



EMPLOYMENT TRIBUNALS

Claimant: Mr Alfred Arieleno

Respondent: Croma Vigilant (Scotland) Ltd

Heard at: London Central

On: 1 May 2019

Before Judge: Mrs A Isaacson

Representation

Claimant: Mr Mann

Respondent: Miss C Elvin

JUDGMENT

The Judgment of the Tribunal is as follows:

The claimant's claims for unfair dismissal, holiday pay and notice pay are struck out on the basis that they were presented out of time and it was reasonably practicable to present the claims in 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 union representative 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 sufficient to justify a finding of fact that it was not reasonably practicable to present a complaint in time to the Tribunal.
8. The claimant's EDT was the 28 December 2017. The claimant's claim form was presented on 22 May 2018. The claimant's ACAS early conciliation (EC) certificate was issued on 29 April 2018 and confirms notice on 29 March 2018, outside the three months' time limit. Therefore, the ACAS EC did not stop the clock or extend time by a further month as EC was only started after the three months' time limit had expired.
9. Both Mr Mann and the claimant gave evidence before the Tribunal. Mr Mann confirmed that he was aware of the claimant's right to bring a Tribunal claim and of the three months' time limit and the need to enter into EC before presenting a claim. He had been waiting for a response from the respondent regarding an appeal but by the end of March, wary of the three months' time limit, held a meeting with a number of the claimants and then started EC by communicating with ACAS and sending a schedule of the relevant claimants. An ACAS certificate for those claimants confirms the start of the EC as 26 March and the end being 26 April 2018.
10. Mr Mann is not sure whether it was his fault or ACAS' mistake but unfortunately the claimant's name was missed off the schedule of names from ACAS. A colleague of the claimant's noticed the mistake and told the claimant who then telephoned ACAS. Since Mr Mann was away he immediately asked to start EC. This must have been on the 29 March 2018 according to the ACAS certificate.

11. Mr Mann explained to the Tribunal he was an employee of Unison but not “officially” the representative of the claimant until a regional organiser had passed the case file to the union’s solicitors and got the go ahead. However, Mr Mann was a union employee and representing the claimant and other employees of the respondent at the relevant time. He was communicating to the respondent on behalf of the claimant and advising him regarding his potential claims and rights.
12. Unfortunately, I find that it was reasonably practicable for the claimant to have presented his claim in time. Both he and Mr Mann were aware of his right to bring claims before a Tribunal and were aware of the three months’ time limit and the need to enter into EC before presenting a claim. The claimant’s name should have been included in the schedule sent to ACAS. The claimant’s remedy may lie with the union. There was no evidence brought to the Tribunal to demonstrate that the mistake was made by ACAS. Since the claimant hasn’t brought an Equality Act claim I don’t have the discretion to extend time.
13. Therefore, I find that the claimant’s claim was presented out of time and since it was reasonably practicable for the claim to have been presented in time I strike out all of his claims on the basis that the Tribunal does not have jurisdiction to hear his claims.

Employment Judge A Isaacson

_____ 1 May 2019 _____

Date

JUDGMENT & REASONS SENT TO THE PARTIES ON

.....15 May 2019.....

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FOR THE TRIBUNAL OFFICE