



Case Number: 3331013/2018

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EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Mr T Jeyasundra

and

Respondent

London Sovereign Limited

Held at Bury St Edmunds on 20 January 2020

Representation

Claimant:

In Person, with an Interpreter in
the Tamil Language

Respondent:

Mr A Craven, Solicitor

Employment Judge Kurrein

JUDGMENT

- 1 The Claimant's claims are struck out because the Employment Tribunal has no jurisdiction to hear them.

REASONS

- 1 This hearing concerns the second claim brought by the Claimant following the termination of his employment for alleged gross misconduct on 8 August 2017. I refer to it as 'this claim', and refer to the earlier claim as 'the first claim'.
- 2 The first claim, in case number 332788/2017, was struck out at an Open Preliminary Hearing ('OPH') on 26 June 2018 because the Early Conciliation Certificate and ET1 identified one of the Respondent's Managers as the Respondent.
- 3 This Judgment should be read in light of the Judgment of EJ Palmer in the first case, particularly as I consider myself bound by the findings of fact made by her.
- 4 This case has come before me at an OPH to hear the Respondent's application to strike out this claim because it is out of time and there is no jurisdiction to hear it.
- 5 I have heard the evidence of the Claimant on his own behalf and read and heard the submission of the parties. I have read the case files and the documents to which I was referred. I make the following findings of fact.
 - 5.1 The Claimant was born on 16 December 1979 and started his employment with the Respondent as a bus driver on 29 October 2007. He signed a contract at that time that correctly identified this Respondent as his employer.

- 5.2 On 6 June 2017 the Claimant was allegedly involved in two incidents of potential gross misconduct. He was interviewed and later suspended on 19 June 2017.
- 5.3 He was then signed off sick so that his disciplinary hearing did not take place until 8 August 2017, immediately after which he was summarily dismissed. That outcome was upheld following an appeal hearing on 21 August 2017.
- 5.4 Thereafter, the Claimant:-
- 5.4.1 Was given free advice by the CAB
- 5.4.2 Learned of the relevant time limits from ACAS
- 5.4.3 Found out himself of the need to start Early Conciliation ('EC') and did so on 29 August 2017
- 5.4.4 Paid a Solicitor to draft the first claim
- 5.4.5 Presented the ET1 for the first claim on 18 September 2017.
- 5.5 Mr Clapson, the Respondent's Manager named as the Respondent in the first claim, presented a Response on 2 November 2017. He took the point that he was not the correct Respondent and there was no EC regarding the correct Respondent.
- 5.6 On 11 November 2017, having been advised by ACAS, the Claimant sought to amend the name of the Respondent. That was held in abeyance pending a decision as to whether there was a valid claim.
- 5.7 On 23 January 2018 EJ Heal gave directions for the OPH to determine the issue of whether there was a valid claim.
- 5.8 The Claimant was aware from no later than this time, and probably from November 2017 when he sought to amend, that he was at risk of having the first claim struck out. He sought advice from ACAS, the CAB and his solicitor, but could not afford to pay anyone.
- 5.9 The preliminary issue was determined against the Claimant on 26 June 2018.
- 5.10 In the interim, on 24 April 2018, the Claimant started new employment in which he earned more than with the Respondent.
- 5.11 The Claimant started EC again on 28 June 2018, which ended the next day, and presented this claim, which is in identical terms to the first claim, on 1 July 2018.
- 5.12 The Respondent's Response was presented on 15 August 2018 and took out of time points, and others.
- 5.13 On 26 July 2019 EJ Heal directed an OPH to determine the out of time issues.
- 6 I accept that the Claimant has a number of long-standing medical complaints. Some of these are sinus-related. He has also had lower back pain. He has always had a Central Auditory Processing Disorder, which affects his memory,

thought processes and his ability to hear clearly. It has caused gaps in his learning. He was suffering from acute anxiety following his suspension, and was clearly anxious before me.

Unfair Dismissal

7 The provisions of S.111 Employment Riughts Act apply:-

111 Complaints to employment tribunal

(1) A complaint may be presented to an employment tribunal against an employer by any person that he was unfairly dismissed by the employer.

(2) Subject to subsection (3), an employment tribunal shall not consider a complaint under this section 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 as 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.

8 I have had regard to the following guiding principles:-

Wall's Meat Co Ltd v Khan [1978] IRLR 499, Lord Denning, quoting himself in Dedman,

'It is simply to ask this question: Had the man just cause or excuse for not presenting his complaint within the prescribed time?

Palmer and Saunders v Southend-on-Sea Borough Council [1984] IRLR 119, the matters to be considered include:-

The substantial cause of the claimant's failure to comply with the time limit;

Whether there was any physical impediment preventing compliance, such as illness, or a postal strike;

Whether, and if so when, the claimant knew of his rights;

Whether the employer had misrepresented any relevant matter to the employee;

Whether the claimant had been advised by anyone, and the nature of any advice given; and whether there was any substantial fault on the part of the claimant or his adviser which led to the failure to present the complaint in time.

9 The Claimant's claims all relate to conduct that occurred on or before 8 August 2017. He should have started EC against this Respondent no later than 7 November 2017. He in fact did so on 28 June 2018, over seven months late.

10 I accept that he made a mistake in naming the Respondent in the first case, but there is no evidence that it is attributable to any of his conditions. The Respondent was named in his contract and it should have been obvious to both him and those who assisted or advised him, at the very least, that it was not Mr Clapson.

11 The very fact that he did present his first claim in time is, in my view, direct evidence that it was reasonably practicable for him to have done so against the correct Respondent at that time. He knew of his rights and had been advised

of the time limits. This was not a case where the Respondent had tried to cloak its identity.

- 12 In my view the delay by the Claimant in re-starting EC naming the correct Respondent from early November 2017 until late June 2018 is simply too great to be 'reasonable'. He sought and received advice, although he has not detailed it, and I can see no reasonable ground for him to have delayed until after the first claim was struck out to try and remedy his mistake.
- 13 I therefore find that the Claimant has not established, on the balance of probabilities, that it was not reasonably practicable for him to present this claim in time, far less that he did so within a reasonable time of the time expiring.

Disability Discrimination

- 14 The relevant time period is set out in S.123 Equality Act 2010

123 Time limits

(1) Subject to [[sections 140A and 140B]] proceedings on a complaint within section 120 may not be brought after the end of—

(a) the period of 3 months starting with the date of the act to which the complaint relates, or

(b) such other period as the employment tribunal thinks just and equitable.

(2)

(3) For the purposes of this section—

(a) conduct extending over a period is to be treated as done at the end of the period;

(b) failure to do something is to be treated as occurring when the person in question decided on it.

(4)

- 15 I was referred, or referred myself, to the following principle decisions:-

Robertson v Bexley Community Centre [2003] IRLR 434

Palmer and Saunders v Southend-on-Sea Borough Council [1984] IRLR 119

British Coal Corp v Keeble [1997] IRLR 336

Chohan v Derby Law Centre [2004] IRLR 685

Virdi v Comr of Police of the Metropolis [2007] IRLR 24

- 16 I repeat my above findings in respect of the relevant dates. These claims are clearly out of time unless the Claimant establishes on the balance of probabilities, that it would be just and equitable to extend time in his favour.
- 17 In applying the just and equitable test I have to have regard to all the circumstances of the case. The decision in *Keeble* assists me in setting out the following matters as worthy of particular consideration. I deal with each in turn

The length of and reasons for the delay

18 The length of the delay, more than seven months, is considerable. In my view no satisfactory explanation has been given for it.

The extent to which the cogency of the evidence is likely to be affected by the delay

19 This is inevitably a problem whenever there is delay. The events set out in the Claim and the documents date back to at least 2015. There is a substantial risk that memories will have faded or be less confident. The Respondent will be prejudiced.

The extent to which the party sued had cooperated with any requests for information

20 No issue arises under this head.

The promptness with which the plaintiff acted once he or she knew of the facts giving rise to the cause of action

21 The Claimant did not act promptly. I make the same points as above.

The steps taken by the plaintiff to obtain appropriate professional advice once he or she knew of the possibility of taking action

22 The Claimant is not at fault here: he sought advice and obtained all the advice and information he needed. There is no evidence on which I can find that any of those who advised or assisted him were at fault.

23 I accept that the decision in *Robinson* does not create a rule, it is no more than guidance. However, it is equally clear that the granting of an extension of time is a discretion that must be exercised judicially, and the onus is on the Claimant to establish that it would be just and equitable to do so. He has failed to discharge that burden.

24 In light of all my above findings I have concluded, in all the circumstances of the case, that it would not be just and equitable to extend the Claimant's time to present his case so as to confer jurisdiction on the Tribunal.

25 The Tribunal has no jurisdiction to hear this claim and it must be struck out as having no reasonable prospect of success.

Employment Judge Kurrein

20 January 2020

Sent to the parties and
entered in the Register on

: :
27/01/2020

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For the Tribunal

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