitation date before he contacted ACAS.

- 2.2 The Claimant researched Employment Tribunals during the disciplinary process on the telephone and on the internet. However, he does not seem to have found or looked at the Tribunal's website. Immediately after the dismissal, he sought legal advice and had a telephone conversation with DAS Legal Service (funded under his household insurance). He was told about the Tribunal process and that there was a time limit of three months to bring proceedings. However, he was told to concentrate on the appeal and go back to his solicitor after that had concluded, if necessary. The Claimant believed that he would be successful in the appeal process, and he believes that he has a strong case supported by colleagues. He said that he forgot about the time limit advice. He knew that he had a limited period of time to bring a claim, but he could not remember what it was.
- 2.3 The Claimant told the Tribunal that he had suffered from depression for some period of time, and was in a severely depressed state after he was dismissed. He has been on the highest dosage of sertraline, an anti-depressant, for some time now, pre-dating his dismissal. The doctor's undated letter (apparently December 2017) confirms that the Claimant has depression and that he is taking the maximum dosage of sertraline (200mg daily). The nature of the Claimant's depression is such that it fluctuates, and at times when he is severely depressed he struggles to leave his bedroom/house. The Claimant ruptured his left Achilles tendon on 15 March 2017, and told the Tribunal that he was immobile for about 12 weeks. Once he was mobile again, he was able to find some self-employed part-time locum pharmacy work. He is a qualified pharmacist. However, during the period before this he was depressed. He is the main bread winner for his wife and family, with a re-mortgaged house, and he had no income in the months following his dismissal.
- 2.4 The Claimant's evidence was that in July he re-focused on the tribunal proceedings and spoke to his solicitor on the telephone on 27 July. The email message confirms that he was warned that he was now well out of time for bringing proceedings, and that he should get an ACAS certificate immediately and start proceedings and take it from there. Thus, the Claimant went to ACAS on 28 July and was told by them that he had missed the deadline, and they gave him a certificate immediately. The Claimant hoped that he would get some assistance in filling in the claim form from his solicitor, although in the end he did it himself and presented it to the Tribunal on 16 August. It is a short typed statement of what occurred, on some two thirds of a side of A4 paper.

The Law

3. Section 111(2) of Employment Rights Act 1996 provides:

(2)an employment tribunal shall not consider a complaint under this section [for unfair dismissal] 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 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.
4. The test for reasonable practicability is what is reasonably feasible in the light of all the circumstances – see Palmer v Southend on Sea Borough Council [1984] ICR 372, CA. The Claimant relies on ignorance of the time limits, based on his forgetting what his solicitor advised him. The question is whether that ignorance was reasonable. Where the Claimant is generally aware of his rights, ignorance of time lengths will rarely be acceptable as a reason for delay. This is because the Claimant has been put on notice to inquire as to time limits and generally about how to enforce those rights. See Dedman v British Building and Engineering Appliances Ltd [1973] 1WLR 171, CA; Trevelyan's (Birmingham) Ltd v Norton [1991] ICR 488 EAT. Debilitating illness may prevent a Claimant from submitting a claim in time. However, this is only a valid reason for extending time if supported by medical evidence, particularly if the Claimant has taken legal advice and was aware of the time limit. See Midland Bank Plc v Samuels (1992) EAT 672/92.

Conclusions

5. Having regard to the relevant facts, applying the appropriate law, and taking into account the submissions of the parties, I have reached the following conclusions:
- 5.1 Although there is scant medical evidence in support, I accept the Claimant's oral evidence that he was incapacitated by reason of severe depression and his mobility difficulties for a period of time between his dismissal and about mid-June 2017. Giving the Claimant the benefit of the doubt, I conclude that this meant it was not reasonably practicable or feasible for him to present his claim until about June 2017 when he was able to obtain part-time work. I take his return to work as an indication of an improvement in his mental health and, of course, his physical mobility. I accept that he genuinely forgot the advice about time limits from his solicitor, and that he was not in a fit state before June to research his claim, either on the internet or through ACAS, or through legal advice.
 - 5.2 However, what has not been satisfactorily explained by the Claimant is why, when he was able to get back to work in June, and therefore was not mentally and physically impaired, he did not immediately go back to his solicitor concerning the Tribunal proceedings and/or research his position on the Tribunal website and thus remind himself of the precise time limits. He has not given a good reason why he did not go back to

his solicitor until 27 July. He is an intelligent and well educated person. His ignorance of time limits in the period of six weeks or so between mid-June and late July is not, in the circumstances, reasonable.

- 5.3 If I am wrong about that, I have to consider the position after he received his ACAS early conciliation certificate on 28 July. At that date, there was nothing to stop him putting in a claim within a day or two. He must have realised by now the urgency of the situation, having been advised by ACAS and his solicitor that he was already out of time. Inexplicably, he waited until 16 August, some 19 days later, before he put his claim in. He wanted his solicitor to assist him with the claim form, but he was able to and did complete it himself and he did it very shortly and briefly.
- 5.4 I cannot take the merits of the Claimant's case into consideration, although it may be that he has a strong case on the merits against the Respondent. However, I have not heard any evidence about this. Further, the focus today is on the time limit issue.
- 5.5 The time limit in unfair dismissal claims is a strict one, even if I give the legislation a liberal construction in favour of the employee, as far as I can. (See Dedman). It is for the Claimant to prove that the presentation of the claim in time and before 16 August was not reasonably feasible. I accept his arguments and evidence to mid-June. However, he has not established why he could not have presented the claim form in the period thereafter, in the time up until 16 August. Presenting the claim on 16 August was thus not within such further period as I consider reasonable. He should have presented it in June when he was able to seek and obtain work again. If not then, he should have started his proceedings in late July at the latest, immediately after his visit to ACAS.
- 5.6 Thus, the claim is brought out of time and the Tribunal has no jurisdiction to hear and determine it. I therefore strike it out.

Employment Judge

Date: ...22/01/2018

Sent to the parties on: .07/02/2018

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For the Tribunal Office