



THE EMPLOYMENT TRIBUNALS

Claimant: Mr P Hollocks
Respondent: Industrial Water Jetting Systems Limited
Heard at: Bury St Edmunds
On: 25 July 2019
Before: Employment Judge M Warren

Representation

Claimant: In person
Respondent: Did not attend

OPEN PRELIMINARY HEARING SUMMARY

JUDGMENT

1. It was not reasonably practicable for the Claimant's claim to have been issued in time and it was issued within such further time as is reasonable.
2. It is just and equitable to extend time in respect of the claim of disability discrimination.

REASONS

Background

1. By a claim form dated 6 March 2019, Mr Hollocks seeks to bring claims of unfair dismissal and disability discrimination. The claims are resisted and the Respondent correctly objects that they are out of time. At my direction, today's preliminary hearing was converted to an Open hearing so that the tribunal may consider whether the claims should be struck out for having been issued out of time.

Are the claims out of time?

2. The events about which Mr Hollocks complains span March 2018 to his dismissal on 31 August 2018. Early conciliation was between 8 November and 22 December 2018, a period of 44 days. The primary limitation period of 3 months expired on 30 November. An additional 44 days takes that to 5 January 2019. Because the early conciliation certificate was issued within a month of the limitation period expiring, one adds a further month, taking the final date to 5 February 2019. These proceedings were therefore issued a month and a day out of time.

Should time be extended?

Law

3. The law is different depending on whether one is considering the unfair dismissal claim or the discrimination claim. The test in respect of the unfair dismissal claim is whether it was reasonably practical to have issued in time and if it was not, whether the claim was thereafter issued within such further period as the tribunal considers reasonable, (s111(2) of the Employment Rights Act 1996). The test in respect of the discrimination claim is whether it is just and equitable to extend time, (s123(1) of the Equality Act 2010).
4. The question of whether it was reasonably practicable to bring a claim in time is a question of fact for the Tribunal. The onus is on the Claimant to show that it was not reasonably practicable, (Porter v Bandridge Ltd [1978] ICR 943 CA).
5. The expression, “reasonably practicable” means, “reasonably feasible” see Palmer v Southend Borough Council 1984 IRLR 119 CA.
6. When considering whether it is just and equitable to hear a claim notwithstanding that it has not been brought within the requisite three month time period, the EAT has said in the case of Cohan v Derby Law Centre [2004] IRLR 685 that a Tribunal should have regard to the Limitation Act checklist as modified in the case of British Coal Corporation v Keeble [1997] IRLR 336 which is as follows:
 - (1) The Tribunal should have regard to the prejudice to each party.
 - (2) The Tribunal should have regard to all the circumstances of the case which would include:
 - (a) Length and reason for any delay
 - (b) The extent to which cogency of evidence is likely to be affected
 - (c) The cooperation of the Respondent in the provision of information requested

- (d) The promptness with which the Claimant acted once he knew of facts giving rise to the cause of action
 - (e) Steps taken by the Claimant to obtain advice once he knew of the possibility of taking action.
7. In Abertawe Bro Morgannwg University Local Health Board v Morgan [2018] EWCA Civ 640 the Court of Appeal clarified that there was no requirement to apply this or any other check list under the wide discretion afforded tribunals by s123(1), but that it was often useful to do so. The only requirement is not to leave a significant factor out of account, (paragraph 18). Further, there is no requirement that the tribunal must be satisfied that there was a good reason for any delay; the absence of a reason or the nature of the reason are factors to take into account, (paragraph 25).
8. In the case of Robertson v Bexley Community Services [2003] IRLR 434 the Court of Appeal stated that time limits are exercised strictly in Employment Law and there is no presumption, when exercising discretion on the just and equitable question, that time should be extended. Nevertheless, this is a matter which is in the Tribunal's discretion.
9. That has to be tempered with the comments of the Court of Appeal in Chief Constable of Lincolnshire v Caston [2010] IRLR 327 where it was observed that although Lord Justice Auld in Robertson had noted that time limits are to be enforced strictly, his judgment had also emphasised the wide discretion afforded to Employment Tribunals. Lord Justice Sedley had noted that in certain fields such as the lodging of notices of appeal in the EAT, policy has led to a consistently sparing use of the power to extend time limits. However, this has not happened and ought not to happen in relation to the discretion to extend time in which to bring Tribunal proceedings which had remained a question of fact and judgment for the individual Tribunals.

Discussion and conclusions

10. Mr Hollocks has lymphadenopathy. The worry of this and the constant pain has placed an enormous strain on his mental health. The medication which he takes makes him tired and drowsy.
11. After his dismissal, Mr Hollocks has been extremely unfortunate in having sustained injuries in 2 cycling accidents. In the first at the end of October 2018, he sustained a broken cheek bone and haemorrhaged eye socket. In the second on 9 December 2018, his injuries were a broken nose, , broken ribs, broken finger and a facial injury requiring 18 stiches.
12. The combination of the effects of his lymphadenopathy and the 2 accidents have been that he has been unable concentrate and do as he puts it, almost anything. It is these things that have prevented him from putting in a claim earlier.

13. Considering the discrimination claim first, the prejudice to the Respondent if I extend time is that it will have the expense and inconvenience of defending a claim which has been brought outside the time limit parliament has seen fit to impose on such cases. The greater prejudice is to Mr Hollocks, who will be deprived of the opportunity to present his case and seek justice for wrongs he says have been done to him.
14. Mr Hollocks is one month and one day out of time and the reason for the delay is the effects of his medical condition, his medication and his great misfortune in being involved in 2 accidents within a short space of time. With such a short delay, cogency of evidence is unlikely to be affected. There is no suggestion of any lack of cooperation on the part of the Respondent. Mr Hollocks has not acted promptly, for the reasons explained and he has not sought advice.
15. Weighing these matters in the balance, but having particular regard to the balance of prejudice, I decided that it was just and equitable to extend time and the discrimination claim will therefore be allowed to proceed.
16. The, "reasonably practicable" test for the unfair dismissal claim is more strict. Was it reasonably feasible for Mr Horrocks to have issued his unfair dismissal claim in time? I accept his evidence that the combination of his lymphadenopathy, the medication he was taking, the impact of his 2 cycling accidents were such that he was not capable of doing almost anything and that he was not capable of putting in to the tribunal his claim that he was unfairly dismissed. His claim of unfair dismissal will also be allowed to proceed.
17. This Judgment must be posted on the public register on the internet. My analysis of the issues in the case and my case management orders need not be and I will therefore set them out in a separate document.

Dated: 26/07/2019

Employment Judge M Warren

ORDERS SENT TO THE PARTIES ON

04/08/2019

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FOR THE TRIBUNAL OFFICE