



# EMPLOYMENT TRIBUNALS

**Claimant**  
**Mr R Garcia de Lara Rodriguez**

**Respondent**  
**Ikea Ltd**

v

**Heard at:** Watford

**On:** 11 March 2020

**Before:** Employment Judge Andrew Clarke QC

## **Appearances**

**For the Claimant:** In person  
**For the Respondent:** Mr S Ellerby - Solicitor

## **JUDGMENT**

1. The claim in respect of alleged unlawful deductions from wages is dismissed upon withdrawal by the claimant.
2. The claim for unfair dismissal is dismissed, the claimant having failed to present his claim within the primary limitation period when it was reasonably practicable for him to have done so.
3. The claim for disability discrimination is dismissed, the claimant having failed to present his claim within the primary limitation period and his having failed to satisfy the Tribunal that it was just and equitable to extend the time for presentation of the claim.

## **REASONS**

### **Introduction**

1. The claimant was employed by the respondent as a chef from 9 September 2011 to 9 February 2019. He was dismissed for gross misconduct, the nature of the alleged misconduct is irrelevant for present purposes.
2. He brought a claim by submitting his claim form electronically on the 27 June 2019. He had notified ACAS under the early conciliation process on 30 April and received an early conciliation certificate on the 23 May 2019. There is no dispute that in so far as a claim for unfair dismissal is concerned

the last day for presentation was 23 June 2019. The claimant also brought claims for disability discrimination and unlawful deductions from wages (by non-payment of sums owed). Again, it was agreed that the last day for presenting the claims in respect of those matters cannot be later than 23 June.

3. Therefore, the claims were all presented outside the primary limitation period applicable to them and the hearing today has been to determine whether to extend time into the secondary limitation period.
4. I heard evidence from the claimant himself and read the witness statement provided by his girlfriend, Alexandra Blackman, together with a short letter explaining her absence through illness.

### **The facts**

5. After he was dismissed the claimant sought advice as to whether he could bring claims against the respondent from his solicitor. He had prepared a detailed letter of appeal against that dismissal and he showed that letter to the solicitor. He also gave him a detailed oral account of his complaint. Having considered that material, the solicitor advised him that he had a viable claim and wrote a one page letter to him summarising the claims and his advice. I have not seen that letter, for obvious reasons.
6. Having heard from the claimant in evidence it is clear that he understood, after that meeting and advice, that he could bring a claim before an Employment Tribunal, but before doing so he had to go through the ACAS early conciliation procedure and that there were time limits for bringing such claims which time limits the conciliation process would have an impact upon.
7. Precisely what the claimant then knew of the time limits is impossible to ascertain given the passage of time and the subsequent events. He had certainly researched bringing claims (and the early conciliation process) on the internet and had at some stage downloaded the ET1 form to see what he would need to do in order to present a claim.
8. The claimant was uncertain as to whether he would make a claim. However, by late April (when he began the early conciliation process) he had decided that he would claim and had done some work on the grounds of claim which were to accompany his claim form. That work continued in May 2019.
9. Immediately before he got the early conciliation certificate the claimant returned to being undecided as to what to do about making a claim, but decided that he would not proceed when he got that certificate. He received an email from ACAS which stated, "I have now issued the early conciliation certificate and you have a minimum of 1 month to make a claim to the Employment Tribunal." The claimant, who is Spanish, speaks good (if accented) English and writes reasonable English, but needs some help with grammar.

10. The claimant's witness statement and, initially, his oral evidence suggested that he was confused by the email into thinking that he had longer to present the claim than he actually did. However, having heard his answers to questions, I am satisfied that he was not confused by the email. He understood that he had at least a month, but perhaps more, to bring a claim. As he had, by this stage, decided not to make a claim, this did not concern him and he did not seek to clarify the precise position.
11. Some 4 weeks later he had again changed his mind. He told his girlfriend on the 21 June that he was going to claim and she reminded him that he might have only a month from the 23 May to do so. She advised him to contact the Employment Tribunal Service to find out the correct position.
12. He telephoned the Employment Tribunal and from what he was told thought that the final day for presentation could be 22 June. That left him the afternoon and the evening of 21 June and the whole of 22 June to finalise the paperwork.
13. It is impossible to ascertain how much progress had been made towards finalising that paperwork before the 21 June. Clearly, some work had been done before the claimant decided against making the claim, but I accept that the claimant felt that it was not in a finalised state. However, I consider that the work done had been significant and the claimant had his appeal letter (much of which is used in the grounds) and the letter of advice from his solicitors, in order to help him complete the work.
14. The claimant's explanation for why it took him until 27 June to finalise his claim form is that he was stressed and panicked when he learnt how little time was left. He makes that point against the background of his having sought help with stress after his dismissal and being in the process of undergoing talking therapy. He did have assistance from his girlfriend, a social worker, who was familiar with his story.
15. The grounds submitted with his claim form provide details of his unfair dismissal claim, but little by way of particulars of his disability discrimination or monetary claims. He refers to having a bad back and suffering from stress. His pattern of work is said to have contributed to these conditions and the respondent is said to have failed to behave sensitively and appropriately in response to them. Without considerably more detail it is not possible to exclude the possibility that the conduct referred to extended over a period of time up to around the time of his dismissal and there is a suggestion that the penalty of dismissal was chosen because of complaints he had made in the past about those matters.
16. The monetary claims lacked particularity. In a written opening statement for this hearing the claimant indicated that he wished to withdraw them. Having questioned him about them it is clear that would have been considerable difficulty in the way of proving such claims. He has no records and made no contemporaneous claims, although there were claims mechanisms available. Furthermore, the claims appeared historic and unlikely to be part of a course of conduct extending over a period in that he says that he was

sometimes paid (for overtime and attending meetings) and sometimes not. I am satisfied that he wishes to withdraw the claims for good reason and I dismiss them.

**The law as applied to the facts**

17. The limitation regimes for the two remaining claims are different. That for unfair dismissal is found in Section 111 of the Employment Rights Act 1996 and allows a claim to be made after the primary limitation period, of 3 months from the effective date of termination, has expired if it was not reasonably practicable to bring a claim in that time period and it was brought in a further reasonable period. I am assisted in this regard by the following dicta from Lady Smith in the case of Asda Stores Limited v Kauser EAT 0165/07. She explained the test in the following words “the relevant test is not simply a matter of looking at what was possible but to ask whether, on the facts of the case as found, was reasonable to expect that which was possible to have been done.”
18. Here it was undoubtedly possible to bring the claim within the primary limitation period, but was it reasonable to expect this claimant so to do?
19. I am satisfied that the claimant knew there was a time limit, knew this gave him a month and perhaps more from 23 May to bring a claim, but did not seek to ascertain what more, if any more, time he had until 21 June. The reason for that failure was that he had from just after receiving the early conciliation certificate until that point, decided not to make a claim. The claimant focused in what he said to me on the period from 21 June until the claim was made, but I consider it important to look at how the whole period from dismissal to 23 June was used. The reason why the claimant found himself with little time to finish his application was that he had only decided very late in the day to make the claim.
20. In any event, even if I was to focus on the last few days, he has failed to satisfy me that it was not reasonable to expect him to claim in time. I accept that he was stressed by the realisation of how little time was left, but he had done some significant work towards preparing his claim form and he already had his appeal letter which could (and did) provide the bulk of the material needed for the grounds. The fact that he was engaging in talking therapy does not, in my view, show that he was so incapacitated by stress as to be unable to complete his claim form. I note that I have no medical evidence other than (if can be properly so described) a letter showing that he had attended a talking therapy appointment and had another fixed for 27 June. In any event, the fact remains that he was running out of time was because of his leaving matters to the last moment.
21. For those reasons the unfair dismissal claim was presented out of time and is dismissed.
22. The limitation periods for the discrimination claim are found in Section 123 of the Equality Act 2010. The test here is whether it is just and equitable to extend time. Again, the burden of proof is on the claimant. He must satisfy

me that it is just and equitable to extend time. The starting point is that Parliament has fixed the period for bringing such a claim and going beyond that period is the exception rather than the rule.

23. As higher courts have suggested is appropriate, I have kept in mind the factors listed in Section 33 of the Limitation Act 1980 which deals with extending personal injury limitation periods. I set out my views in respect of each below, although it will be clear that I consider that some have little, if any, application to the facts of this case.
  - 23.1 The lengths and reason for delay.  
The delay is short, but the reason is that the claimant did not start to finalise his claim form until very late in the day, as set out above.
  - 23.2 The likely effect on the cogency of the evidence.  
The short delay here is unlikely to have any effect on the cogency of the evidence in the case.
  - 23.3 The extent to which the party sued has cooperated with requests for information.  
That appears to me to be irrelevant here.
  - 23.4 The promptness with which the claimant acted once he knew of the facts giving rise to the claim.  
This claimant was aware of those facts from the start and was professionally advised that he had a viable case at an early stage, yet he vacillated about whether to bring a claim (as is his right) so as to leave only a little time to finalise the paperwork at the end.
  - 23.5 The steps taken to get advice at an appropriate time.  
The claimant did seek advice at an appropriate time, but then did not claim until after the primary limitation period had passed.
24. I have considered whether I should look at the merits of this case when making my decision. Had this been a case of an apparently strong and particularised claim, that would (in my view) be a factor in the claimant's favour. Here it is impossible to take any view of the merits at this stage and, therefore, I leave the matter out of account. This is a case where the claimant might be deprived of a valuable claim by the strict application of the primary limitation period, alternatively the respondent might be forced to defend a thoroughly bad one by allowing time to be extended into the secondary limitation period; it is simply too early to say.
25. I consider this to be a difficult balancing exercise. However, tempting as it is to allow the claim to proceed because it is only a few days out of time, I believe that I must resist that temptation. The claimant could and should have brought the claim in time and he has failed to satisfy me that it is just and equitable to allow it to continue in all the circumstances. Hence, that claim too must be and is dismissed.

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Employment Judge Andrew Clarke QC

Date: ...25 March 2020.....

Sent to the parties on: 23 April 2020

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For the Tribunal Office