



EMPLOYMENT TRIBUNALS

Claimant: Mr D V Highland

Respondent: Vinola Knitwear (Manufacturing) Co Limited

Heard at: Leicester **On:** Thursday 26 July 2018

Before: Employment Judge Brewer (sitting alone)

Representatives

Claimant: In Person

Respondent: Mr D Bansal, Solicitor

JUDGMENT

The Tribunal does not have jurisdiction to hear the Claimant's claims for unfair dismissal, redundancy pay and notice pay.

REASONS

Introduction

1. This is one of the claims which were rejected for none payment of fees, the date of rejection is unclear. The Claimant was written to by HMCTS towards the end of 2017. The Claimant was asked whether he wished to reinstate his Tribunal claim following abolition of the fees and he confirmed that he did. HMCTS wrote to the Claimant again on 5 December 2017 stating that they had been unable to locate his original claim form and therefore asking him to submit a new ET1. The Claimant did submit a new claim form and that was received by the Employment Tribunal on 12 December 2017.

2. That claim form contained no early conciliation (EC) certificate number. The matter was referred to the Regional Employment Judge who ordered an open Preliminary Hearing to consider the following 3 questions:-

2.1 Whether the claim is time bound?

2.2 Whether the Claimant failed to comply with ACAS early conciliation requirements?

2.3 Whether it is still possible to have a fair trial?

3. The case came before me for hearing today. Mr Highland represented himself and the Respondent was represented by Mr D Bansal, solicitor. I heard evidence from Mr Highland and have considered the bundle of documents which was presented as a joint bundle.

Issues

4. The issues are essentially the questions I have referred to above. I took the issues in the following order:-

4.1 Did the Claimant complete the EC procedure?

4.2 If not, does the Tribunal have jurisdiction to hear his claims?

4.3 If the Tribunal does have jurisdiction, were the claims presented in time?

4.4 If so, is it still possible to have a fair trial given the passage of time, over 3 years, to today's date?

4.5 If the claims were not submitted in time, was the time taken to submit the claims reasonable if I find it was not reasonably practicable for the claims to have been presented in time?

4.6 If the claims were not submitted in time and time is extended, nevertheless is it possible to have a fair trial?

5. Having considered the documents and heard Mr Highland's evidence I make the following findings of fact.

6. The Claimant's employment terminated on 6 February 2015. The reason for termination was redundancy. That is not in dispute.

7. Shortly after the termination of his employment the Claimant went to a Citizens Advice Bureau in South Wigston and they referred him on to a claims handling company called Legal Services. Within a week or so of his dismissal the Claimant met a lady representing Legal Services. He was given some advice and there were some letters exchanged. He was asked for a payment up front by them of £250 but the Claimant says, and I accept, that he did not really know what that money was for and he did not pay it.

8. The Claimant heard no more from Legal Services, despite chasing them. He did not pursue the Employment Tribunal proceedings and the next thing he knew was receipt of a letter from HMCTS telling him about the abolition of fees and asking him if he wanted his claim reinstated. After that the Claimant spoke to ACAS. The Claimant does not know whether Legal Services contacted ACAS on his behalf.

9. The CAB never told the Claimant about early conciliation or the need for an EC certificate.

10. The Claimant was never sent a copy of any completed ET1 and he never asked for one.

11. The person who advised him from Legal Services told the Claimant she was a Barrister. The Claimant relied entirely on Legal Services and did not do any research himself.

12. In December 2017 the Claimant completed the ET3 himself and at 2.3 in the claim form he confirms that he was never given an EC certificate by ACAS and today confirmed he had not been sent one by Legal Services.

13. The Claimant contacted ACAS after he submitted the December 2017 claim form but again he did not speak to them about early conciliation.

The Law

14. The following is the relevant law.

15. A claim for unfair dismissal must be submitted within 3 months of the effective date of termination, although that 3 month period is modified to facilitate early conciliation (Section 111, Section 207A and Section 207B Employment Rights Act 1996).

16. A claim for a redundancy payment has to be made within 6 months beginning with the "relevant date" within the meaning of Section 164 Employment Rights Act 1996. That time limit is also modified to take account of early conciliation as set out above.

17. A claim for notice pay is a claim made under the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 (SI 1994/1623). That claim must be made within 3 months of the effective date of termination subject to the ability to extend time including to facilitate early conciliation (see Regulation 8B).

18. In each of the above claims where the Tribunal is satisfied that it was not reasonably practicable for the claims to have been brought within time, time may be extended if the time taken to submit the claims was, in the Tribunal's discretion, reasonable.

19. It is necessary to refer to one case which is the decision of the then President Mr Justice Langstaff sitting in the Employment Appeal Tribunal on a Rule 3(10) application in the case of **Ms A Cranwell v Mr R Cullen** (UK EAT/0046/2014). That case concerned whether the absence of an early conciliation certificate was in and of itself fatal to a claim or whether the Tribunal could exercise the discretion given to it by Rule 6 of the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013. The judgment in that case is the Tribunal has no discretion to allow a claim to proceed where there has been no early conciliation as required by the Employment Tribunals Act 1996.

Discussion

20. Before considering the facts and applying those to the law I should state that I found Mr Highland to be an honest and credible witness. He did not seek to lay the blame for what occurred in this case. He accepts that he was rather too laid back and did not pursue legal services beyond some phone calls chasing them up in the early stages.

He confirms that he did essentially nothing until written to by HMCTS following the withdrawal of the fees. I am also grateful to Mr Bansal for his thoughtful submissions.

21. There is no doubt that a claim was submitted on behalf of Mr Highland. That must be the case because there is a record of it which explains why HMCTS wrote to him as they did in 2017 requesting to know whether he wanted his claim reinstated. The question is whether we can presume that everything else in the claim form as it should have been, in particular whether there was an EC certificate. There are really two ways to look at this case. It is either that Legal Services submitted the claim and the only thing missing was the fee. In that context it seems entirely likely that the letter from Legal Services which Mr Highland says he received asking him for a payment of £250 was in fact Legal Services asking him for the fee. The alternative is that Legal Services submitted a completed claim form and the only thing that was missing was the fee.

22. In the circumstances I do not feel able to conclude that an organisation which submitted a claim form without a fee is an organisation incapable of submitting a claim form without other details such as an early conciliation certificate. Mr Highland did not suggest for example that there was any discussion with Legal Services about whether he wished to conciliate. He was not saying there was a discussion about how much he would be prepared to settle for if there was conciliation. Had Legal Services contacted ACAS these are the sorts of questions that would have been asked by the conciliation officer. In many cases there is discussion of settlement, in other cases there is discussion of no settlement and in some cases one or other of the parties does not wish to conciliate and the matter proceeds from there.

23. But from the Claimant's evidence it seems that there was no discussion with him about conciliation, no request to know whether he would be prepared to settle and if so for how much and from that it seems to me that the reasonable conclusion is that ACAS were not contacted by Legal Services or to put it the other way round I cannot conclude from the evidence that they were contacted and it seems to me that in the absence of an EC certificate or any evidence that one was obtained at some point, the better view is that there is not and the Claimant's claims cannot proceed.

24. It is not strictly necessary for me to answer the other questions considered at this hearing. However given the evidence it would be impossible to conclude one way or another whether the claims were submitted in time. However, if they were not given that Mr Highland relied upon legal advice it seems to me that the failure of that legal advice does not assist the Claimant. As long ago as 1974 in the case of **Deadman v British Building and Engineering Appliances Limited** [1974] ICR 53, the Court of Appeal stated that "if a man engages skilled advisers to act for him – and they mistake the time limit and present [the claim] too late – he out. His remedy is against them". This principle has been repeated in many cases since. The presumption therefore is that if somebody engages the skilled adviser to act for them then it was reasonably practicable for the claim to be presented in time. That is what Mr Highland did and therefore I conclude that it was reasonably practicable for him to have presented his claim in time and insofar as they were presented beyond the normal time limit, which is far from clear, I would not have been minded to extend time in this case in any event.

25. The above findings of course mean that the issue of whether a fair trial is possible does not need to be determined but in any event it was conceded on behalf of the Respondent, rightly so in my view given the detailed ET3 which was produced after the December 2017 ET1 was submitted, that a fair trial is still possible. All of the decision makers remain in the business and they clearly have detailed recollection of what took place. However as I say it is not necessary for me to deal with that in any further detail given my findings above.

26. For the reasons set out above the Claimant's claims under case number 2600611/2018 are dismissed.

Employment Judge Brewer
Date 04 August 2018

JUDGMENT SENT TO THE PARTIES ON

04 August 2018

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FOR THE TRIBUNAL OFFICE