



EMPLOYMENT TRIBUNALS

Claimant: Mr D Byam

Respondent: William Hill Organisation Limited

Heard at: London Central

On: 29 March 2019

Before Judge: Mrs A Isaacson

Representation

Claimant: In person

Respondent: Ms K Hosking, Counsel

JUDGMENT

The Judgment of the Tribunal is as follows:

The claimant's claims for unfair dismissal and race discrimination are struck out for being presented out of time.

REASONS

The law

1. The time limit for presenting a claim for unfair dismissal is 3 months from the effective date of termination ("EDT") as set out in section 111(1) Employment Rights Act 1996 ("ERA"). The Tribunal is able to consider complaints presented out of time only if it is satisfied (1) that it was not reasonably practicable for a complaint to be presented before the end of the relevant 3 months period, and (2) if so, that it was presented within such further period as it considers reasonable. The burden lies on the claimant at both stages of the test.

2. It is a question of fact in each case whether it was reasonably practicable to present a claim in time. There may be various relevant factors including the claimant's knowledge of the facts giving rise to their claim and their knowledge of their rights to claim and the enforcement of those rights.
3. Mere ignorance of the time limit for bringing a claim for unfair dismissal does not of itself amount to reasonable impracticability, especially where the employee is aware of their right to bring a claim. The question is, was the claimant's ignorance reasonable?
4. Where an employee has knowledge of their right to claim unfair dismissal there is an obligation on them to seek information or advice about enforcement of those rights.
5. If a solicitor is at fault the Tribunal will usually consider that it was reasonably practicable for the claim to have been presented in time.
6. A claimant's illness maybe relevant to the question of reasonable practicability and a Tribunal is prepared to exercise leniency in such situations but the Tribunal still needs to decide whether it was reasonably practicable for the claimant to have presented his claim in time.
7. The existence of an ongoing internal appeal is not by itself sufficient to justify a finding of fact that it was not reasonably practicable to present a complaint in time to the Tribunal.
8. Section 123 of the Equality Act 2010 ("EqA") provides that a claim may not be brought after the end of 3 months starting with the date of the act to which the complaint relates, or such other period as the Employment Tribunal thinks just and equitable.
9. The Tribunal has wide discretion in determining whether or not it is just and equitable to extend time and it is a wider discretion then for unfair dismissal. It should consider everything that it thinks is relevant. However, time limits should be strictly applied and the exercise of the discretion is the exception rather than the rule. There is no presumption that the Tribunal should exercise its discretion.
10. The Tribunal is not legally required to but may consider the check list set out in section 33 of the Limitation Act 1980 in considering whether to exercise its discretion:
 - a) the length and reason for the delay;
 - b) the extent to which the cogency of the evidence is likely to be affected by the delay;
 - c) the extent to which the party sued had cooperated with any requests for information;
 - d) the promptness which the claimant acted once he knew 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.

11. The Tribunal will consider whether a fair trial is still possible and the prejudice to the respondent.

Findings of fact

12. The claimant's employment was terminated on the 27 June 2018. The claimant appealed his dismissal and his appeal hearing was heard on the 29 August 2018 and he was told that his appeal was unsuccessful by letter dated 13 September 2018.
13. The claimant contacted ACAS on the 18 September 2018. In that conversation he was advised that there were strict time limits for presenting a claim to the Tribunal and that the time limit was frozen for one month after the end of the conciliation period. The claimant didn't hear from ACAS and chased them about three weeks later and was told that their systems had been down. On the 18 October 2018 he received a call with an offer which he rejected. The ACAS officer said she would call him back but instead he received a copy of the ACAS certificate which stated the date of receipt as the 18 September 2018 and date of issue as being the 18 October 2018.
14. The Tribunal accepts the claimant's evidence that at this stage he didn't realise that the conciliation period was over. He called ACAS again on the 30 October 2018. He was then told that the conciliation period had ended on the 18 October 2018 as he had rejected the respondent's offer at that time. He asked for the ACAS certificate to be resent. He hoped new dates would be shown on the certificate but he received a copy with the same dates.
15. The Tribunal finds that by the 30 October 2018 and certainly by the time the claimant received his second copy of the ACAS certificate, around the beginning of November 2018, that he knew that he needed to present his claim by 18 November 2018. He therefore had over two weeks to present his claim.
16. The claimant came across as a very efficient capable person. He had a record of all the conversations and steps he had taken. He was fully informed of the deadline for bringing a claim and the one month ACAS extension. Although the claimant was occupied with applying for jobs and was suffering from anxiety at the time he was clearly capable of making an application on line and in time.

In conclusion

17. The Tribunal finds that the claimant presented his claim out of time. His claim form should have been presented by the 18 November 2018 and was only presented on 26 November 2018.
18. It was reasonably practicable for the claimant to present his claim in time. The claimant knew of his right to bring a claim and how to bring a claim before the deadline. He had been told by ACAS about the one month extension. Although he may have initially thought that conciliation had only ended on the 30 October 2018, once he had spoken to ACAS on the 30

October 2018 it was made clear to him that the conciliation period had ended on the 18 October 2018 and this was confirmed when he received the second copy of the ACAS certificate.

19. Although the claimant was busy making job applications and was suffering from anxiety, he was capable of applying for jobs and making an application to the Tribunal. The claimant had time to present his claim form by 18 November 2018.
20. Therefore, the Tribunal finds it was reasonably practicable for the claimant to have presented his claim in time.
21. The Tribunal does not find it would be just and equitable to exercise its discretion to extend time in these circumstances. The time limits are strictly enforced to ensure certainty. The claimant was able and should have presented his claim form in time. The delay could and should have been avoided.
22. Therefore, the Tribunal finds that all the claimant's claims should be struck out for being presented out of time.

Employment Judge A Isaacson

Date 29 March 2019

JUDGMENT & REASONS SENT TO THE PARTIES ON

4 April 2019

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FOR THE TRIBUNAL OFFICE