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EMPLOYMENT TRIBUNALS

Claimant: Mr J Dutson
Respondent: Total Security Services Limited
Heard at: East London Hearing Centre
On: Thursday 5 September 2019
Before: Employment Judge Ross (sitting alone)

Representation

Claimant: Neither present nor represented
Respondent: Ms P Hall (Consultant)

JUDGMENT

The judgment of the Employment Tribunal is that:-

1. The Employment Tribunal has no jurisdiction to consider the complaint of unfair dismissal.
2. The claim is struck out.

REASONS

Background

1 It was common ground that the Claimant commenced work for the Respondent as a security officer on 17 February 2016. This claim was presented on the 19 March 2019 without an early conciliation certificate number, no early conciliation process having been undertaken at that point by the Claimant. The claim was then rejected by letter dated 27 March 2019 from the Tribunal. This letter included: “**You need an early conciliation certificate to pursue your claim**”.

2 After a period of early conciliation between 25 March 2019 and 29 March 2019

(evidenced by an ACAS certificate on the Tribunal file), the Claimant presented his claim again on the 1 May 2019 with an early conciliation certificate number. The claim was accepted. When the claim was reviewed by Employment Judge Gilbert, she believed that the claim was presented out of time. The date that the employment ended was pleaded as 4 January 2019, see the ET1 part 5 (although the Respondent's case is that the Claimant was never dismissed).

3 Although standard case management orders were made, the claim was listed for a final hearing on the 5 September 2019. In fact, this appears to have been unintended by Employment Judge Gilbert. On 26 August 2019, Employment Judge McClaren noticed this and converted the hearing today to a Preliminary Hearing for the Respondent's application to strike out to be considered, and for the Tribunal to consider whether the claim was presented in time.

4 Further, on the 3 July 2019, the Respondent applied to strike out the claim under rule 37 (1)(B) and rule 37(1)(C). The grounds for the striking out was set out. A renewed application to strike out was made on the 26 July 2019 on the same grounds. By that point, the Claimant had not complied with any of the case management orders and that application was listed for 5 September 2019.

5 On the 4 September 2019, the Claimant's son contacted the Respondent's representatives and the Employment Tribunal. His conduct during those calls may well have formed part of any strike out application under rule 37 (1)(b) of the Rules of Procedure.

The Hearing Today

6 The Claimant failed to attend and was not represented. On checking the file and the Tribunal emails, there was no application to postpone by the Claimant. At 10:15am the clerk attempted to call both telephone numbers held on file for the Claimant, but both calls went through to a messaging service.

7 On considering the file, I noted that the Claimant's son had stated on 4 September 2019 that the Claimant had requested that his case be transferred to Cardiff because they were living in Wales. There was no such request on file and the Respondent did not know of one. Also, from the file, I took into account a letter received from the Claimant dated 12 July 2019, which stated:

"At the moment, on employment support allowance due to my ill health. Mainly I have fatigue of the spine and poor blood circulation throughout my body, so I am unable to travel very "much" these days".

However, in that letter the Claimant provided no medical evidence to explain why he could not attend this Employment Tribunal at all nor why he could not attend this hearing on 5 September 2019. The letter does not on its face appear to be sent as an application for a postponement.

8 In these circumstances, I decided that it would further the overriding objective for the preliminary hearing to proceed today. The parties had had an equal chance to attend

and a Preliminary Hearing was necessary to decide the issue of jurisdiction; and to continue with this Preliminary Hearing was a proportionate step in the circumstances where there had been no application to postpone nor an explanation for the Claimant's absence today. This would also save the Respondent costs and save the resources of the Tribunal.

The Claim

9 From my reading of the ET1, it contains a single complaint of unfair dismissal. It does not allege disability discrimination (which the ET3 refers to). Furthermore, I have found that the claim does not allege unlawful deduction of wages. The box for arrears of pay in part 8.1 of the ET1 is not ticked. On this issue, the narrative at 8.2 states only:

"...they are a very false company. Especially when it comes to paying their security guards their proper wages for the hours they do."

This is not an allegation that the Claimant had not been paid his full wages; rather, it reads as an example as to why the Respondent is a "*false company*", not as a complaint from the Claimant that he had suffered an unlawful deduction from wages. In any event, if I am wrong in my analysis of the claim from, the ET1 does not specify any dates when it is alleged that the Claimant was not paid his full wages.

The Issues and Law

10 From the issues identified in the letter of 26 August 2019, I decided to first deal with the issue of jurisdiction in respect of the unfair dismissal complaint. If there was no jurisdiction to hear the complaint, there was no need to deal with the strike out application.

11 I directed myself to section 111 and section 207A of the Employment Rights Act 1996 which I do not need to repeat.

Decision

12 Applying section 111 (2)(A) and the extension of time provisions in section 207A of the Employment Rights Act 1996, I concluded as follows taking the date of termination of employment to be 4 January 2019 as pleaded by the Claimant:

- 12.1. Date A, the date of the referral to ACAS, was 25 March 2019.
- 12.2. Date B was 29 March 2019, the date that early conciliation ended.
- 12.3. The limitation date for presenting the claim was therefore 29 April 2019.
- 12.4. The claim was presented on 1 May 2019, which was two days outside the 3 month limitation period set out in section 111 ERA 1996.

13. The Claimant has filed no evidence to explain why it was not reasonably

practicable to present the claim in time. His ET1 does not explain why it was not presented in time. Moreover, the Claimant was told what was necessary when his claim was returned to him by the Employment Tribunal on 27 March 2019. There was no explanation from him, nor any evidence, to explain why it was not reasonably practicable for him to complete early conciliation, obtain a certificate, and present his claim in time.

14. Therefore, I find that it was reasonably practicable for the Claimant to present this claim before the end of the limitation period of 3 months ending on 29 April 2019.

Conclusion

15. The Employment Tribunal has no jurisdiction to consider the complaint of unfair dismissal. The claim is struck out.

Employment Judge Ross

16 September 2019