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EMPLOYMENT TRIBUNALS

Claimant: Mr D Gowlett
Respondent: Airline Services Limited
Heard at: East London Hearing Centre
On: 24 July 2017
Before: Employment Judge Brown

Representation

Claimant: Ms Alison Thackaray (Claimant's mom)
Respondent: Mr Grahame Anderson (Counsel)

JUDGMENT

The judgment of the Tribunal is that:-

1. Time is extended for the presentation of the Claimant's claims of direct disability discrimination, discrimination arising from disability and indirect disability discrimination until 5 April 2017.
2. The Employment Tribunal does not have jurisdiction to consider the Claimant's complaint of unfair dismissal, because it is not a complaint of automatic unfair dismissal and the Claimant did not have two years of service, pursuant to *s108 Employment Rights Act 1996*.
3. The Claimant is not bringing a complaint for failure to pay notice pay.

REASONS

1 The Claimant was employed by the Respondent from 28 November 2016 until 8 December 2016, as a cleaner and general worker. He obtained an Acas early conciliation certificate on 15 March 2017. The early conciliation certificate did not provide any extension of time because the day A and Day B were the same; that is, 15 March 2017.

2 The Claimant has learning difficulties. He has difficulty reading and writing. He can read simple documents, but cannot read and understand legal forms. He needs help from a person he trusts to read legal documents, or fill in forms for Tribunals. He likes to be independent and to do things for himself. When the Claimant was dismissed, he was unaware of the existence of Employment Tribunals. He visited the Citizens Advice Bureau on 13 December 2016, when he was told about the existence of Employment Tribunals. He was also given help to write a letter to his employer asking for the reason he was dismissed and saying that he believed that it was related to his learning difficulties with regard to getting an air side pass.

3 The Claimant then visited the Citizens Advice Bureau about 8 – 10 times thereafter, when he was helped to complete forms for the Employment Tribunal. He could not do this on his own. His appointment times were limited to an hour and the Claimant was not able to complete his form within even one or two appointments. Mr Gowlett was also helped by his mother after his dismissal, but his learning difficulties are such that he has very poor short term memory.

4 At either one of his appointments at the Citizens Advice Bureau or when he telephoned Acas on about 15 March 2017, Mr Gowlett and his mother were told that there is a three month time limit for bringing complaints to the Employment Tribunal.

5 Mr Gowlett's mother reminded him that he needed to submit his claim in time, but, unfortunately the Claimant kept forgetting to complete the relevant paper work or to bring the relevant paperwork with him.

6 I have no doubt that Mr Gowlett, the Claimant, has significant learning difficulties which prevents him from completing legal paperwork, or Employment Tribunal paperwork, without help. I accept that he required a number of appointments with the Citizens Advice Bureau over a number of weeks, to assist him to complete the Employment Tribunal claim form. Due to his learning difficulties, he was unable to remember to complete the paperwork on his own, even with the prompting of his mother. I accept the Claimant's evidence that he tried very hard to complete the paperwork and visited the Citizens Advice Bureau in order to do so. I find that the Claimant's learning difficulties presented a very significant barrier to his ability to comply with the time limits and that, in reality, even with his own efforts and the assistance of others, he could not submit his claim within the three months time limit.

7 I accept his evidence and find that the earliest he was able to put in his claim form was 5 April 2017, even with the help of his mother of the Citizens Advice Bureau.

8 In terms of the relevant law, by s123 *Equality Act 2010*, complaints of discrimination in relation to employment may not be brought after the end of the period of three 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. If the claim has been brought out of time, the Employment Tribunal can extend time for its presentation where it is just and equitable to do so. In *Robertson v Bexley Community Centre Leisure Link [2003] IRLR 434* the Court of Appeal stated that there is no presumption that an Employment Tribunal should extend time unless it can justify a failure to exercise its discretion. Quite the reverse: a Tribunal cannot hear a complaint unless the Claimant convinces the Tribunal that it is just and equitable to extend time. The exercise of the

discretion is the exception of no rule. In exercising the discretion to allow time to be extended and claims out of time to proceed, Tribunals may have regard to the checklist contained at s33 *Limitation Act 1980*, as considered by the Employment Appeal Tribunal in *British Coal Corporation v Keeble & Other [1997] IRLR 336*. The factors which can be considered include the prejudice each party would suffer as a result of the decision reached, the circumstances of the case and, in particular, the length of and reasons for the delay, the extent to which the cogency of the evidence is likely to be affected by the delay, the extent to which the party sued has cooperated with any request for information, the promptness with which the Claimant acted once he/she knew of the facts giving rise to the cause of action and the steps taken by the Claimant to obtain appropriate advice once he/she knew of the possibility of taking action.

9 Looking at the factors which might be relevant to my decision as to extension of time, I consider that, in this claim, there was a one month delay in the Claimant bringing a claim to the Tribunal. I consider that that is a relatively short delay. There is no evidence of any prejudice to the Respondent, caused by that delay. The Claimant had written a letter to the Respondent on 13 December 2016, asking for the reason for his dismissal and saying that he believed that his dismissal was linked to his learning difficulties, so the Respondent was aware of this potential claim at an early stage. There is no evidence before me that the cogency of the Respondent's evidence will be affected by that delay.

10 I considered that the Claimant acted as promptly as he could in obtaining advice and in trying to submit his claim form, but that his learning difficulties effectively prevented him from completing the paperwork without assistance. Even when he did obtain assistance completing the paperwork, this took several weeks. Further, his learning difficulties prevented the Claimant from remembering to prioritise his Employment Tribunal claim. I considered that the Claimant did seek advice and obtain appointments, showing real determination to bring his claim appropriately. I considered that there would be significant prejudice to the Claimant if I did not extend time for a claim and which might be a valuable claim for him.

11 On balance, I considered that justice required me to extend time for the presentation of the claim. The Claimant had good reason for not being able to comply with the time limits, despite substantial efforts on his part. There is little evidence, on the other hand, that the Respondent has been prejudiced by the delay.

12 The Claimant contends that he was dismissed, either because of his learning difficulties, or because of his inability to complete paperwork, which was linked to his learning difficulties. I have identified his claims as claims of direct discrimination, indirect disability discrimination and discrimination arising from disability. The Respondent did not agree with my categorisation of those claims, but I indicated that the facts pleaded on the claim form clearly could give rise to those claims.

13 The Claimant is not alleging facts which would give rise to a claim of automatic unfair dismissal. It is not in dispute that he does not have two years of service and therefore he is not able to bring a complaint of ordinary unfair dismissal - s108 *Employment Rights Act 1996*.

14 The Claimant confirmed that he was not bringing a complaint for notice pay. He did not tick the relevant box on the claim form and, in any event, he was not employed for one

month, so he had no right to notice pay under s86 *Employment Rights Act 1996*.

Employment Judge Brown

31st July 2017