



EMPLOYMENT TRIBUNALS

Claimant: Mr D Khan

Respondent (1): AK Accountancy

Respondent (2): Mr Bilal Azeem t/a AK Accountancy

Respondent (3): Azeem Accountants Limited

HELD AT: Leeds

ON: 26 February 2018

BEFORE: Employment Judge Cox

REPRESENTATION:

Claimant: In person

Respondents: No appearance or representation

JUDGMENT

1. The claims against the First and Second Respondents are dismissed.
2. The claim of unfair dismissal against the Third Respondent is dismissed.
3. The claims against the Third Respondent of age discrimination, unauthorised deductions from wages and failure to pay notice pay are dismissed as having been brought out of time.

REASONS

1. In the claim form he presented on 22 September 2017 Mr Khan alleged that his former employer had unfairly dismissed him, discriminated against him because of his age, made unauthorised deductions from his wages and owed him damages for breaching his contractual right to notice of termination of employment. It was unclear who Mr Khan was saying employed him and the claim was eventually served on three Respondents.

2. None of the Respondents sent in a response to the claim. A Hearing was nevertheless necessary because it was unclear who the correct Respondent was, Mr Khan did not appear to have sufficient service to qualify to bring a claim of unfair dismissal and the claim appeared to have been presented outside the statutory time limits.
3. At the Hearing, after discussion with the Employment Judge, Mr Khan confirmed that it was the Third Respondent who employed him. The claim was therefore dismissed against the First and Second Respondents.
4. Mr Khan also confirmed at the Hearing that he had begun working for the Third Respondent on 3 November 2016 and that his employment ended at the beginning of April 2017. He accepted that the reason he was dismissed was because the Respondent could not afford to employ him anymore. As he had not completed the two years' continuous employment that is required to qualify to complain of unfair dismissal (see Section 108(1) of the Employment Rights Act 1996 – the ERA), the Tribunal dismissed that aspect of his claim.
5. Mr Khan worked as an administration apprentice for the Respondent, which is a small accountancy firm owned by Mr Bilal Azeem. His complaint of age discrimination was that he had not been given the work that he expected, such as email correspondence, answering the 'phone and dealing with clients who came into the office. That work was instead given to Mr Azeem's brother Umair, who also worked for the firm. Mr Khan believed that he was not given the work because of his young age: he was 18 at the time and a recent school leaver.
6. Mr Khan's other claims were that the Respondent owed him £300 in wages and had not given him the one week's notice he was due to terminate his contract.

The law on time limits

7. There is a three-month time limit for bringing claims of age discrimination, unauthorised deductions from wages and damages for failure to give notice (Section 123(1)(a) of the Equality Act 2010, Section 23 ERA and Article 7 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994). Mr Khan said that he was dismissed at the beginning of April 2017 but was unsure of the exact date. For the purposes of its decision on time limits, the Tribunal worked on the assumption that the time limit for all Mr Khan's claims ran from the end of his employment and that the final day of his employment was on or before 7 April 2017, the end of the first working week in April. Mr Khan should therefore have presented his claim by 6 July 2017. (Mr Khan did not contact ACAS under the early conciliation procedure until 14 August 2017, so the provisions that allow for an extension of time to accommodate the early conciliation procedure did not apply.) He in fact presented it on 22 September 2017, 11 weeks late.
8. The Tribunal has power to deal with late claims in certain circumstances. In the case of a claim of unauthorised deductions from wages or failure to give notice, the Tribunal can deal with the claim if it is satisfied that it was not reasonably practicable for the Claimant to present his claim by the due date and it was presented within a further reasonable period. In relation to a claim of age

discrimination, the Tribunal can consider a late claim if it considers that it has been presented within a period that the Tribunal considers just and equitable.

9. It is the exception rather than the rule that a Tribunal will allow a late claim, and it is up to the Claimant to satisfy the Tribunal that it should extend time.

The circumstances of Mr Khan's case

10. Mr Khan contacted ACAS in the middle of April 2017, soon after his employment ended, for help in securing his outstanding wages. They wrote to Mr Azeem a few times but initially he ignored their letters. He eventually agreed to pay Mr Khan £631 but then paid him only £313, in around the middle of June 2017.
11. In his evidence, Mr Khan at first said that ACAS told him he had the option of bringing a Tribunal claim when Mr Azeem initially ignored ACAS's letters. Later in his evidence, he said that ACAS did not mention until the end of July or beginning of August that he should go to a Tribunal. He said that was the first time he had even been aware of the existence of Tribunals. He said that ACAS did not mention time limits at all. Although he went to the Employment Tribunals website, he saw no mention of time limits there either. The Tribunal found this evidence unconvincing. Mr Khan was in contact with ACAS as early as the middle of April 2017 and had several interactions with them. ACAS are aware of the enforcement mechanism for employment rights and the importance of time limits and the Tribunal finds it more likely than not that they discussed these things early in their dealings with Mr Khan. The Employment Tribunal website also makes clear the importance of time limits and the Tribunal finds that when Mr Khan looked at that website he would have seen that information.
12. Mr Khan went on holiday from 7 August until the beginning of September, planning to make a claim to the Tribunal on his return. When he returned from his holiday he did some research on the internet about bringing a claim and on around 15 September 2017 he talked to a friend who explained about how to make a claim to the Tribunal. He presented his claim about a week later.
13. Mr Khan thought at the time he was employed by the Respondent that he was being treated unfairly because of his age. He was not aware that age discrimination was unlawful until he saw that there was a box on the claim form that he could tick if he believed he had been discriminated against because of age.

The Tribunal's conclusions

14. The Tribunal was satisfied that it was reasonably practicable for Mr Khan to present his claim of unauthorised deductions from wages and damages for failure to give notice by the due date of 6 July 2017. During the course of their dealings with Mr Khan from mid-April onwards, ACAS would have mentioned to him both the role of Tribunals and the importance of time limits. Even if the Tribunal had accepted Mr Khan's evidence that ACAS never mentioned Tribunals to him until the end of July and never mentioned time limits at all, he could reasonably have been expected to find out this information for himself. He was clearly able to use the internet to research how to enforce his rights on his return from his holiday at

the beginning of September and he could reasonably have been expected to do that research earlier, and at the latest when it became clear in the middle of June that Mr Azeem was not going to pay him what he believed he was owed. The websites for ACAS and the Employment Tribunals both make clear the importance of the three-month time limit.

15. Even if it had not been practicable for Mr Khan to present his claim by the due date of 6 July 2017, the Tribunal would not have accepted that he presented his claim within a further reasonable period. Even after the date he accepts ACAS told him that he could enforce his rights through a Tribunal, he did not bring a claim but went on holiday for three weeks. On his return, he delayed for over two weeks before making a claim.
16. The Tribunal therefore dismissed the claims of unauthorised deductions from wages and damages for breach of the contractual right to notice.
17. Turning to Mr Khan's age discrimination claim, the Tribunal noted that Mr Khan believed at the time he was employed by the Respondent that he was being treated unfairly because of his age. The Tribunal considers that he could reasonably have been expected to research at an early stage whether there was anything he could do about that. He could easily have asked ACAS for advice when he contacted them about his unpaid wages. In fact, he took no active steps to research his rights and how to enforce them until he returned from his holiday in September, five months after his employment had ended. Even then he delayed for over two weeks before completing a claim form, which is what he says first gave him the information that age discrimination could be the subject of a claim to the Tribunal. In these circumstances, the Tribunal does not accept that the age discrimination claim was presented within a further just and equitable period.
18. The Tribunal therefore dismissed the age discrimination claim.

Employment Judge Cox

Date 8 March 2018