



EMPLOYMENT TRIBUNALS

Claimant: Mr N Taylor
Respondent: Zinithya Trust
Heard at: Leicester
On: 18 May 2017
9 June 2017 (in chambers)
Before: Employment Judge Ahmed (sitting alone)

Representation

Claimant: Mr J Gater, Lay representative
Respondent: Mr Jagpal, Solicitor

JUDGMENT AT A PRELIMINARY HEARING

1. The Claim is amended to include complaints of disability discrimination, breach of contract, unlawful deduction of wages, holiday pay and arrears of the national minimum wage.
2. The application to amend to include complaints of whistleblowing is refused.
3. The complaints of unfair dismissal, breach of contract, unlawful deduction of wages (including holiday pay), disability discrimination and arrears of the national minimum wage were presented out of time but it was not reasonably practicable to present those complaints in time or it is just and equitable to extend time. The Claimant shall be permitted to pursue those complaints.

REASONS

1. By a Claim Form presented to the tribunal on 21 September 2016, the Claimant, Mr Nick Taylor (born 17 March 1967), sought to bring complaints of unfair dismissal, disability discrimination, notice pay (breach of contract), unlawful deduction of wages in respect of outstanding holiday pay and arrears of pay in respect of the national minimum wage. For the reasons set out in the preamble to my earlier order made on 16 February 2017, all of the complaints with the exception of unfair dismissal were initially rejected at the vetting stage.

2. The Claimant has undertaken these proceedings through a friend, Mr John Gater, who completed and lodged the Claim Form (ET1) on the Claimant's behalf. In addition to the boxes ticked for unfair dismissal, disability discrimination, notice pay, holiday pay and arrears of pay the ET1 in the narrative stated that there is also a complaint as to a failure to pay the national minimum wage. The Claim was rejected because on the Form the claimant had indicated that he did not have an ACAS early conciliation certificate number (which by implication meant he had not undergone the process of early conciliation which is mandatory for the types of complaints he wished to bring) but was instead relying on an exemption namely that it was a claim for interim relief. Of course interim relief can only apply to unfair dismissal in respect of the types of complaint Mr Taylor was intending to bring which is why that was the only complaint that was accepted. It later became clear that this was not a claim for interim relief at all but Mr Gater had ticked that exemption box because the online system would not allow him to proceed further once he had indicated there was no early conciliation number and he needed to get past that stage to hit the submit button. As it happened Mr Taylor *had* undergone the process of early conciliation and he did indeed have an early conciliation number which he obtained on 20 May 2016. If that information had been entered correctly this hearing would never have had to take place.

3. Following the previous hearing when these issues were identified this case was listed for a further preliminary hearing to determine whether the claim should be amended to allow those complaints which Mr Taylor had *intended* to bring (now by way of an amendment) and/or whether such complaints should be struck out as having been presented out of time.

4. Having heard oral submissions and evidence from Mr Taylor on 18 May 2017, I reserved my decision. These reasons set out my conclusions following a careful consideration of the facts and circumstances.

5. Mr Taylor began working as a volunteer for the Respondent Trust in its library café. He appears to have been unable to manage his financial affairs having been declared bankrupt. He is a 49 year old man who has always lived with his parents. According to his witness statement he has no social life apart from his passion for Leicester City Football Club. He acknowledges that he is sometimes very naïve. His statement gives examples of instances where others have taken advantage of his naivety. He alleges that the Chief Executive Officer of the Respondent Trust took advantage of this and borrowed £1,700 from him to pay various bills for the organisation. He says he has only received part repayment of the loan. I must make it clear that the allegation is strongly disputed and I make no finding in that respect as there has been no evidence heard on the issues. The impression one gains is that Mr Taylor needs help from others to get through daily life events

6. In April 2016, Mr Taylor was reported to the police by the Respondent for items that allegedly went missing from the Trust. There was a lengthy investigation at the end of which he was told that there would be no prosecution and no charges were brought.

7. On 14 April 2016, the Claimant sent a letter, which I am confident was prepared on his behalf by others, resigning from his employment for the false allegations that he believed had been made against him. It does not appear that the Claimant worked any period of notice. As the letter would have been received on 15 April 2016, that is agreed as the effective date of termination.

8. The Claim Form was presented on 21 September 2016 in the circumstances referred to above. The Claimant having spent 29 days in early conciliation, those 29 days must be added back to the three month time limit under the 'stop the clock' provisions. This means that the time for presenting the unfair dismissal, breach of contract, unlawful deduction of wages and minimum wage complaints expired on 12 August 2016. The claim was therefore presented approximately 5 weeks late.

9. Under Section 111 Employment Rights Act 1996, a complaint for unfair dismissal must be presented before the end of the period of 3 months beginning with the effective date of termination, 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 3 months. The extension on 'reasonably practicable' grounds applies to complaints of breach of contract, unlawful deduction of wages (including holiday pay) and national minimum wage claims. Under section 123 of the Equality Act 2010 complaints of discrimination must be brought within three months of the act to which the complaint relates or such other period as the tribunal thinks 'just and equitable'.

10. I will deal firstly with the extension under the reasonably practicable test. Mr Jagpal for the Respondent cites a passage from **Wall's Meat Co Ltd v Khan [1979] ICR 52** where Lord Denning MR (at page 56) said this:

"It seems to me that the reaction of the ordinary man who is..... charged with theft would be: 'It's no good my claiming for unfair dismissal whilst this charge is till outstanding against me. I will wait and see what happens to it before making a claim". If that be his state of mind, then he is time-barred as soon as the three months have elapsed without presenting a claim. It was reasonably practicable for him to present his complaint of unfair dismissal within three months. His only reason for not doing so was because of the outstanding charge. That is not an acceptable reason for saying that it was 'reasonably practicable' to present his claim within the three months."

11. Mr Jagpal submits that this passage aptly describes the Claimant's situation and the application for extension of time where that test applies should be refused.

12. It has to be said that Mr Taylor is not an 'ordinary man'. It is quite apparent to anyone who comes across him that he has learning difficulties. He relies on the assistance of friends to get by and in particular upon Mr Gater for the purposes of these proceedings. It was only when Mr Gater came to the Claimant's aid that he was able to lodge this Claim. Mr Gater does not have any legal qualifications, training or experience. It is clear from the documents submitted that at various times, Mr Gater has attempted to obtain assistance from solicitors or advice centres but such assistance has only been sporadic and patchy.

13. The delay caused by the police investigation is relevant but is not the only factor. Mr Taylor was indeed affected by the investigation in that it drove him to what he says was "a dark place" and he had thoughts of self harm feeling that the "whole world was against him". However, Mr Taylor was not waiting for the police investigation to end so that he could then lodge his claim which is what the passage in **Khan** refers to. Mr Taylor was unable to focus properly on his affairs during the investigation and his anxious state was undoubtedly affected by his

mental condition. He also alleges that he received intimidatory threats not to bring proceedings. It is difficult to make any finding on that last allegation as Mr Taylor is vague about it and no evidence has been produced by the Respondent by way of rebuttal. However, it is clear that Mr Taylor did not present his claim because it was a matter of choice to wait for the police investigation to end but because the Claimant was unable to focus on his affairs properly. In all of the circumstances I am satisfied that it was not reasonably practicable for the Claim to have been presented within the normal time limit.

14. The next issue is whether the Claim has been submitted within a further reasonable period. It was only in August 2016 that Mr Taylor had a chance meeting with Mr Gater and was thus able to obtain his assistance. It needed someone to marshal the relevant information and put it in a presentable form. If the meeting had never taken place I doubt that any Claim would have been lodged at all. Mr Gater needed to undertake some legal research which is understandable. As someone without any prior legal knowledge or assistance that would clearly have taken time given that Mr Gater has his own commitments. The eventual delay was relatively short. I consider that 5 weeks was a further reasonable period in which to lodge the Claim.

15. So far as the just and equitable test is concerned there is no reason to refuse an extension. In addition to the matters mentioned above, in particular the fact of the Claimant's disability, I also take into account the following:

15.1 There is no little or no prejudice to the Respondent in extending time other than the prejudice of having to deal with the additional complaints;

15.2 The cogency of the evidence is unlikely to be affected by the relatively short delay;

15.3 That Mr Gater acted with reasonable speed once he was on board.

16. I now turn to the application to amend the claim to add further complaints. The leading authority on amendments is ***Selkent Bus Company v Moore [1996] IRLR 661***. In that case, the Employment Appeal Tribunal made it clear that in deciding whether to exercise its discretion to grant leave for an amendment a tribunal should take into account all of the circumstances and should balance the injustice and hardship of allowing the amendment against the injustice and hardship of refusing it. In doing so, it must consider relevant circumstances such as the nature of the amendment, the applicability of statutory time limits and the timing and manner of the application.

17. Clearly, the addition of new causes of action is a 'major' rather than minor amendment, although what the Claimant is seeking to do is nothing more than to bring all of those complaints which were in the original ET1 (other than the whistleblowing complaint) which were not accepted because of technical errors on the part of Mr Gater. Those technical errors should not prevent the Claimant from having his case heard or dealt with. If what he says is true he has been substantially underpaid. Absent the technical errors, not only would the unfair dismissal complaint have been accepted but all the other complaints (other than the whistleblowing complaint) which the Claimant seeks to add upon by way of an amendment would have been accepted too. Both the issue of time limits and the timing and manner of the application have already been dealt with.

18. There is no prejudice to the Respondent in allowing an amendment other than the prejudice of having to deal with the complaints themselves which they

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would have had to do if the Claim Form had been submitted properly. The balance of hardship clearly favours the Claimant. If the amendments are not allowed the Claimant would be deprived of the opportunity of having his complaints heard and stands to lose (on his case) significant sums as well as damages for disability discrimination, if of course he succeeds.

19. In coming to my decision on the amendment application, I have taken into account all of the circumstances. Whilst the ambit of all of the complaints have yet to be fully defined that is not a valid reason to refuse the application. The case is still in its early stages. The relevant facts in relation to the unfair dismissal complaint will be closely connected to the discrimination issues. It would be highly artificial to hear the same evidence in respect of one complaint but not another.

20. There is an application in an 'amended' witness statement of the Claimant to add complaints of whistleblowing. This complaint was not in the original ET1, there are no details of it in the Claimant's first witness statement and the application even now lacks proper particulars. Insofar as that amendment application is seriously pursued it is refused.

Employment Judge Ahmed

Date: 26 July 2017

RESERVED JUDGMENT AND REASONS
SENT TO THE PARTIES ON
12/8/17

.....
S.Cresswell

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FOR THE TRIBUNAL OFFICE