



EMPLOYMENT TRIBUNALS

Claimant: Mr W Crawford

Respondent: Prestige Recruitment Services Limited

Heard at: Manchester

On: 30 June 2016 and 20 July 2016
(in chambers)

Before: Employment Judge Slater

Representation

Claimant: In person

Respondent: Not present

RESERVED JUDGMENT

The tribunal does not have jurisdiction to consider the complaints of unfair dismissal, breach of contract and discrimination because of religion or belief which were presented out of time and the claims are dismissed.

REASONS

Issues

1. This was a preliminary hearing to determine whether the claim had been received out of time and, if it was, whether the claim should be allowed to proceed.
2. The respondent had not been required to present a response to the claim pending the determination of the time limit point. The respondent was notified of the preliminary hearing and was entitled to attend but not required to do so. They did not attend.
3. I clarified with the claimant the complaints which he wished to pursue in the employment tribunal. These were a complaint of unfair dismissal, a complaint of discrimination on the grounds of religion or belief and a complaint of breach of contract in relation to early termination of a 6 month contract.

4. The claimant had less than two years' service with the respondent and, therefore, did not have the right to claim "ordinary" unfair dismissal. From the explanation the claimant gave to me, I could not identify that his unfair dismissal claim was one of those special cases where the two year qualifying period does not apply. However, the claimant had not been informed in advance that his complaint of unfair dismissal could be struck out on the grounds of not having sufficient qualifying service, so I said I would proceed to hear and determine the time limit point. If the unfair dismissal complaint survived this determination, the tribunal would send the claimant a letter warning him that the complaint of unfair dismissal could be struck out because of lack of qualifying service and giving him an opportunity to object to that strike out.

5. In relation to the complaint of discrimination because of religion or belief, the claimant believes that his dismissal was linked to his religion or belief and that an alleged theft of his property was also an act of discrimination. He told me that the last act of alleged discrimination occurred on 24 September 2015. If the complaints of discrimination are allowed to proceed, they will need further clarification. I will address the time limit point on the assumption that there is a continuing act of discrimination ending on 24 September 2015. This will not affect the respondent's ability to argue that acts earlier than 24 September 2015 are out of time, if I allow the claim to proceed.

6. I heard evidence from the claimant. In the course of his evidence, he referred to documents which he did not have with him but which I considered might be relevant to my decision. I, therefore, reserved my decision, making orders for the claimant to send in copies of these documents to be considered by me before I made my decision. The claimant sent in documents in response to the orders.

Facts

7. The claimant gave the dates of his employment as 15 July 2015 to 21 September 2015. He told me he was engaged by the respondent to work for the Information Commissioners Office (ICO) for a period of 6 months beginning on 15 July 2015.

8. On 21 September 2015, the claimant says he was told by the respondent by telephone that his fixed term contract of six months had been terminated but he was given no reason for the early termination.

9. The claimant says his personal belongings were returned to him from the ICO via the respondent. He alleges that a teapot of sentimental value was missing from the items returned. He alleges this was theft. This is the last act of discrimination complained of and the claimant gives the date for this as 24 September 2015.

10. The claimant notified ACAS on 24 November 2015. The ACAS certificate was issued on 2 December 2015.

11. The claimant was aware from ACAS of the deadline for submitting his claim to the tribunal.

12. The claimant was admitted to hospital under the Mental Health Act on 19 December 2015. The claimant appealed against his compulsory detention and was successful. He told me that his compulsory detention ended on 5 January 2016 but, on professional advice, he remained in hospital until 12 January 2016. From a discharge notification sent to the tribunal following the hearing, the discharge date is given as 8 January 2016. The reason for admission has been blanked out on the copy of the form, but it is apparent that the claimant had been admitted to a mental health facility on 19 December 2015.

13. The claimant saw his GP on 12 January 2016. His GP provided him with a fit note certifying him as unfit for work for the period 8 January 2016 to 22 February 2016. The claimant needed the note to be able to continue claiming benefits.

14. The claimant first sought to present the claim online on 3 February 2016. He did not complete the box requiring the ACAS certificate number and ticked the box stating that ACAS did not have the power to conciliate on some or all of his claims. I accept the claimant's explanation that the online application would not accept the number he was typing into the box, since he was typing a number which was missing the last two numbers and that he then ticked the box he did because, without ticking one, he was not able to proceed with the online application. In the details of claim, however, the claimant gave an ACAS reference number – R122774/15. This is the ACAS certificate number without the final "/70". The claimant gave evidence that he took the ACAS number from the e-mail header, rather than from the attached early conciliation certificate.

15. The claimant has sent the tribunal a copy of the ACAS e-mail dated 2 December 2015. The subject header does give the reference "R122774/15" rather than the full certificate number. However, the text of the e-mail includes the following "If a prospective claimant then decides to lodge an ET1 with the Employment Tribunal, s/he must quote the Acas reference number on the Certificate when completing the ET1. **It is important to quote the full number on the attached certificate, which is a letter followed by 10 numbers in the format Rnnnnnnn/nn/nn (where n=number).**" The use of bold to highlight text is that of ACAS in the e-mail. The early conciliation certificate was attached to the e-mail

16. The claim was rejected by the tribunal by a letter dated 18 March 2016 on the grounds that it appeared to be "relevant proceedings" to which the ACAS early conciliation requirements applied and the claimant had not given an early conciliation number in section 2 of the claim form. The notes accompanying the tribunal's letter explained the procedure for applying for a reconsideration of the decision and for appealing to the Employment Appeal Tribunal and gave the respective time limits for the application and appeal.

17. The claimant wrote to the tribunal on 21 April 2016, a letter received on 25 April 2016, appealing the decision to reject his claim. He enclosed a revised form including the full ACAS early conciliation certificate number. The claim was accepted and treated as received on 25 April 2016, the date on which the error had been rectified.

18. The claimant gave evidence that he did not write to the tribunal to provide the full ACAS number until 21 April because the tribunal's letter contained two time limits and he took the second of these as applying. He gave evidence that he did

not write immediately because he had to apply for jobs. His benefits had been reduced because the respondent had written to the Job Centre saying, incorrectly, that he had worked for them in February and, therefore, he was in financial difficulties.

Law

19. In accordance with section 111(2) Employment Rights Act 1996, a tribunal shall not consider a complaint of unfair dismissal unless it is presented before the end of the period of three months beginning with the effective date of termination or “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.”

20. Time is extended in accordance with section 207B ERA to facilitate conciliation before the institution of proceedings. Section 207B is as follows:

“(1) This section applies where this Act provides for it to apply for the purposes of a provision of this Act (a 'relevant provision').

But it does not apply to a dispute that is (or so much of a dispute as is) a relevant dispute for the purposes of section 207A.

(2) In this section—

(a) Day A is the day on which the complainant or applicant concerned complies with the requirement in subsection (1) of section 18A of the Employment Tribunals Act 1996 (requirement to contact ACAS before instituting proceedings) in relation to the matter in respect of which the proceedings are brought, and

(b) Day B is the day on which the complainant or applicant concerned receives or, if earlier, is treated as receiving (by virtue of regulations made under subsection (11) of that section) the certificate issued under subsection (4) of that section.

(3) In working out when a time limit set by a relevant provision expires the period beginning with the day after Day A and ending with Day B is not to be counted.

(4) If a time limit set by a relevant provision would (if not extended by this subsection) expire during the period beginning with Day A and ending one month after Day B, the time limit expires instead at the end of that period.

(5) Where an employment tribunal has power under this Act to extend a time limit set by a relevant provision, the power is exercisable in relation to the time limit as extended by this section.”

21. Section 123 of the Equality Act 2010 provides that, subject to s.140B, proceedings may not be brought after the end of the period of 3 months starting with the date of the act to which the complaint relates, or such other period as the employment tribunal thinks just and equitable. Section 123(3) provides that conduct extending over a period is to be treated as done at the end of the period.

22. Section 140B provides for an extension of time to facilitate early conciliation in the same way as section 207B ERA.

23. Article 7 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 provides that, subject to article 8B, an employee's contract claim can only be considered if it is presented within the period of three months beginning with the effective date of termination of the contract giving rise to the claim. If the tribunal is satisfied that it was not reasonably practicable to present the claim within that period it may be considered if it was presented within such further period as the tribunal considers reasonable.

24. Article 8B provides for an extension of time to facilitate early conciliation in the same way as section 207B ERA.

25. Rule 13(4) of the Employment Tribunals Rules of Procedure 2013 provide that where a judge decides that an original rejection of a claim was correct but that the defect has been rectified, the claim shall be treated as presented on the date that it was rectified.

Conclusions

26. The claimant notified ACAS within the relevant time limit for each of the complaints. Applying the provisions of s.207B ERA and the other comparable provisions extends the time for presentation of the claims until 2 January 2016. The claim was accepted on 25 April 2016 after the defect relating to the early conciliation certificate number was corrected. It was, therefore, more than 3 months out of time.

27. Had it not been for the claimant's mental health problem and admission to hospital on 19 December 2015, I consider it likely that the claimant would have sought to present the claim on time. I consider it likely that the claimant would have been suffering from the mental health condition for some period prior to his admission to hospital. I conclude that the claimant was not capable of presenting the claim in the period from issue of the ACAS early conciliation certificate on 2 December 2015 until, at the earliest, his discharge from hospital on 8 January 2016. I conclude that neither his mental health at that time nor his circumstances, detained in a mental health institution, would have allowed him to present a claim during that period.

28. I consider it likely that the claimant would not have been capable for some period after his discharge to deal with presenting a tribunal claim. I have little evidence to assist me on when he could reasonably be expected to have been able to present a claim after his discharge from hospital. The GP had signed him as unfit for work for the period 8 January to 22 February 2016. However, the claimant sought to present the claim online on 2 February 2016, the last day of the extended time limit. The claimant was aware of the time limit from ACAS and proved himself capable of completing the online form on that day.

29. Unfortunately, the claimant made an error when he tried to input the ACAS early conciliation certificate number. Had he not made this error, his complaints would have been presented on time. The claimant had the early conciliation certificate number. The text of the e-mail from ACAS made the importance of

inserting the correct number clear. Had the claimant read the e-mail properly, he would have been alerted to the need to check the number on the certificate, since the number he was using did not match the format indicated in the text of the e-mail.

30. I conclude that it was reasonably practicable to present the complaints of unfair dismissal and breach of contract within the extended time limit. The claimant had the number but he entered it incorrectly. The evidence presented to me does not satisfy me that it was not reasonably practicable for the claimant to insert the correct number and, therefore, present the complaints on time. The tribunal does not have jurisdiction to consider the complaints of unfair dismissal and breach of contract and these complaints are dismissed.

31. The test for whether time should be extended to consider the complaints of discrimination on the grounds of religion and belief is different. I must consider whether it is just and equitable in all the circumstances to allow the complaints of discrimination to proceed. The claimant had complied with the requirements for early conciliation. He tried to present the claim on time. He would have succeeded had he not entered an incomplete early conciliation certificate number. In the details of claim he wrote the incomplete number. However, once he was notified of the rejection of his claim, he did not seek to correct this until more than a month after the date of the tribunal's letter. His explanation was that he took the second time limit on the letter. This must refer to the time limit for an appeal to the Employment Appeal Tribunal. The claimant was not appealing to the Employment Appeal Tribunal. The claimant also explained his delay because of his need to apply for jobs. I do not consider these to be adequate explanations for the delay in correcting the error.

32. Had the claimant acted promptly on receipt of the letter from the tribunal rejecting his claim, I may have considered it just and equitable to extend time to allow the complaints of discrimination to be considered, given that the error he had made on the claim form was of such a technical nature. However, the delay in correcting the error must form part of the circumstances I consider in deciding whether it would be just and equitable to extend time. I conclude that it would not be just and equitable to extend time and do not do so. The tribunal does not, therefore, have jurisdiction to consider the complaints of discrimination and these complaints are dismissed.

Employment Judge Slater
20 July 2016

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON
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FOR EMPLOYMENT TRIBUNALS