



EMPLOYMENT TRIBUNALS

Claimant: Mr C Bonsu
Respondent: Calumet Photographic Ltd
HEARD AT: BEDFORD ET **ON:** 11th May 2017
BEFORE: Employment Judge Bloom

REPRESENTATION

For the Claimant: In person
For the Respondent: Mr I Rimmer (Solicitor)

PRELIMINARY HEARING JUDGMENT ON ISSUES

1. The issue to be determined before me was whether or not the Claimant's respective claims of unfair dismissal and/or race discrimination were presented within the requisite statutory time periods. The Claimant represented himself and also gave evidence on oath. He also called one witness Ms Maureen Evans who works for West Bletchley Age UK a charitable advisory service. No one gave evidence on behalf of the Respondent who were represented by their Solicitor Mr Rimmer.
2. Some of the background facts in this case are relatively simple and straightforward. The Claimant was scheduled to have attended a disciplinary hearing with his employer on 11th April 2016. He had been absent from work in a period leading up to that and it was alleged that those periods of absence were not as a result of sickness and that the Claimant himself had simply failed to attend work. He was sent a letter instructing him to attend that disciplinary hearing and was warned that one potential outcome of it could be his dismissal. I was informed, which was a matter not in dispute, that he failed to attend the scheduled meeting on the 12th April 2017. By letter of that date he was summarily dismissed. The letter was submitted by the Claimant at first class post to

his home address and in evidence before me the Claimant accepted that he received that letter on the 14th April 2017. He was aware therefore with effect from that date that his employment had been terminated by the Respondent. I find therefore that the effective date of termination of the Claimant's employment was 14th April 2017.

3. In so far as his claim for unfair dismissal is concerned the provisions of Section 111(2) Employment Rights Act 1996 apply. Those provisions state that any claim for unfair dismissal must be presented to the Employment Tribunal before the end of the period of 3 months beginning with the effective date of termination. 3 months less one day from the 14th April 2017 would, pursuant to those provisions, have resulted in the fact that any claim for unfair dismissal must have been presented on or before 13th July 2016. However, it is now a requirement that prior to bringing any unfair dismissal claim the prospective claimant should first have undergone the ACAS early conciliation process. That process does extend the statutory time periods. It is sufficient for the purposes of this case to say that the Claimant should have notified ACAS of his potential claim and therefore should have commenced the early conciliation process by notifying them of his claim on or before 13th July 2016.
4. Section 111(2)(b) states that the 3 month time period may be extended "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 3 months".
5. There is a similar statutory time limit in respect of claims of unlawful discrimination. As stated in this case the Claimant brings claims of race discrimination (direct discrimination). The relevant statutory provisions are set out Section 123 Equality Act 2010. Section 123(1) states that "a complaint 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". At the commencement of the Preliminary Hearing the Claimant went through 8 specific allegations of race discrimination. In essence he alleges that those acts took place on a continuous period throughout his 13 years of employment and therefore would have ended on the last day of his employment namely 14th April 2016. The same time period therefore in so far as his claim for unfair dismissal is concerned applies to any discrimination claim. Again it is a requirement of the early conciliation process that prior to bringing such proceedings the ACAS early notification and subsequent and early conciliation process should have been undertaken.
6. In reaching my judgment in this case I have considered the statutory provisions set out in the Employment Tribunals (early conciliation; exemption and rules of procedure) Regulations 2014. The schedule to those regulations is relevant. To satisfy the requirement for early conciliation a prospective Claimant must either complete an early

conciliation form (which can be done either by email or by post) or, relevant to the purposes of this case, telephone ACAS in accordance with Rule 3 of that schedule. Rule 3 is important. It states – “a prospective claimant telephoning ACAS for early conciliation must call the telephone number set out on the early conciliation form and tell ACAS” of his or her name and address and the prospective respondents name and address.

7. On 15th April 2016 having been notified of his dismissal the Claimant visited the offices of Ms Evans at Age UK. He had previously been to the CAB to take advice about bringing his claims. They have told him that they were unable to assist and suggested he visit Age UK. Upon arriving at their offices the Claimant spoke to Ms Evans. She told him that he would be advised first to lodge an appeal against his dismissal internally before bringing any further action. The Claimant did that and subsequently appealed. His appeal was unsuccessful and having been informed of that fact he returned to see Ms Evans at Age UK on 16th May 2016. I am entirely satisfied having heard the evidence from Ms Evans that on that day and on 15th April 2016 she had informed the Claimant that there was a 3 month time limit in bringing such proceedings. She did not explain to him in detail however all of the processes and possible extensions to that time period with regard to ACAS early conciliation. I am however satisfied that the Claimant had been advised there were statutory time limits in bringing a claim and that consequently thereafter he was conscious of the importance of proceeding within the statutory time limits.
8. Importantly on 16th May 2016 the Claimant spoke to ACAS. Ms Evans was present during the course of that conversation and could hear what the Claimant was saying although she was unable to hear what the ACAS Officer said. I have seen a record of the Claimant’s mobile telephone calls and it is beyond any doubt that the call was made shortly before 11am and lasted some 15 minutes. During the course of it the Claimant told the ACAS Officer about what had happened to him and the basis of his claims. Importantly I’ve noted the number rang by the Claimant to ACAS. The number rang was 0300 1231100 which is the ACAS general help line. It was not the early conciliation notification line which is a separate number, 0300 1231122. As a result I am satisfied that what the Claimant did on the 16th May 2016 was to in outline terms tell ACAS of the basis of his claim rather than notifying them, as he had to do prior to issue of any claims, of his desire to go through the early conciliation process. To have done so would have required a call to a different number. That is why, as subsequently happened, the Claimant heard nothing further from ACAS.
9. Two or three days after the 16th May the Claimant visited Ms Evans again and asked her if she had heard anything from ACAS. I’m satisfied having heard the evidence from Ms Evans that she had stressed to the Claimant that neither she or her organisation should be put on the record as acting for the Claimant. They had no expertise in dealing with

Employment Law issues. Ms Evans told me and the Claimant that neither she or her colleagues had heard anything from ACAS. As I have already said the Claimant had been pre-warned certainly by the 16th May 2016 about the importance of complying with time limits. Unfortunately, the Claimant did nothing then until the 19th September 2016 when he visited Ms Evans again at her office. He asked whether she had heard anything. Ms Evans was surprised that the Claimant should be visiting her at that stage as she had thought either he was doing nothing about the claim or that he was acting himself in bringing such proceedings. The Claimant was not a client of her organisation and she was not expected I find to have done anything to support him in bringing that claim. She ascertained with the Claimant that an early conciliation certificate had not been issued. To rectify that omission she and the Claimant contacted ACAS on the 19th September 2016 and immediately an early conciliation certificate was issued. By this time however the process undertaken in obtaining that certificate and subsequently presenting the claim was over 2 months out of time. The claim was presented to the Employment Tribunal some 7 days later after the certificate was issued on 26th September 2016.

10. There are 2 different legal tests I must undertake in determining whether or not the Claimant's claims can proceed. They are entirely different.
11. In so far as the unfair dismissal claim is concerned the statutory provision, as stated above, is Section 111(2)(b) Employment Rights Act 1996. This involves a determination as to whether or not it was not reasonably practicable for the Claimant to have presented the claim within the statutory time period. In determining this issue I have considered a number of authorities including *Dedman v British Building and Engineering Appliances Ltd (1974) ICR 53* and *Sodexo Healthcare Services Ltd v Harmer EATS0079/08* and *Trevelyan (Birmingham) Ltd v Norton (1991) ICR 488*. The statutory provision to which I have referred should be given a liberal construction in favour of an employee. Ignorance of a Claimant's rights to claim unfair dismissal may make it not reasonably practicable to present a claim in time but the ignorance must itself be reasonable. The test to which I must apply my mind is not whether or not the Claimant knew of his rights, but whether or not he ought to have known them. This was not a case however where the Claimant was in fact ignorant of the obligations upon him to present the claim in time. As I have stated he had been advised by Ms Evans certainly by the time of his second visit on 16th May 2016 that there was a 3 month time limit applying to his claim and that he was required to notify ACAS pursuant to the early conciliation process prior to bringing that claim. Even if, which is not the case in any event, Ms Evans and Age UK had provided incorrect advice to the Claimant that would not be a reason for me to conclude that it was not reasonably practicable for him to have brought the claim in time. I mentioned that to deal with the point made by the Claimant that Ms Evans had provided him with the incorrect ACAS telephone number on 16th May. The case of *Riley v Tesco Stores Ltd (1980) ICR 323 (a Court of Appeal Judgment)* makes it

clear that incorrect advice from an organisation such as the CAB or in this case Age UK is to be treated as the fault of the Claimant himself. It is also highly relevant in this case that some 4 months after seeing Ms Evans 2 or 3 days after the 16th May 2016 the Claimant only then went into see what progress was being made in relation to his claims. Not surprisingly there was none because he had failed to undertake the required early conciliation process.

12. There were no other factors put to me on behalf of the Claimant that justified the claim being presented that late. Consequently I am not satisfied that it was not reasonably practicable for the Claimant to have brought the claim within the 3 month statutory time limit (even allowing for an extension of time pursuant to the early conciliation process). Consequently it follows that the claim being presented on the 26th September 2016 is out of time and the claim for unfair dismissal therefore must as a result be dismissed.
13. The issue in respect of the race discrimination claim is entirely different however. The statutory provisions are set out in Section 123(1) Equality Act 2010 which gives me a wider discretion than that permissible under Section 111 of the Employment Rights Act 1996. I may if I consider it to be “just and equitable” extend that time period.
14. In determining such an issue I have considered the authorities of *Robertson v Bexley Community Centre (2003) IRLR 434* a decision of the court of appeal and the judgment of the Employment Appeal Tribunal in *British Coal Corporation v Keeble (1997) IRLR 336*. I’ve considered the various factors listed in Section 33 of the Limitation Act 1980. As I have stated the Claimant only before me at this preliminary hearing outlined in any detail at all the specific allegations of race discrimination. There were 8 of them and it is not necessarily for me now in this judgment to recite them save to say they were not pleaded in the ET1 nor were they raised by the Claimant in respect of any internal grievances prior to his dismissal, and nor were they raised either during the disciplinary process or at the Appeal Hearing. It is now over a year since the Claimant’s employment terminated. It is fairly obvious that the recollection of those who might be able to give evidence on behalf of the Respondent in defending such claims would have been affected by the elapse of time since the alleged events and the date they would finally come to a full hearing. The reason those proceedings have been delayed is through the fault of the Claimant as set out above. The Claimant knew of the statutory time limit for the reasons I have also explained. The interests of justice determine that I should, in exercising any discretion, look at how any delay may affect the Respondents ability to defend such claims. I find as a result of the fact that they have only been identified now over a year since the alleged events took place must by their very nature affect the Respondents ability to effectively defend them. For the same reasons I have found against the Claimant in relation to his claim for unfair dismissal it was incumbent on him to progress his claim within the statutory time limit. He had, as I have

already made reference to, been informed by Ms Evans at Age UK that there was a 3 months statutory time limit in bringing the claims. The Claimant had done nothing to chase up the matter for a 4 month period until he returned to Age UK on the 19th September 2016. I do not, as a result, therefore think it appropriate for me to exercise my discretion in favour of the Claimant to allow those claims to proceed out of time and in consequence they are, as a result, dismissed.

15. Mr Rimmer on behalf of the Respondent made an application that the Claimant should pay the wasted costs in respect to the previously adjourned preliminary hearing that took place before Employment Judge Moore on the 23rd February 2017. I'm not satisfied that it is appropriate to make that order for costs. Although the preliminary hearing on the 23rd February 2017 had to be adjourned due to insufficient evidence being brought to the Tribunal I am not satisfied that that omission whether or not it was the omission of the Claimant or, in all fairness, at least partly the omission of the Respondent was as a result of the Claimant acting vexaciously, abusively, disruptively or otherwise unreasonably in bring the proceedings or the way in which those proceedings had been conducted. I note that even at the hearing before me the Respondents themselves had failed to bring some important documentation and had not undertook their obligations under the orders made by Employment Judge Moore to agree with the Claimant an indexed and paginated bundle for the preliminary hearing. Consequently I do not think it appropriate to make any order for costs in respect of those wasted at the hearing on 23rd February 2017 against the Claimant. I have also noted in reaching that decision that the Claimant, a married man with 3 young children, has considerable debts including council tax arrears and various County Court Judgments and has no savings.

16. End of Judgment.

Employment Judge Bloom

Date 24th May 2017

JUDGMENT SENT TO THE PARTIES ON

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FOR THE SECRETARY TO THE TRIBUNALS