



EMPLOYMENT TRIBUNALS

Claimants Mr F Lawson (C1) & Mrs V Lawson (C2)

Respondent Lawson Civil Engineering & Utilities LTD Limited

Heard at Wrexham Law Courts
Before Employment Judge Othen

On: 9 March 2022

Representation

Claimant In person

Respondent Miss I Bayliss of counsel

RESERVED JUDGMENT

1. The claimants' claims of unfair dismissal are dismissed as the Employment Tribunal does not have jurisdiction to hear them under Section 111(2)(a) and (b) of the Employment Rights Act 1996.
2. The claimants' claims for unpaid holiday, notice and arrears of pay will be subject to further case management orders.

REASONS

Introduction

1. The claimants were employed by the respondent from an unknown date in 2000 and November 2013 respectively. They were dismissed by way of a letter which they received on 13 October 2020. They bring claims of unfair dismissal and for non-payment of notice, holiday and other pay.
2. The respondent contests the claims.

3. On 17 November 2021, REJ Davies directed that: *"there will be a Preliminary Hearing to determine the following issue:*
 - 3.1 *Was the unfair dismissal complaint presented outside the time limits in sections 111(2)(a) & (b) of the Employment Rights Act 1996 and if so, should it be dismissed on the basis that the Tribunal has no jurisdiction to hear it? Further or alternatively, because of those time limits (and not for any other reason), should the unfair dismissal complaint be struck out under rule 37 on the basis that it has no reasonable prospects of success and/or should a deposit order be made under rule 39 on the basis of little reasonable prospects of success? Dealing with these issues may involve consideration of subsidiary issues including whether it was "not reasonably practicable" for the unfair dismissal complaint to be presented within the primary time limit; what the effective date of termination was."*
4. The claimants represented themselves and gave sworn evidence from C1. C2 chose not to give evidence. The respondent was represented by Miss I Bayliss and did not call witness evidence. I considered the documents from an agreed 82-page Bundle of Documents and two further contracts of employment which were adduced on the day of the hearing by the respondent and shared with the parties and the Tribunal.
5. As the claimants were unrepresented, appropriate time was taken at the outset of the hearing to explain the above preliminary issue to them and the purpose of the hearing itself. They were referred to sections 111(2)(a) & (b) of the Employment Rights Act 1996 which they were able to access on their smartphone(s).

Findings of fact

6. The relevant facts are as follows. Where I have had to resolve any conflict of evidence, I indicate how I have done so at the material point. References to page numbers are to the agreed Bundle of Documents.
7. It was agreed between the parties at the start of the hearing that the Claimants' effective date of termination was 13 October 2020, that being the date on which they received letters terminating their employment (53,55).
8. From that date until 21 November 2020, the claimants wrote three emails to the respondent asking for payment of holiday and notice pay. The last of these stated:
 - 8.1 *"Unfortunately, if by Monday 23rd November 2020 we do not receive confirmation that we will be paid by Friday 27th November 2020, we will be forced to immediately proceed with the first stage of small claims / employment court legal proceedings. This is our final position on the matter"(77).*
9. C1's witness statement and evidence in cross examination referred to advice that he had sought and received from a Citizens' Advice Bureau, sometime after dismissal (he was not sure exactly when). He confirmed that he was advised that the claimants may have claims for unfair dismissal and that such

claims must be pursued through the employment tribunals and that he should research on-line. He said that he was not told about any relevant time limit for doing so and he did not make further enquiries or do further research.

10. C1 stated in evidence that the claimants had originally submitted their ET1 claims to the employment tribunals on 18 January 2021 but that these had been rejected as they did not contain any ACAS Early Conciliation (EC) numbers. He said that he was not aware of the EC process and had not followed it.
11. The claimants then submitted their complaints to ACAS on 9 April 2021 and their EC certificates were issued on 12 April 2021.
12. The claimants' claim forms were received by the employment tribunal on 7 September 2021 (for the bundle, only a copy of C1's claim form appeared but all other evidence was consistent with both claim forms having been submitted together). Attached to C1's claim form was a statement of claim which was dated 1 January 2021.

Relevant law and conclusions

13. Section 111(2) of the Employment Rights Act 1996 states:

"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."

14. The claim forms were not submitted within three months' of the effective date of termination and were clearly outside that time limit. I must therefore consider the statutory test under section 111(2)(b).
15. I am not satisfied that it was not reasonably practicable for the claimants' complaints to be submitted within the three-month time limit. My reasons for this conclusion are as follows:
 - 15.1 There is no evidence that the claimants were prevented from submitting their claims because of illness or incapacity. C1 gave oral evidence that they were in fact working on a self-employed basis at this time;
 - 15.2 The claimants took advice from a Citizens' Advice Bureau shortly after dismissal and were aware of their legal rights to pursue claims of unfair dismissal;
 - 15.3 The claimants did not make any enquires or do any legal research about correct legal procedure or time limits and so were unaware of these things;

- 15.4 The claimants attempted to submit their claim forms on 18 January 2021 but this was already six days outside the relevant time limit of 12 January 2021;
- 15.5 The only reasons given by C1 for the last submission of the claim forms at that stage were:
- 15.5.1 That he had been advised and/or believed that employment tribunal litigation would be expensive and was waiting for the respondent to pay them their entitlements so that they could seek legal advice;
 - 15.5.2 They wanted to see their employment contracts first before they took legal action but the respondent did not send copies to them;
 - 15.5.3 The Christmas period of 2020 meant that they were busy with the festive period and with childcare;
 - 15.5.4 They were suffering from stress caused by their dismissal and financial hardship;
 - 15.5.5 The COVID lockdown and school closures from January 2021 meant that they were busy with childcare;
 - 15.5.6 That although C1/the claimants had had time, on or before 1 January 2021, to complete the statement of claim that was subsequently attached to the claim form(s), they had assumed that the process for submitting the claims would be difficult and lengthy and so did not attempt to do so at that time.
16. In all the circumstances, and while I might have great sympathy with the claimants' position, I do not consider that it was not reasonably practicable for their complaints to be submitted within the relevant time limit for the above reasons.
17. In any event, the claimants' claims were not then submitted for early conciliation until nearly three months later, in April 2021 and then were not properly submitted to the employment tribunal until September 2021. This was not a reasonable time period thereafter. C1 was not able to offer any credible explanation for this further delay.

V. Othen

Employment Judge Othen
21/03/22

JUDGMENT AND REASONS SENT TO THE PARTIES ON 23 March 2022

FOR THE TRIBUNAL Mr N Roche