



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

AND

Respondent

Mr S Beckford

Worcestershire County Council

HELD AT Birmingham

ON

12 August 2021

EMPLOYMENT JUDGE Choudry

Representation:

For the claimant: In person

For the respondent: Ms A Ost - Solicitor

RESERVED JUDGMENT

The Tribunal does not have jurisdiction to hear the claimant's claim for unfair dismissal on the basis that (1) the claimant has insufficient service to bring a claim for unfair dismissal; and (2) the claim has been presented outside the time limits prescribed by section 111(2) of the Employment Rights Act 1996 and it was reasonably practicable for the claim to be brought in time. As such, the claimant's claim is dismissed.

REASONS

Background

1. The claimant brought a claim for constructive unfair dismissal following his resignation with effect from 2 January 2006.
2. The respondent is a local authority.

Evidence and documents

3. I heard evidence from the claimant. I was presented with an agreed bundle of some 123 pages. The claimant also referred to other documentation which were not in the bundle and which he had not sent to the Tribunal nor to the respondent.

Issues

4. At the start of the hearing I explained that the issues that I needed to consider were:
 - 4.1 Does the claimant have sufficient continuous service as required by section 108 (1) of the Employment Rights Act 1996 to bring a claim for unfair dismissal.
 - 4.2 Was the claimant's complaint presented within the three month time limit set out in section 111(2)(a) of the Employment Rights Act 1996 ("ERA 1996")? The claimant cites on the Claim Form that his effective date of termination was 1 January 2006. The respondent contends that the termination date was 2 January 2006.
 - 4.3 If not, was it presented 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.

Facts

5. I make the following findings of fact:
 - 5.1 By a letter dated 16 June 2005 the respondent made the claimant an offer of employment for the role of social worker. By a further letter dated 19 August 2005 the claimant's offer of employment was confirmed by the respondent with a start date of 22 August 2005. The claimant asserts that he commenced employment with the respondent on 5 August 2005 as a Social Worker. The respondent contends that the claimant's start date was 25 August 2005. However, in light of the letter dated 19 August 2005 I find that the claimant's employment started on 22 August 2005.
 - 5.2 The respondent is the local authority providing social services to the Worcestershire area.
 - 5.3 The claimant tendered his resignation from his role by a letter dated 3 December 2005. In his letter the claimant indicated that he wished his resignation to take effect on 9 December 2005. The respondent replied to the claimant with a letter of 7 December 2005. In their letter the respondent indicated that the

claimant was contractually obliged to provide 1 months' notice. This would make his last day of employment 2 January 2006. The respondent indicated that it could not accept the claimant's last day of employment as 9 December 2005.

- 5.4 In its letter of 7 December 2005 the claimant was also invited to attend a disciplinary hearing on 15 December 2005 to deal with allegations of gross misconduct. These allegations were that (1) the claimant had allegedly endangered a service user by revealing information to a third party, not in line with good practice and data protection guidance, and then not acknowledging the potential risk to the service user and her unborn baby in discussions with colleagues and his line manager; (2) allegedly arranging a lone visit to the service user on 20 September for 2.30pm, but left the office at 10.30am to keep this appointment when the journey time was approximately 45 minutes; and (3) the claimant had allegedly provided false information on his application form in order to gain employment with the respondent. The claimant accepted during cross examination that he had the support of his trade union during the disciplinary process.
- 5.5 It was not clear from the evidence before me whether this disciplinary hearing took place. From the respondent's pleadings it would appear not as the respondent indicates at paragraph 5 of its grounds of resistance that upon completion of its own investigations into the claimant's conduct the respondent concluded that had the claimant not resigned, he would have been dismissed in any event for gross misconduct and the claimant was informed of this by a letter dated 2 February 2006.
- 5.6 Following findings of misconduct into the above allegations, the respondent was obliged to inform the General Social Care Council ("GSCC"). Following their own investigations, the Conduct Committee of the GSCC determined on 4 October 2007 that the claimant be removed from the Register of the General Social Care Council. The claimant appealed this decision.
- 5.7 On 27 June 2008 the claimant's appeal was dismissed. The respondent sought a review of this decision on 4 July 2008 to correct some errors in the GSCC's decision. By a letter dated 8 July 2008 the claimant also applied for a review of the decision of the GSCC. In support of his application the claimant submitted additional submissions to the GSCC on 12 September 2008.
- 5.8 Following a hearing at the Birmingham Asylum and Immigration Tribunal held on 21 to 24 April and 28 to 30 May 2008 the Care Standards Tribunal found on 27 June 2008 that the decision of the GSCC to remove the claimant from the Register to be proportionate.
- 5.9 On 27 September 2020 the claimant wrote to the Employment Appeal Tribunal (EAT) requesting a reconsideration or an appeal relating to reference: MIS 24277 on the basis that new evidence was available. However, the above reference is not a case reference for an Employment Tribunal claim. Ms Ost for the

respondent also arranged for a search to be undertaken of the register of claims in Bury St Edmunds and no claim showed up with the claimant's name. In an email dated 27 May 2021 the claimant indicated that he appealed again in 2011 and that this appeal was held at City Centre Tribunal, Bull Street in 2011. As mentioned above the Employment Tribunal Service has no record of any previous claim by the claimant.

- 5.10 The claimant commenced Early Conciliation on 3 November 2020 and ended on 11 November 2020. The claimant issued proceedings for unfair dismissal on 25 November 2020.
- 5.11 When asked by the Employment Tribunal why his claim should be allowed to proceed out of time the claimant responded as follows:

"...The reasons for the appeal in question delayed is that when I attempted to appeal that blocked by organisations that jurisdictions to review the case, including the Health and Care Professions Council...

..Organisations that could deal my appealed sooner when lodged ignored the law, as in Article 30(7) of the Health and Social Work Professions Order 2001 which enables a panel to review a striking off order at any time, considering new evidence that comes to light?"...

- 5.12 Despite my explaining to the claimant on more than one occasion as to the issues which I needed to determine, his evidence continued to focus on why the respondent's decision to find him guilty of misconduct was incorrect as they had no actual evidence against him and that the respondent had breached his contract.

Applicable law

6. Section 108(1) of the Employment Rights Act 1996 ("ERA") provides:
- "Section 94 does not apply to the dismissal of an employee unless he has been continuously employed for a period of not less than [two] years ending with the effective date of termination".*
7. Prior to 6 April 2012 only 1 year's continuous service was required by section 108 (1) of ERA.
8. Section 111(1) of ERA 1996 provides:
- "A complaint may be presented to an [employment tribunal] against an employer by any person that he was unfairly dismissed by the employer.*
9. Section 111(2) of ERA1996 provides:

“[Subject to the following provisions of this section], an [employment tribunal] shall not consider a complaint under this section unless it is presented to the tribunal:

- (a) before the end of the period of three months beginning with the effective date of termination, or*
- (b) 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.”*

10. Section 207 B of ERA1996 deals with the extension of time limits to facilitate conciliation before the institution of proceedings. Section 207 B provides:

“(1) This section applies where this Act provides for it to apply for the purposes of a provision of this Act (a “relevant provision”).[...][2](#)

(2) In this section—

(a) Day A is the day on which the complainant or applicant concerned complies with the requirement in subsection (1) of section 18A of the Employment Tribunals Act 1996 (requirement to contact ACAS before instituting proceedings) in relation to the matter in respect of which the proceedings are brought, and

(b) Day B is the day on which the complainant or applicant concerned receives or, if earlier, is treated as receiving (by virtue of regulations made under subsection (11) of that section) the certificate issued under subsection (4) of that section.

(3) In working out when a time limit set by a relevant provision expires the period beginning with the day after Day A and ending with Day B is not to be counted.

(4) If a time limit set by a relevant provision 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.

(5) Where an employment tribunal has power under this Act to extend a time limit set by a relevant provision, the power is exercisable in relation to the time limit as extended by this section”.

11. The Court of Appeal in **Marks & Spencer plc v Williams-Ryan [2005] EWCA Civ 470** sets out a number of legal principles to consider in relation to time limits as follows:

- Section 111(2) of ERA 1996 should be given a liberal interpretation in favour of the employee;
- Regard should be had to what, if anything, the employee knew about the right to complain to a tribunal and of the time limit for doing so.
- Regard should also be had to what knowledge the employee should have had, had they acted reasonably in the circumstances. Knowledge of the right to make a claim does not, as a matter of law, mean that ignorance of the time limits will never be reasonable. It

merely makes it more difficult for the employee to prove that their ignorance was reasonable.

- Where a claimant retains a solicitor and fails to meet the time limit because of the solicitor's negligence, the claimant cannot argue that it was not reasonably practicable to submit the claim in time.

Submissions

12. The claimant did not make any submissions and Ms Ost, for the respondent, relied on the contents of her letter to the Tribunal dated 14 April 2021 (pages A43 and A44 of the bundle) and her strike out application dated 6 August 2021 as her submissions.
13. In her strike out application Ms Ost noted that the claimant in correspondence to the Employment Tribunal referred to the Health and Social Work Professions Order 2021 which enabled the relevant tribunal to review a striking off order at any time. The claimant also referred to the Health and Care Professions Tribunal Service, Practice Note. Ms Ost noted that the Health and Care Profession Council is no longer the body regulating Social Work practice in England and that this had been performed by Social Work England since 2019. Ms Ost further noted that neither the Practice Note nor any other rules or regulations provide for any appeal rights to the Employment Tribunal in respect of the Health and Care Profession Council or any prior or subsequent regulatory body.

Conclusions

14. In reaching my conclusions I have considered all the evidence I have heard and considered the pages of the bundle to which I have been referred. I also considered the submissions submitted on behalf of the respondent as referenced in paragraph 12 above.
15. I am satisfied on the evidence before me that, as the claimant had less than 5 months' service as at the effective date of termination, he has insufficient service to bring a claim for unfair dismissal and, as such, the Tribunal does not have jurisdiction to hear the claimant's claim for ordinary unfair dismissal. I am also satisfied that none of the circumstances set out in sections 108(2), 108(3), 108(4) and 108(5) of ERA apply so as to disapply the need for two years' service.
16. In any event, the claimant's complaint has been brought 14 years outside the time limits prescribed by statute. The claimant does not benefit from any extension as a result of the early conciliation process. The claimant has not produced any evidence to show why it was not reasonably practicable for the claimant to bring his claim on time. On the contrary, he has shown that he has had the ability to pursue several appeals in different forums. He also had the benefit of support from a trade union. In the circumstances, I find that it was reasonably practicable for the claimant to bring his claim in time.

17. As such, the Tribunal does not have jurisdiction to hear the claimant's claim. The claim is therefore dismissed.

Signed by:

Employment Judge Choudry
20 February 2022