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EMPLOYMENT TRIBUNALS

Claimant: Mr M P Pinnington

Respondent: Britvic Soft Drinks Ltd

Heard at: East London Hearing Centre

On: 13 March 2017

Before: Employment Judge Ferris (sitting alone)

Representation

Claimant: In person

Respondent: Mr G Anderson (Counsel)

JUDGMENT

The judgment of the Employment Tribunal is:-

- (1) To strike out the claim because it is out of time and the Tribunal does not have jurisdiction to hear the claim.
- (2) The Respondent's application for costs is dismissed.

REASONS

1 I heard evidence from Mr Pinnington and read documents submitted by him and I make the following findings of fact.

2 The Claimant was employed as an Engineer at Britvic for over 11 years until he was suspended in April 2016 and then summarily dismissed on 29 June 2016 for alleged misconduct. The Claimant had already engaged a firm of solicitors Dale Langley, to assist in his case and he received advice and assistance (they wrote a letter on his behalf to his employers) during his suspension and prior to his dismissal. That cost the Claimant about £4,500. He could not afford to continue with that firm.

3 Graham Hipwell a work colleague recommended an expert who had worked in HR for a number of years and was acting as a consultant on a no win no fee basis for

claimants in unfair dismissal cases. Her name was Karen Louise Ward. The Claimant met Karen on 5 August 2016. At that meeting the Claimant received advice about his claim and was told that he would have to log an application under the early conciliation procedure with ACAS. Karen undertook that task on his behalf.

4 Time passed and the Claimant heard nothing more. In September he contacted his work colleague Graham Hipwell who was a close friend of Karen, but apparently did not receive any further information. On 12 October 2016, the Claimant sent Mr Hipwell a text to say that he really needed to contact Karen because he had heard nothing from her and knew that time was pressing.

5 In the course of his cross-examination this morning the Claimant was very unclear as to when he himself eventually contacted ACAS. He told me at first that it was after 4 October 2016 and then finally he seemed to settle for a date which was before the 4 October 2016. At some point, again date uncertain, he obtained the ACAS EC Certificate number from Graham who apparently had extracted the relevant number from Karen. With that number the Claimant told me he was able to contact ACAS to find out what had happened. At some point, again dates are very uncertain on the evidence of Mr Pinnington, he found out that the Early Conciliation Certificate had been issued and he procured a copy of that certificate. Again it is not clear when that happened. It appears that by 6 December he was communicating with Graham to say that he was “up the creek without a paddle”.

6 Given that the Claimant had already been advised by a firm of solicitors prior to his dismissal in June and then by Karen in early August it is puzzling that he had not made certain in the following three months that his case was progressed. In my judgment he must have known before the end of September that Karen was not able to help him, for whatever reason, and at that point he should have taken steps to protect his position first with ACAS who could certainly have tracked his name and the name of his employer even if he did not have the relevant reference number, and knowing what he did about Employment Tribunals and time limits he should then have made his application to the Employment Tribunal, as he eventually did on 19 January, but a great deal earlier and certainly before 4 November 2016.

7 In my judgment the Claimant has not demonstrated to me that it was not reasonably practicable to present his claim before 4 November 2016. That appears to be the relevant date because the ACAS first contact was 19 September and the certificate was issued on 4 October 2016. Even if it had not been reasonably practicable to present the claim by early November 2016 the Claimant took his time thereafter with full knowledge of the Early Conciliation Certificate and having been in contact with ACAS at least once prior to effectively presenting a claim to the Employment Tribunal on 19 January.

8 The Claimant told me that he seems to have done very little in December 2016, if anything, to progress this case and he went on holiday with his family on 22 December 2016. Even if it had not been reasonably practicable to present his claim by the beginning of November 2016, in my judgment thereafter this claim was not presented within a reasonable time.

9 Accordingly I must strike out this claim. I am pleased to record that the Claimant

has now found fresh employment.

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Employment Judge Ferris

24 March 2017