



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr Kamel Zenad

v BMI Healthcare Limited

Heard at: Watford

On: 6 February 2019

Before: Employment Judge Andrew Clarke QC

Appearances

For the Claimant: In person

For the Respondent: Miss H Paterson, Counsel

JUDGMENT

1. All material claims were presented outside the primary limitation period and the claimant has failed to satisfy the tribunal that it was not reasonably practicable to have presented them within that time period.
2. The claims being presented out of time, they are all dismissed for want of jurisdiction.

REASONS

1. The claimant was dismissed by the respondent on 12 March 2018 and there is no dispute as to this being the effective date of termination of his employment. He notified ACAS as part of the early conciliation process on 22 May 2018 and received a certificate on 6 June 2018. Therefore, as the parties agree, he had until 6 July to present his claim to the tribunal. He did not present it until 31 July. That claim has attached to it detailed Grounds of Claim.
2. The claim was presented outside the primary limitation period appropriate for the claims brought within it, primarily a claim for unfair dismissal. Hence, for his claims to proceed the claimant must satisfy me that it was not reasonably practicable for him to present his claim in that period and, if he

does so, that he presented it in such further period as I think reasonable (see s.111(2)(B) of the Employment Rights Act 1996).

3. Having heard from the claimant I am satisfied that for some time prior to 25 May 2018 the claimant's wife had been in hospital with serious complications arising in her pregnancy. On 25 May the claimant's son was born prematurely and remained in hospital until discharged, with the claimant's wife, after an operation. The date of discharge was 14 August 2018. The claimant tells me that this was a time of great stress and difficulty where his main focus was upon his wife and son and his other children who were primarily being cared for by his brother and his wife. He seeks to explain his failure to deal with the claim in time by reference to those difficulties which he says were uniformly debilitating and restricting of his ability to function normally from well before 25 May until 14 August and (possibly) beyond.
4. I have to decide whether those circumstances (for which I express great sympathy) meant that it was not reasonably practicable to present the claim within the primary limitation period.
5. It is clear from the claimant's evidence (and I so find) that:
 - 5.1 He had instructed solicitors at around the time of his dismissal and from dealings with them and from his own researches, he was well aware from an early stage of his ability to make a complaint to the employment tribunal and the process for so doing. He cannot recall when he learned of the precise time limits for making claims, but he certainly knew of them before making his claim.
 - 5.2 He continued to have dealings with his solicitors, in relation to making a claim in respect of his dismissal, until sometime after he received the ACAS Certificate. He referred to conversations with them and to letters and emails to and from them.
 - 5.3 He himself made the application for the Early Conciliation Certificate and had a discussion with the ACAS Officer about various matters. I am satisfied that mention was made of time limits, but I accept that he claimant cannot now recall precisely what was said. He had a further conversation with ACAS about how he wished to receive his certificate and told the officer in question that either email or post would be satisfactory. It was sent by email (and possibly also by post). Plainly, he had access to email on a regular basis, although I accept that this would be limited when he was physically in the hospital.
 - 5.4 He was able to make the claim, on 31 July, within this period of personal difficulty which he explained ended (at the earliest) on 14 August 2018. He provided a detailed statement of his case when making the claim.

- 5.5 He could have made the claim earlier than 31 July. He repeatedly said, when giving evidence, that had he known that he should do so, he could have acted earlier. That is consistent with his evidence to the effect that the stress and strain on him was uniform throughout the period referred to above. There is no suggestion in this case that the claimant made the claim after his personal situation had improved, indeed his son was not operated on until early August 2018 and it would appear that his life hung in the balance prior to that. The claimant could not explain what triggered him to put in the claim when he did.
6. I approach this matter on the basis that Parliament has provided claimants with a secondary limitation period and that the Court of Appeal, many years ago and when dealing with an unfair dismissal claim regime with rather tighter time limits, suggested that a liberal construction of the provisions should be adopted in favour of the claimant. Nevertheless, I must still apply the statutory test and not substitute it for it an approach based on justice and equity.
7. This is a claimant who was not ignorant of his rights, or the existence of time limits for making a claim. In so far as he was unaware of the precise details of time limits he had ready sources of information in his solicitors and ACAS, both of which he consulted at the material time.
8. Was the claimant's personal situation such that whilst it may have been possible for him to make the claim in time, it would not be reasonable to expect him to do so? In order to answer that question I need to look at what he was able to do at the material times. He was dealing with his solicitors in relation to this claim, dealing with ACAS and, eventually, putting together a detailed claim, all within the period when he tells me (and I accept) that his personal circumstances were extremely difficult. Difficult they may have been, but they did not prevent him from making a claim in time. However, whilst I accept that if the circumstances rendered it impossible for him to make a claim in time, it would not be reasonably practicable for him to do so, the converse is not the case. Reasonable practicability is not to be directly equated with possibility.
9. Given what he was able to do in the period and his state of knowledge, I do not accept that it was not reasonably practicable to make the claim within the primary limitation period. I think that it was reasonably practicable for the claimant to have done so. Hence, all aspects of this claim must be and are dismissed for want of jurisdiction.

Employment Judge Andrew Clarke QC

Date: 7 March 2019

Sent to the parties on: 15 March 2019

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For the Tribunal Office