



EMPLOYMENT TRIBUNALS

Claimant: Mr R Rajeeakaran
Respondent: Kentucky Fried Chicken (GB) Limited
Heard at: Cambridge **On:** 1 March 2019
Before: Employment Judge T Brown (sitting alone)

Appearances

For the claimant: Not present or represented
For the respondent: Mr J Brotherton, non-practising solicitor

JUDGMENT

- (1) Having regard to the applicable statutory time limits, the Employment Tribunals do not have jurisdiction to consider the claimant's complaints:
 - (i) of unfair dismissal,
 - (ii) of age discrimination,
 - (iii) of unauthorised deductions from wages,
 - (iv) of a failure to pay in respect of annual leave, or
 - (v) in respect of a contract claim for notice pay.
- (2) The complaints set out at paragraph (1) above are hereby dismissed for want of jurisdiction.
- (3) It is hereby declared (by consent) that the Employment Tribunals have jurisdiction to consider the claimant's reference as to his right to a redundancy payment.

REASONS

1. Introduction

- 1.1. The parties agree that the claimant was employed by the respondent until he was dismissed summarily on 3 April 2017.
- 1.2. On 6 September 2017, the claimant presented a claim to the Employment Tribunals, complaining that:
 - 1.2.1. he had been unfairly dismissed
 - 1.2.2. he had been subjected to age discrimination
 - 1.2.3. he had not been paid notice pay to which he was entitled
 - 1.2.4. he had not been paid holiday pay to which he was entitled
 - 1.2.5. he was entitled to a redundancy payment and
 - 1.2.6. there had been unauthorised deductions from his wages.
- 1.3. Prior to the presentation of the claim, there appeared to have been a period of early conciliation which was certified by ACAS as having taken place between 11 July 2017 and 7 August 2017.
- 1.4. The respondent presented a response to the claim on 23 October 2017, in which it contended that the claimant's complaints (except the reference for a redundancy payment) had been presented out of time.

2. Preliminary hearing: time limits

- 2.1. A preliminary hearing was listed to consider whether the Employment Tribunals had jurisdiction to consider the claimant's complaints, having regard to the applicable statutory time limits.
- 2.2. That hearing was originally listed for 15 January 2018, and the notice of hearing said that the hearing would consider whether the tribunal had jurisdiction to consider the claimant's claims in view of the three-month time limits. That hearing was postponed on 12 January 2018 and relisted to take place on 5 September 2018.
- 2.3. On 3 April 2018, Mr Charles Davey of counsel went on record for the claimant.
- 2.4. At the hearing on 5 September 2018, the claimant was represented by Mr Davey. The claimant applied to postpone the hearing because:
 - 2.4.1. his representative had not received a copy of the notice of hearing, and had not appreciated that the hearing was to consider time limits,
 - 2.4.2. the claimant said that he had evidence of different dates of early conciliation (and seems to have handed up to Employment Judge Vowles copies of that evidence), and

- 2.4.3. the claimant wished to produce medical evidence that, if the claim had been presented out of time, this had been because ill-health had prevented earlier presentation, so that it had not been reasonably practicable to present the complaints in time.
- 2.5. Employment Judge Vowles relisted the preliminary hearing for today, 1 March 2019, at Cambridge, and listed a final hearing for five days from 15 July 2019 at Reading.
- 2.6. On 7 January 2019, Mr Davey wrote to the Employment Tribunals to say that he had been unable to contact the claimant and that accordingly he no longer represented the claimant.

3. Application for a postponement

- 3.1. It appears that on 28 February 2019 the Employment Tribunals telephoned the claimant to confirm the hearing on 1 March 2019. At 1:08 pm on 28 February 2019, the claimant wrote to the Employment Tribunals by email saying:

I had a telephone call from the tribunal officer today regarding tomorrow's hearing in Cambridge. I did not receive any notification or details regarding this hearing hence I am not prepared for this hearing. If possible kindly postpone the hearing to any date, if not please let me know the tribunal's decision.

- 3.2. The respondent resisted that application for a postponement of the hearing.
- 3.3. Rule 30A(2) of the Employment Tribunals Rules of Procedure provides that:

Where a party makes an application for a postponement of a hearing less than 7 days before the date on which the hearing begins, the Tribunal may only order the postponement where—

(a) all other parties consent to the postponement and—

(i) it is practicable and appropriate for the purposes of giving the parties the opportunity to resolve their disputes by agreement; or

(ii) it is otherwise in accordance with the overriding objective;

(b) the application was necessitated by an act or omission of another party or the Tribunal; or

(c) there are exceptional circumstances.

- 3.4. The conditions of rule 30A(2)(a) and (b) are not met because the respondent does not consent and the application was not necessitated by something done or not done by the respondent or the Tribunal.
- 3.5. Nor has the claimant satisfied me that there are exceptional circumstances justifying a postponement under rule 30A(2)(c), because he was present on 5 September 2018 when today's preliminary hearing was listed and he therefore knew of the date of the hearing and the matters

which the hearing was to consider. Indeed, the claimant knew of the reason for the hearing when it was first listed for 15 January 2018, and the reasons for the hearing did not change. Further, I am satisfied, the claimant received confirmation of those facts from his barrister after the hearing, if he had not understood them before, because the respondent has (perhaps surprisingly) adduced written evidence to that effect from Mr Davey. The claimant's failure to plan or prepare for this hearing does not in my judgement amount to an exceptional circumstance: the claimant has known about the hearing, and where and when it was to take place, and what it was about; it was postponed previously at his request to enable him better to prepare for it. The claimant has put forward no other matters in support of his application to postpone. Therefore, I concluded that the hearing must proceed.

4. Applicable statutory provisions

- 4.1. The applicable statutory provisions regulating the time by which proceedings must be brought in respect of the matters about which the claimant complains are as follows:
 - 4.1.1. **Unauthorised deductions from wages**—s. 23(2) Employment Rights Act 1996—three months from the date of the payment from which the deduction (or the last in a series of deductions) was made, which may be extended if it was not reasonably practicable for the complaint to be presented within the ordinary time limit;
 - 4.1.2. **Unfair dismissal**—s. 111, Employment Rights Act 1996—three months from the effective date of termination, which may be extended if it was not reasonably practicable for the complaint to be presented within the ordinary time limit;
 - 4.1.3. **Breach of contract**—article 7, Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994—three months from the effective date of termination, which may be extended if it was not reasonably practicable for the complaint to be presented within the ordinary time limit;
 - 4.1.4. **Paid annual leave**—reg. 30, Working Time Regulations 1998—three months beginning with the date on which it is alleged that the exercise of the right should have been permitted (or in the case of a rest period or leave extending over more than one day, the date on which it should have been permitted to begin) or, as the case may be, the payment should have been made, or within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months;
 - 4.1.5. **Age discrimination**—s. 123, Equality Act 2010—three months starting with the date of the act to which the complaint relates, or such other period as the tribunal thinks just and equitable.

- 4.2. In the case of each of these statutory provisions, in order to reconcile the operation of the requirement to engage in early conciliation with the statutory time limit, separate provision is made that:
 - 4.2.1. Day A is the day on which the complainant complies with the requirement in s.18A(1) of the Employment Tribunals Act 1996 (the requirement to contact ACAS before instituting proceedings) in relation to the matter in respect of which the proceedings are brought, and
 - 4.2.2. Day B is the day on which the complainant receives or, if earlier, is treated as receiving (by regulations made under s. 18A(11)) the certificate issued under subsection (4) of that section.
 - 4.2.3. In working out when the applicable time limit expires, the period beginning with the day after Day A and ending with Day B is not to be counted.
 - 4.2.4. If the applicable time limit would (if not extended by this subsection) expire during the period beginning with Day A and ending one month after Day B, the time limit expires instead at the end of that period.
 - 4.2.5. The power conferred on the employment tribunal to extend the applicable time limit is exercisable in relation to that time limit as extended by the relevant section.
- 4.3. There is a period of six-months from the relevant date to make a reference to an employment tribunal as to an employee's right to a redundancy payment: s. 164, Employment Rights Act 1996. The relevant date in the claimant's case is the same as the effective date of termination: s. 145(2)(b), Employment Rights Act 1996.

5. Analysis

- 5.1. There was no dispute that the claimant's employment ended on 3 April 2017. I am satisfied that this was the effective date of termination and the relevant date, and (in the absence of any contrary argument from the claimant) that the time limits in respect of the claimant's other complaints ran from this date. The ordinary three-month time limits for presentation of complaints of unfair dismissal, age discrimination, notice pay, holiday pay, and for unauthorised deductions from wages therefore ended on 2 July 2017.
- 5.2. Early conciliation, by reference to the early conciliation certificate number included in the claim form, R157392/17/66, started on 11 July 2017.
- 5.3. The tribunal file contained a copy of a document appearing to be an early conciliation certificate with the claimant as the prospective claimant and with the reference R154130/17/33. This appears to have been handed up to the Employment Judge on 5 September 2018, but Mr Brotherton said that he did not know about it. The prospective respondent identified in that certificate was not the respondent to these proceedings, but 'Kentucky Fried Chicken', and a named operations manager, and that early conciliation certificate was not referred to in the claim form. I had no evidence from the claimant about the status of this document, nor any explanation or

application in respect of the failure to include the early conciliation certificate number from this document in the claim form, and it appears that the claimant envisaged producing more information or evidence, and that the 5 September 2018 hearing was postponed partly on that basis.

- 5.4. In the absence of any evidence or application from the claimant, I feel unable to proceed on the basis of a document purporting to be early conciliation certificate which does not name the respondent in precise terms, and which is not referred to in the claim form. I did not consider that it would be proper for me to make a case on the claimant's behalf in his absence. I considered that I must proceed on the basis of the information contained in the claim form, in the absence of evidence and argument to the contrary from him.
- 5.5. By reference to the early conciliation certificate referred to in the claim form therefore, the claimant does not benefit from the provisions which extend the ordinary time limit for presenting claims where early conciliation starts during the ordinary three month time limit because early conciliation started (on 11 July 2017) after the ordinary limit had expired for the three-month-time-limit complaints had expired (on 2 July 2017). The claimant's complaints were presented on 6 September 2017, a substantial time after the expiry of the ordinary time limit.
- 5.6. In the absence of any evidence from the claimant, I was not satisfied that it had not been reasonably practicable for the claimant to present his complaints of unfair dismissal, notice pay, holiday pay, and for unauthorised deductions from wages within the ordinary three month time limit. In particular, I had no medical evidence, which the claimant had said he would seek (as a further basis for the application to postpone the 5 September 2018 hearing).
- 5.7. In respect of the claimant's complaint of age discrimination, the claimant advanced no evidence or submissions as to why it was just and equitable to extend the time limit for that complaint to be pursued. Again, I had no medical evidence. In those circumstances, I was not satisfied that it was just and equitable to extend time.
- 5.8. However (as Mr Brotherton accepted), in respect of the claimant's reference for a redundancy payment, different considerations arise because the ordinary time limit for such a complaint is six months. The ordinary time-limit therefore expired on 2 October 2017, and the claimant's complaint was made in time, following in-time early conciliation. The Employment Tribunals therefore have jurisdiction to consider that reference, and it will proceed to a full hearing.
- 5.9. However, the claimant's failure to attend today's hearing, and his failure to take the steps which had led to the postponement of the 5 September 2018 preliminary hearing (especially where the claimant had had notice of the issues for that hearing in advance of January 2018) give rise to a concern that his claim is not being actively pursued. Therefore, I decided that the

claimant must show cause why his claim should not be struck out on the grounds that it is not being actively pursued by him.

- 5.10. I have separately made case management orders to that effect and in respect of the final determination of the outstanding reference about a redundancy payment.

Employment Judge T Brown
1 March 2019

Sent to the parties on:

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For the Tribunal:

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