



EMPLOYMENT TRIBUNALS

Claimant: Mr E Shirley

**Respondents: (1) Fulham Cross Girls' School
(2) Peter Haylock**

Heard at: London Central

On: 29 March 2019

Before Judge: Mrs A Isaacson

Representation

Claimant: Ms Yates, a friend

Respondents:

JUDGMENT

The Judgment of the Tribunal is as follows:

All the claimant's claims are struck out on the basis that they are out of time.

REASONS

The law

1. The time limit for presenting a claim for unfair dismissal is 3 months from the effective date of termination ("EDT") as set out in section 111(1) Employment Rights Act 1996 ("ERA"). The Tribunal is able to consider complaints presented out of time only if it is satisfied (1) that it was not reasonably practicable for a complaint to be presented before the end of the relevant 3 months period, and (2) if so, that it was presented within such further period as it considers reasonable. The burden lies on the claimant at both stages of the test.

2. It is a question of fact in each case whether it was reasonably practicable to present a claim in time. There may be various relevant factors including the claimant's knowledge of the facts giving rise to their claim and their knowledge of their rights to claim and the enforcement of those rights.
3. Mere ignorance of the time limit for bringing a claim for unfair dismissal does not of itself amount to reasonable impracticability, especially where the employee is aware of their right to bring a claim. The question is, was the claimant's ignorance reasonable?
4. Where an employee has knowledge of their right to claim unfair dismissal there is an obligation on them to seek information or advice about enforcement of those rights.
5. If a solicitor or advisor, such as a union official, is at fault the Tribunal will usually consider that it was reasonably practicable for the claim to have been presented in time.
6. A claimant's illness maybe relevant to the question of reasonable practicability and a Tribunal is prepared to exercise leniency in such situations but the Tribunal still needs to decide whether it was reasonably practicable for the claimant to have presented his claim in time.
7. The existence of an ongoing internal appeal is not by itself enough to justify a finding of fact that it was not reasonably practicable to present a complaint in time to the Tribunal.
8. Section 123 of the Equality Act 2010 ("EqA") provides that a claim may not be brought after the end 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.
9. The Tribunal has wide discretion in determining whether or not it is just and equitable to extend time and it is a wider discretion than for unfair dismissal. It should consider everything that it thinks is relevant. However, time limits should be strictly applied, and the exercise of the discretion is the exception rather than the rule. There is no presumption that the Tribunal should exercise its discretion.
10. The Tribunal is not legally required to but may consider the check list set out in section 33 of the Limitation Act 1980 in considering whether to exercise its discretion:
 - a) the length and reason for the delay;
 - b) the extent to which the cogency of the evidence is likely to be affected by the delay;
 - c) the extent to which the party sued had cooperated with any requests for information;
 - d) the promptness which the claimant acted once he knew the facts giving rise to the cause of action; and
 - e) the steps taken by the claimant to obtain appropriate professional advice once he knew of the possibility of taking action.

11. The most relevant factors are the length of, and reasons for, the delay and whether the delay has prejudiced the respondent.
12. The Tribunal will consider whether a fair trial is still possible and the prejudice to the respondent. The Tribunal may consider the merits of the claimant's race discrimination claims when deciding whether to extend time on the basis it is just and equitable to do so.

Findings of fact

13. The claimant was dismissed on the 14 July 2018 following a disciplinary hearing and one month's notice. The claimant was a member of the union Unison and was represented at the disciplinary hearing by a union official Patsy Ishmael.
14. The claimant is unable to read and write so all correspondence between the claimant and the respondents went through Patsy. It is clear that he was aware of his right to bring a claim to a Tribunal soon after his dismissal and he told Patsy that he wanted to bring a claim to the Tribunal.
15. The claimant appealed against his dismissal and an appeal hearing was heard on the 12 September 2018. The claimant was represented at the appeal hearing by Patsy. An outcome letter dated 17 September 2018 was sent to Patsy but she was absent from the union office at the time. The claimant had been trying to speak to Patsy and chased the union office for a copy of his appeal outcome letter. Peter, the only other union officer at the same office as Patsy printed the letter out for the claimant and gave it to him to take to someone to read to him.
16. The claimant was concerned about bringing his claim to the Tribunal and kept contacting the union office, but Patsy was absent. The claimant sought help from a friend Ms George who contacted the union office on his behalf. She was told that the file had been passed to the regional office and they were waiting to hear back from them. She chased a few days later and was told about the three months deadline for presenting a claim but was not told about the need to enter into early conciliation with ACAS.
17. Based on Ms George's own evidence the Tribunal finds that at this time Ms George was aware of the three months' time limit for presenting a claim to the Tribunal. Had she been advised by the union to contact ACAS at this time then just a phone call to ACAS to start the early conciliation would have paused the time for bringing a claim to the Tribunal for the duration of the conciliation period and given the claimant an extra month to present his claim once conciliation had been completed.
18. Although Unison did not advise Ms George about ACAS and early conciliation, the Tribunal finds that it was reasonable for Ms George, having just been told about the three months' time limit, to have researched on the internet about presenting a Tribunal claim, something she did later on after speaking to the union again but after the three month time limit had expired. Had she done that research at that time she would

have discovered the need to call ACAS and obtained a pause and an extension of time.

19. Ms George eventually was able to speak to Colin Innes from Unison's regional office after the three months deadline had expired. He told her that the union would not be supporting the claimant further and told her that the deadline for presenting a claim had, anyway, expired. He advised her about how to bring a claim and wished her luck.
20. Ms George then googled how to present a claim. She contacted ACAS and obtained an ACAS certificate dated 25 October 2018 (not seen by the Tribunal).
21. The claimant then sought assistance from a friend, Ms Yates, who also contacted ACAS and obtained a certificate dated 9 September 2018. She assisted the claimant in presenting a claim form on the 14 November 2018.
22. It is not disputed that the claim form was presented out of time.

Conclusion

23. The claimant confirmed to the Tribunal that he was aware of his right to bring claims before a Tribunal. He expected the union Unison to assist him in presenting a claim on his behalf, in time, particularly as he cannot read and write.
24. The claimant had difficulty in contacting Unison after his appeal had been unsuccessful as Patsy was away from the office. With assistance from his friends he was told that his case was being considered by the regional office. Ms George was aware of the deadline for presenting a claim to the Tribunal before the three months period had expired. The Tribunal appreciates that she may only have known very shortly before the deadline expired but she did know in time and could search on the internet, as she later did, to find out how to bring a claim in time. Had she done so at that time then she could have contacted ACAS and got an extension of time to present the claimant's claim form.
25. The Tribunal concludes that as the claimant was a member of a union and had been represented by Unison since his disciplinary hearing and had assistance from friends who were aware of the deadline for presenting a claim to the Tribunal, it was reasonably practical for him to have presented his claims for unfair dismissal, public sector duty and holiday pay in time. Therefore, all those claims are struck out for being out of time.
26. The claim form includes also includes a claim for race discrimination. The discrimination claim is not particularised but merely states that the respondent took the decision to terminate the claimant or commence disciplinary proceedings against the claimant either consciously or sub-consciously because of race and refers to a disparity in treatment between the claimant and white colleagues.

27. The claimant never complained of race discrimination during his employment or during the disciplinary process.
28. The claimant needs to show a prima facie case of discrimination to be answered before the Tribunal may consider the respondent's explanation for any difference in treatment. There needs to be more than just a suggestion that race may have been a factor.
29. The Tribunal has considered the chance of the race discrimination case succeeding which appear to be very slim when considering whether to exercise its discretion to extend time.
30. The Tribunal appreciates that the claimant was relying on the union to present a claim on his behalf and he may have a remedy against them. However, the claimant, through Ms George, was aware of the need to present his claim in time before the deadline had expired and could have obtained an extension by calling ACAS and starting early conciliation. Therefore, the Tribunal finds that the claimant allowed the time limit to expire before presenting his claim.
31. Although the length of the delay is not significant, and it is still possible to have a fair hearing, the Tribunal does not feel it should exercise its discretion to extend time in these circumstances when time limits should be strictly adhered to. There is a need for certainty. The claimant hasn't sufficiently explained why the claim form wasn't presented in time when Ms George was aware of the time limit before it expired. The chances of the discrimination claims succeeding are very slim and the claimant was represented by a trade union official and had support from friends prior to the expiry of the three months' time limit.
32. In conclusion, the Tribunal does not exercise its discretion to extend time and therefore the claimant's race discrimination claims are struck out for being out of time.

Employment Judge A Isaacson

Date 29 March 2019

JUDGMENT & REASONS SENT TO THE PARTIES ON

3 April 2019

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FOR THE TRIBUNAL OFFICE