



EMPLOYMENT TRIBUNALS

Claimant: Mr H Wallett

Respondent: Blue Sky Care Limited

Heard at: Nottingham **On:** Thursday 7 March 2019

Before: Employment Judge Brewer (sitting alone)

Representatives

Claimant: Mrs S Dobson, Lay Person

Respondent: Mr R Ryan of Counsel

JUDGMENT

The Employment Tribunal does not have jurisdiction to hear the Claimant's claim and the case is dismissed.

REASONS

Introduction

1. By a claim form received by the Tribunal on 4 October 2018 the Claimant claims constructive unfair dismissal. The case was due to be heard substantively on 7 March 2018. However, the Respondents applied to convert the hearing to a Preliminary Hearing to consider whether the claim was submitted out of time and if so whether the Tribunal should extend time and Employment Judge Hutchinson agreed to that request. The hearing came before me.

2. At the hearing although the Claimant was present, he was represented by his partner Mrs Dobson. The Respondents were represented by Mr Ryan. I was given various documents to consider but few of them were relevant. In the event, Mrs Dobson confirmed that there was no witness evidence from the Claimant. She confirmed that she had taken all actions in this case and that Mr Wallett, the Claimant, relied entirely on what she had to say about the submission of the claim and any time limit issues. She is not legally qualified.

Issues

3. The issues in this case are whether the claim was submitted out of time and if so whether it was not reasonably practicable for the claim to be submitted within the normal time limit and if I am satisfied that it was not reasonably practicable, whether I consider the period in which it was submitted to be reasonable in all the circumstances.

The Law

4. The time limit for submitting a claim for unfair dismissal set out in Section 111(2) of the Employment Rights Act 1996. Essentially the time limit is 3 months from the effective date of termination as that may be extended by the application of Section 207B of the same act to account for early conciliation.

5. I have referred to some case law in the decision below.

Findings of Fact

6. The Claimant's employment terminated on 9 February 2018 when he resigned from his employment with immediate effect as is apparent from page 50 of the bundle and as the parties agreed.

7. ACAS was contacted on 4 September 2018 and the date of the early conciliation certificate is 6 September 2018.

8. As set out above the claim was received by the Tribunal on 4 October 2018.

9. The ordinary time limit for submitting the claim ended on 8 May 2018. No extension for early conciliation applies in this case because ACAS were not contacted until after the normal time limit had expired.

10. This means that the claim was submitted some 8 months out of time.

11. Mrs Dobson said that, in effect, what she did, the Claimant did. In other words she was not acting as an adviser to him, she simply took all of the steps in this process. Mrs Dobson works as a receptionist in a doctors surgery, she is not a lawyer but as she herself said she is not stupid. She has access to a computer and to the internet, she knows how to do research, she understands about searching online.

12. For the first month after dismissal the Claimant was somewhat depressed. Around 2 months after termination of the Claimant's employment he and Mrs Dobson went to see their local MP. That was not to discuss his employment situation but another matter. However, at the end of the meeting the MP asked whether there was anything else the couple would wish to raise and the employment matter was mentioned. The MP said that if they wanted to discuss that further they could meet her again.

13. In mid-April Mrs Dobson went on the internet and did some research into unfair dismissal.

14. Sometime around mid-May Mrs Dobson made first contact with ACAS. She says that she was given general advice but the person who was on the helpline did not mention any time limits.

15. Mrs Dobson says she had a couple of further conversations with ACAS but they were not helpful. She said that time limits were not mentioned.

16. The couple had a second meeting with their MP in June 2018. This time the employment situation was discussed and the couple were told to contact ACAS and also put in a claim.

17. On 16 July 2018 the Claimant was out walking his dog. He met an employee of his former employer, PW. PW told the Claimant that he knew all about what had happened at work and it was at this point that the Claimant decided to bring a claim.

18. Mrs Dobson said that efforts were made to try to settle with the company. She had spoken to a company representative and wrote a letter dated 18 July 2018, a copy of which appears at page 57 of the bundle. The company responded on 2 August 2018 and a copy of that letter appears at page 65 of the bundle. The essence of the letter is that following numerous telephone calls from the Claimant and the letter of 18 July 2018, there was no wish on the part of the company to settle and "the company deems this matter as closed". It follows that from this date it was clear that no settlement was in prospect.

19. On 24 August 2018 the Claimant wrote to the Information Commissioners Office and a copy of his letter appears at page 69c of the bundle. For our purposes the relevant part is on page 69f as he says "spoke to ACAS and Employment Tribunal and am taking company for constructive dismissal, under this ground I feel very strongly I could no longer work for the company. I am taking to Employment Tribunal as I feel so strongly Blue Sky Care were very out of line with me as an employee". It follows that with effect from 24 August 2018 the Claimant had spoken both to ACAS and the Employment Tribunal and had determined to bring a claim for constructive dismissal.

20. In early September 2018 Mrs Dobson spoke to a manager at ACAS. She says that she was advised that there was a 3 month time limit which she concedes she understood to run from the date of termination in which to bring a claim. She was told that she was out of time for early conciliation but was nevertheless given an early conciliation number. The early conciliation certificate records that contact was made with ACAS on 4 September 2018 and the date of the early conciliation certificate is 6 September 2018.

21. The claim was submitted on 4 October 2018.

22. Those then are the facts in this case.

Discussion

23. The first question I have asked myself is whether it was reasonably practicable for the claim to have been brought in time. That normally requires a consideration of whether there was some impediment to bringing the claim in time and all of the surrounding circumstances including any erroneous advice that was received.

24. The Claimant does not rely on any impediment to bringing the claim in time. What is relied upon is ignorance. Although Mrs Dobson said that ACAS did not advise her that there was a time limit, she does not say that she was given wrong advice about what time limit there was. There is no presumption on the part of ACAS that somebody calling a helpline needs any particular information. The point of a helpline is that they are responding to the help that is required. Mrs Dobson does not say that she asked any questions about the process for bringing a claim because if she had then that advice would have been given and she would not have needed to call again several more times including speaking to a manager in September 2018.

25. It is settled law that if somebody wishes to rely on ignorance then the ignorance must be reasonable and given that Mrs Dobson is an intelligent woman with access to the internet and indeed given her confirmation that she researched dismissals, I do not consider that it is possible for her and through her the Claimant to rely on ignorance in this case. Any simple research on the internet would throw up a plethora of pages of information and advice on bringing an Employment Tribunal claim including time limits and the need for early conciliation. In my judgment in this case ignorance is no defence.

26. The research was commenced around halfway through the initial 3 month time period under the Employment Rights Act and there seems to be no good reason why that research was not thorough enough to advise the Claimant that he needed to contact ACAS and seek an early conciliation certificate prior to bringing a claim and the time limits within which those things should be done. It is no answer to that to say that ACAS did not advise Mrs Dobson or the Claimant of time limits because ACAS were not contacted until either very close to even shortly after the normal time limit expired and of course it remains unclear what questions were asked on the helpline by Mrs Dobson.

27. The second question is whether the period taken to submit the claim outside of the normal time limit was reasonable. This is not a question I need to answer given my response to the first point that it was in fact reasonably practicable for the claim to have been brought in time. Nevertheless for the sake of completeness this is a point I feel I should cover.

28. It is entirely clear from the chronology outlined above that by 24 August 2018 the Claimant intended to bring and indeed the suggestion is that he had brought his claim. He knew about ACAS, he knew about Employment Tribunals, he knew about constructive dismissal. That is plain from the letter he signed which starts at page 69c of the bundle. Nevertheless it took another 2 months or so before the claim was submitted. That is not a reasonable period of time given all the circumstances of this case.

28. I should add that even if was to accept that it was not until the issue of the early conciliation certificate on 6 September 2018 that the Claimant was aware that he should have brought a claim, it still took another 4 weeks for that claim to be submitted and I would have found that 4 weeks not reasonable in all the circumstances.

29. It follows that for all of those reasons the claim is out of time and I decline to extend that time for the reasons set out above and therefore the claim is dismissed.

Employment Judge Brewer

Date: 20 March 2019

JUDGMENT SENT TO THE PARTIES ON

.....

.....
FOR THE TRIBUNAL OFFICE