



EMPLOYMENT TRIBUNALS

Claimant

Mr S Wilson-Roberts

v

Respondent

Network Rail

Heard at: Bury St Edmunds

On: 12 August 2019

Before: Employment Judge S Moore (sitting alone)

Appearances

For the claimant: Did not attend and was not represented.

For the respondent: Mr B Uduje, Counsel.

JUDGMENT

The claim is struck out because it was submitted out of time and the Tribunal does not have jurisdiction to hear it.

REASONS

1. This is a claim for unfair dismissal following the claimant's dismissal for gross misconduct. The claimant was dismissed for, amongst other things, falsifying a safety record; that is stating in a document that safety tests had been undertaken on the rail network when they had not been. The claimant was dismissed on 13 July 2018 and his claim form was presented to the tribunal on 5 November 2018. The claimant lodged a further claim form on 1 January 2019 effectively providing further and better particulars of his first claim, stating that at the relevant time of the misconduct he was suffering from stress, that he had been treated unfairly compared to his depot supervisor and that the respondent had not taken into account his employment history of 27 years when applying the sanction of dismissal.
2. The respondent subsequently made an application that the claim be struck out on the grounds that it had been presented out of time and/or that it disclosed no reasonable prospect of success and/or that a deposit order should be made on the grounds that the claim disclosed little prospect of success.

3. The claimant was and is represented by his Trade Union representative, Mr Raymond Marney. Notice of today's open preliminary hearing was sent to Mr Marney and to the respondent's representatives by letter of 31 March 2019. I was also informed that the Watford Tribunal Office had left a telephone message with Mr Marney on Friday 9 August 2019 reminding him of today's hearing. However, at the hearing today both the claimant and his representative failed to attend. When the claimant was telephoned he said that he had no knowledge of the hearing and was unable to attend today because he was at work. Having heard submissions from the respondent's counsel, Mr Oduje, and in view of the fact that the claimant's representative had had proper notice of the hearing I decided to proceed in the claimant's absence. It will be a matter for the claimant as to whether he subsequently decides to make an application for a reconsideration of this judgment.
4. As regards to the question of whether the claim was submitted out of time, Mr Oduje submitted that allowing for the early conciliation period the claim should have been presented by or on 3 November 2018 but had not been presented until 5 November 2018. Further, although 3 November 2018 was a Saturday this made no difference because the non-working day rule does not apply in the tribunal. In support of this proposition he cited Miah v Axis Security Services Ltd – a judgement of Judge Eady QC, sitting in the EAT, of 23 March 2018. He said the claim had been presented out of time, there was no reason why it could not have been presented in time and it could therefore not be said that it was not reasonably practicable for the claim to have been presented in time. Accordingly, the tribunal had no jurisdiction to hear it. His alternative submission was that the claim had no reasonable prospect of success, the respondent is a safety critical industry and the claimant had admitted falsifying a safety report, which was plainly a matter that justified his dismissal. There was no factual dispute, the procedure had been fair and a qualitative assessment of the claim was capable of being made. Alternatively, the claim had little reasonable prospect of success and a deposit order should be made.
5. My conclusions are that it appears from the file that there is no dispute as to when the claim form was presented, i.e. the 5 November 2018, and that it should have been presented by or on 3 November 2018. Although 3 November 2018 was a Saturday, in the case of Miah v Axis Security Services Ltd Judge Eady QC held that rule 42 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 does not apply to s.111(2) of the Employment Rights Act 1996. Further, the claimant has not suggested any reason in his amended claim form of 1 January 2019 (or subsequently) why it was not reasonably practicable for him to have submitted his claim form by 3 November 2018. It therefore follows that the claim form was presented out of time and that the employment tribunal does not have jurisdiction to hear it. It is therefore struck out on this basis.

6. I would add that I would not have been minded to strike the claim out on the basis that it had no reasonable prospect of success on its merits, however I would have been minded to make a deposit order on the basis that the claim has little reasonable prospect of success.

Employment Judge S Moore

Date: 16 August 2019

Sent to the parties on:

.....02.09.19.....

For the Tribunal:

.....