



EMPLOYMENT TRIBUNALS

Claimant: Mr B Thompson

Respondent: Easton Gymnastics Club

RECORD OF A PRELIMINARY HEARING

Heard at: Norwich (CVP)

On: 11 February 2021

Before: Employment Judge S Moore (sitting alone)

Appearances

For the Claimant: In person

For the Respondent: Ms Boyle, solicitor

This has been a remote hearing on the papers to which the parties/consented did not object. The form of remote hearing was CVP. A face to face hearing was not held because it was not practicable and all matters could be determined in a remote hearing.

JUDGMENT ON PRELIMINARY ISSUE

The claims have been brought out of time in circumstances where it was reasonably practicable for them to have been brought in time. The Tribunal therefore has no jurisdiction to hear them and they are struck out.

REASONS

1. The Claimant has brought claims for unfair dismissal, unpaid holiday pay, notice pay, and for arrears of pay. The purpose of this hearing was to determine whether the claims have been brought of time and/or whether the Tribunal has jurisdiction to hear them.
2. The Claimant was dismissed by the Respondent from his position of Director of Coaching on 13 June 2019. Following his dismissal, he took free legal advice from three sources, namely Citizens Advice, a solicitor, and a Human

Resources consultant. He said he was aware that there was a time limit of 3 months for bringing his claims. On 30 July 2019 he contacted ACAS to begin the process of early conciliation and received an acknowledgement from ACAS on the same date.

3. An ACAS certificate was issued on 30 August 2019. The Claimant said did not receive that email with the certificate, and I believe that he either did not receive the email or for some reason he did not see it. The Claimant also said that although he was aware of the 3-month time limit for bringing proceedings he believed that contacting ACAS was enough to start proceedings and comply with the time limit.
4. In the meantime, the Claimant had an internal appeal the outcome of which he says he was notified about in early October 2019.
5. On 13 December 2019 the Claimant telephoned ACAS to ask for an update on his case and was told the ACAS certificate had been issued on 30 August 2019. He said he was advised by ACAS he should submit his claim as soon as possible. He was issued with a second ACAS certificate on 13 December 2019 and submitted his claim the same day.
6. Claims for unfair dismissal, unpaid holiday pay, and breach of contract must be brought within 3 months of the effective date of termination of the contract of employment or such other period as the Tribunal considers reasonable where it is satisfied it was not reasonably practicable for the complaint to have been brought within three months.
7. In this case the time-limit for bringing the claims in question expired on 13 October 2019.
8. Accordingly, the first question is whether it was reasonably practicable for the claims to have been brought by that date. Essentially this means asking whether it was reasonable to expect that which was possible to have been done. Since it was perfectly possible for the claims to have been brought in time the issue is whether it was reasonable to expect the Claimant to have done so, when he hadn't seen the ACAS certificate and said he thought that contacting ACAS was sufficient to commence proceedings.
9. The period between 30 July and 13 October is two and half months. It is reasonable to expect the Claimant to have contacted ACAS during this time and find out when the early conciliation certificate would be issued, or if it had been issued, and/or to seek more legal advice as to what he should do. Essentially it is reasonable to expect him to have been more proactive than he was and to have found out what was going on rather than simply keep waiting. As regards his belief that contacting ACAS was sufficient to commence proceedings, I do not consider the Claimant can reasonably have held such a belief, if, as he said, he had obtained legal advice from 3 different sources. Further if he was confused about the position on time-limits, he could easily have made further enquiries from ACAS, or from the sources of legal advice he had used previously, or simply by looking up the position himself online.

10. Accordingly, I find it was reasonably practicable for the claims to have been brought in time.
11. Further, even if it could be said that it was not reasonably practicable for the claims to have been brought by 13 October 2019, the claims were not brought within a reasonable time thereafter. They were not brought for another 9 weeks (13 December 2019) and it is not reasonable that the Claimant did not contact ACAS until a period 4 & ½ months after the initiation of the early conciliation process had passed. He should have been more proactive and contacted ACAS or sought further legal advice much sooner than he did.
12. Since the claim are out of time the Tribunal has no jurisdiction to hear them and they are therefore struck out.

Employment Judge S Moore

Date: 26/2/21

Sent to the parties on:

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For the Tribunal:

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