

THE INDUSTRIAL TRIBUNALS

CASE REF: 1768/18

CLAIMANT: Gerard James Rogan

RESPONDENT: Colorite Europe Limited

WRITTEN REASONS FOR A DECISION

Constitution of Tribunal:

Vice President: Mr N Kelly

Appearances:

The claimant was represented by Mr Tim Warnock, Barrister-at-Law, instructed by Paul Doran Law.

The respondent was represented by Mr Peter Bloch, Engineering Employer's Federation.

1. This was a Pre-Hearing Review to determine whether it had been reasonably practicable for the claimant to bring the relevant claims within the statutory three month time limit and, if not, whether the claimant had brought the relevant claims within such further period as was reasonable. In other words, to determine whether the statutory time limits of three months for lodging the relevant claims should be extended.
2. The first relevant claim was a claim of unfair dismissal contrary to the Employment Rights (Northern Ireland) Order 1996.
3. Article 154(2) of the 1996 Order provides;
“Subject to paragraph (3) an Industrial Tribunal shall not consider a complaint under this Article 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) *with 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 the period of three months.”*
4. The next relevant complaint is a complaint of unauthorised deductions from wages contrary to the 1996 Order. The relevant time limit and the power to extend that

time limit are contained within Article 55 of that Order and are in similar terms to those relating to unfair dismissal.

5. The next relevant claim is a claim of alleged breach of contract contrary to the Industrial Tribunals Extension of Jurisdiction Order (Northern Ireland) 1994 No 308.

The time limit for lodging a complaint and the power to extend that time limit are contained within Article 7 of that Order and are in similar terms to those relating to unfair dismissal.

6. The next relevant claim is an alleged breach of the Working Time Regulations (Northern Ireland) 2016.

The time limit for lodging a claim and the power to extend that time limit are contained within Regulation 43 of those Regulations and are in similar terms to those relating to unfair dismissal.

7. The relevant time limits ran from the effective date of termination and not from the date of any internal appeal or from the date of any internal appeal decision.

The question of whether it had been 'reasonably practicable' for the claim to have been lodged within three months is a question of fact.

The Court of Appeal (GB) determined in *Palmer v Southend on Sea Borough Council [1984] 1 All ER 945*, that the tribunal should ask itself whether it had been reasonably "feasible" to have presented the claims in time.

8. In an oral decision with reasons, given at the end of the Pre-Hearing Review, I determined that the claimant had not shown that it had not been practicable to lodge the relevant claims within the three month time limit. The claims had therefore been lodged outside the statutory time limits and those time limits could not be extended. The claims were therefore dismissed. The claimant asked for written reasons.

Relevant Findings of Fact

9. The claimant had been employed for approximately three years by the respondent.
10. On 28 February 2017, the claimant had received a final written warning in relation to his performance.
11. On or about 21 August 2017, a further issue arose in relation to his performance.
12. Following an initial investigation, disciplinary charges were issued to the claimant. A disciplinary meeting was arranged. The claimant lodged a sick note for four weeks from 6 September 2017. That sick note stated that he suffered from work related stress and that he was not available therefore for that disciplinary meeting during that four week period.
13. The disciplinary meeting was rearranged after the expiry of the sick note. That sick note was not extended. The claimant attended that further disciplinary meeting on 11 October 2017. The claimant was dismissed with effect from 13 October 2017.

14. The claimant appealed against that decision. The appeal was heard on 3 November 2017. The decision on the appeal to confirm the dismissal was relayed to the claimant on or about 22 November 2018.
15. The claimant did not lodge a claim in the tribunal until 31 January 2018, approximately 18 days outside the statutory time limits relating to the relevant claims.
16. At a Case Management Discussion on 5 July 2018, directions were issued for the current Pre-Hearing Review to determine time limitation.
17. The claimant provided a witness statement. He adopted that witness statement as his evidence in chief and was cross-examined and re-examined. The claimant also produced his medical notes and records from his general practitioner. No further medical report was furnished.
18. The claimant's position was that he had been prevented by a serious mental health condition from lodging his claim within time. No medical or corroborative evidence was produced which supported the claim that he had suffered from a serious mental health condition in the period between his dismissal on 13 October 2017 and the expiry of the statutory time limit on 13 January 2018 or, further, in the period up to the date on which he eventually lodged his tribunal claim on 31 January 2018.
19. The four week sick leave was issued on 6 September 2017, just before the original disciplinary meeting on 7 September 2017 and over one month before the day on which the claimant was dismissed. It had not been renewed or extended. It had referred simply to "work related stress". It provided no evidence of ongoing mental health problems in the period after the claimant's dismissal. The fact that it had not been extended before the disciplinary hearing on 11 October 2017 suggests that there were no such problems.
20. There was evidence of a failed suicide attempt some ten years earlier in 2007. The GP notes had recorded that there had been no depression and the tribunal was not referred to any reference in the GP notes and records of any subsequent mental health problems or any treatment for such mental health problems.
21. The claimant's evidence to the Pre-Hearing Review was entirely unsupported and uncorroborated by any other evidence in relation to the alleged mental health difficulties during the relevant period between the date of his dismissal and the date on which he lodged his claim. The claimant stated that he had felt suicidal and that during this period he "did not know who he was". He stated that he had felt embarrassed talking about his mental health and he did not want to have anything on his record that might interfere with further employment. He stated he did not want to be placed on heavy medication.
22. The claimant had not felt in any way embarrassed or impeded from dealing with "work related stress" in September 2017 when he obtained a four week sick leave just before the original disciplinary hearing. He had already had contact with mental health professionals in relation to his mental health, albeit some ten years previously. Furthermore, the claimant had been able to apply for other jobs during the relevant period and had been able to attend job interviews during the relevant

period. None of that is consistent with his current evidence in relation to his state of mental health during that period. Therefore, on the balance of probabilities, I concluded that the claimant had not discharged the onus of proof placed upon him to establish that it had not been practicable to lodge his claims within three months because he had suffered from serious mental health problems during the relevant period.

23. The claimant had spoken to the Citizen's Advice Bureau and had obtained advice from them in relation to his dismissal in October 2017 or at the latest in early November 2017. The Citizen's Advice Bureau had alerted him to the existence of a time limit for lodging a claim. He stated in evidence that he had felt that the time limit for lodging claims in the tribunal ran from the date of his appeal rather from the date of his dismissal and that he only found out that time ran from the date of his dismissal on 31 January 2018.
24. That evidence does not seem credible. The time limit for lodging a claim is well known and it would have been explained to the claimant by the Citizen's Advice Bureau. In any event, the onus had been on him to seek advice and to clarify the position. The claimant had shown himself capable of seeking advice in relation to this matter when he had contacted Citizen's Advice Bureau in October or early November 2017. He had shown himself capable of dealing with others when he had applied for other posts and when he had attended job interviews during the relevant period. He could easily have checked the position in relation to the relevant time limit. It is clear that he had been able to attend the rearranged disciplinary meeting on 11 October 2017, to lodge an appeal and to attend the appeal meeting on 3 November 2017. It is also clear that, in texts to the respondent in November and December 2017, the claimant had referred to an unfair dismissal claim. He had been contemplating such a claim immediately after his dismissal. In any event, when he was notified of the outcome of his appeal on or about 22 November 2017, he did nothing further for an additional two months. At that point, he should have sought advice and he should have lodged his complaint within time. It had been reasonably practicable or reasonably feasible for him to have done so within the three month time limit.

SUMMARY

25. It is simply not credible that the claimant had suffered from serious mental health difficulties during the relevant period from the date of his dismissal to the date on which he lodged his claim, to the alleged extent that he had felt "suicidal" and that he had not "known who he was". It is not credible that, if that had been the case, he had not sought additional medical help, particularly given his medical history albeit some ten years previously. It is also simply not credible that he had suffered from such serious mental health difficulties during a period when he had been perfectly capable of applying for other posts and perfectly capable of attending job interviews. No medical evidence whatsoever has been produced to substantiate the claimant's allegation of serious mental health difficulties during the relevant period. Previous mental health difficulties from ten years earlier is not sufficient. A sick note of "work related stress" issued over a month before the date of his dismissal is not sufficient.

He had been contemplating an unfair dismissal claim from an early stage. He had sought advice from the Citizen's Advice Bureau. He could and should have clarified

the relevant time limits, if indeed he had been in any doubt about them.

26. Therefore, on the balance of probabilities I conclude that it had been reasonably practicable for the claimant to have lodged his claims within the statutory time limits of three months and that all his claims are out of time and that time cannot be extended.

27. I therefore dismiss the claims for want of jurisdiction.

Vice President:

Date and place of hearing: 29 August 2018, Belfast.

Date decision recorded in register and issued to parties: