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EMPLOYMENT TRIBUNALS

Claimant: Mr N Effendi
Respondent: Countrywide Principle Services Limited

Heard at: East London Hearing Centre
On: 11 December 2017
Before: Employment Judge Brown

Representation

Claimant: In person
Respondent: Mr T Gillie (Counsel)

JUDGMENT

The judgment of the Tribunal is that:-

1. The Claimant presented his complaint of unfair dismissal out of time.
2. It was reasonably practicable to present the Claimant's claim in time. Time is not extended for its presentation and the Claimant's claim is dismissed.

REASONS

The Facts

1 This hearing was listed to decide whether the Claimant's claim had been presented out of time and, if it had, whether time should be extended for its presentation. The Claimant presented a claim for unfair dismissal against the Respondent, his former employer, on 8 September 2017.

2 The Claimant contended that he was suffering from depression following his dismissal and that, as a result, he had been unable to submit his claim in time. He gave

evidence to the Employment Tribunal about this. He was cross examined by the Respondent. During submissions, the Claimant mentioned, for the first time, that he felt unable to pay the Tribunal Fees.

3 I found the following facts.

4 The Claimant was employed by the Respondent from 18 July 2013 to 12 January 2017. He has suffered from moderate depression on a number of occasions during his life, particularly in 2004 and 2010, when he was diagnosed by a health professional with moderate depression and was prescribed medication to treat it. The Claimant produced a medical report to the Tribunal confirming this. The Claimant told the Tribunal, and I accepted, that he had significant psychological symptoms following his dismissal by the Respondent, including night waking and difficulty concentrating and motivating himself.

5 The Claimant is married to a psychiatrist, who is shortly to be fully qualified in the UK. She treated the Claimant with Cognitive Behavioural Therapy for his psychological symptoms following his dismissal. The Claimant has not produced a medical report confirming any particular diagnosis or symptoms suffered by him following his dismissal in 2017.

6 The Claimant has friends and family who helped him following his dismissal. On 6 March 2017 he submitted an appeal against dismissal, although that was out of time (page 34).

7 On 12 March 2017 the Claimant corresponded with the Respondent by email, saying that he had been advised by his legal professional that he was within time to bring a claim to the Employment Tribunal (page 33).

8 On 22 March 2017 the Claimant commenced early conciliation through Acas. The early conciliation certificate was issued by Acas on 10 April 2017. The date by which the Claimant would have to have brought his claim, in order for it to be in time, was 30 April 2017. In the event, the Claimant did not submit his claim until 8 September 2017.

9 The Claimant told me that he applied for 4-5 jobs, online, in March and April 2017. He attended an interview and has been employed since 14 April 2017, full time, by a local authority, as a traffic enforcement officer. The Claimant confirmed that he had sought some advice from a solicitor friend about Employment Tribunal claims and time limits and was aware of these before the expiry of primary limitation period in this case.

The Relevant Law

10 The time limits for presenting complaints of unfair dismissal to an Employment Tribunal are set out in *s111 Employment Rights Act 1996*.

11 By *s111(2)ERA 1996*,

“.. 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 the period of three months.”

12 Where a Claimant fails to present his claim in time and seeks an extension of time, the employee must show that it was not reasonably practicable to present his claim in time. The burden of proving this rests on the Claimant, *Porter v Bandridge Ltd* [1978] IRLR 271, [1978] ICR 943, CA. If he succeeds in doing so, the Tribunal must be satisfied that the time within which the claim was, in fact, presented was reasonable.

13 The question of whether it was reasonably practicable for the complaint to be presented is one of fact for the Employment Tribunal, taking into account all the relevant factors *Palmer and Saunders v Southend-on-Sea Borough Council* [1984] 1 All ER 945, [1984] IRLR 119, [1984] ICR 372, CA. Relevant factors can include the manner of, and reason for, the dismissal; whether the employer's conciliation machinery had been used; 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.

14 The period of early conciliation needs to be added to the primary time limit under *s111 Employment Rights Act 1996*.

Discussion and Decision

15 The Claimant's claim was presented to the Employment Tribunal substantially beyond time limit, even with the additional period allowed by the early conciliation process added. The burden of proof is on the Claimant to prove that it was not reasonably practicable to present his complaint to the Tribunal in time.

16 I accepted the Claimant's evidence that he had psychological symptoms following his dismissal. However, I also accepted his evidence that he was able to apply for 4 - 5 jobs during March and April 2017, before the expiry of the time limit. Even if those applications had been submitted with the help of friends, the Claimant was able to attend an interview and was able to work full-time as a traffic warden from 17 April 2017. He was also able to enter early conciliation through Acas and to correspond with the Respondent about his appeal by email before the expiry of the time limit.

17 The Claimant was aware of his rights and the time limits and he was able to seek legal advice from a solicitor friend.

18 I found that those matters indicated that the Claimant was able to manage his affairs, so as to apply for jobs and to secure full-time employment and to continue to work full-time from 17 April. I concluded that the Claimant could likewise have brought a claim to the Employment Tribunal. It was reasonably practicable, or feasible, for him to do so. There was no medical evidence supporting the Claimant's assertion that his psychological symptoms were so severe that they would have prevented him from bringing a complaint

in time.

19 In submissions, the Claimant mentioned that he had not been able to afford the fee to bring a Tribunal claim. In particular, he said that he was not able afford about £1,000 (which would have included the hearing fee). However, the Claimant brought no evidence of his means to the Employment Tribunal and I noted he was in full-time work from 17 April. There was no evidence that he investigated remission of fees before he secured full-time work.

20 In any event, the Claimant actually gave no evidence about being unable to afford the hearing fee when invited to explain the reasons why he was not able to bring his claim in time.

21 For all those reasons, I concluded that the Claimant had not discharged the burden of proof to establish that it was not reasonably practicable for him to bring his complaint in time. Therefore, I did not extend time for the presentation of his claim. I dismissed the Claimant's claim.

Employment Judge Brown

15 December 2017