



EMPLOYMENT TRIBUNALS

Claimant: Mr Y. Chandel

Respondent: Autoneum GB Limited

Heard at: Birmingham

On: 04 April 2022

Before: Employment Judge Connolly - Sitting alone by CVP

Representation

Claimant: In person

Respondent: Mrs J. Holmes (Legal Advisor)

JUDGMENT

1. The claim of unfair dismissal was not presented within the statutory time limit despite it being reasonably practicable to do so and is dismissed.
2. The race discrimination claim was not presented within the statutory period of 3 months from the last act complained of. It is not just and equitable to permit it to proceed and it is also dismissed.
3. For the avoidance of doubt, all the claimant's claims in Case No.1802627/2021 are therefore dismissed.

REASONS

INTRODUCTION

1. The Respondent manufactures acoustic and thermal management solutions for the car industry. The Claimant was employed by them as an engineer from 23 October 2017 until 25 November 2020, when he was dismissed on the ground of redundancy. A period of early conciliation commenced on 25 February 2021 and ended on 26 March 2021. The claimant presented his claim form to the Tribunal on 26 April 2021.
2. In his claim, the Claimant brought a complaint that his dismissal was unfair and an act of direct race discrimination. He accepts that the Respondent was reasonably entitled to select one employee for redundancy from a 'pool' of himself and one other. He alleges that his selection was unfair and tainted by

what he calls a 'personal' relationship between the decision-maker and the other employee based in some way on race.

3. Employment Judge Broughton listed the claim for a preliminary hearing to determine three issues:
 - 3.1 whether the claims were presented outside the relevant statutory time limits
 - 3.2 if so, in respect of the unfair dismissal claim, whether it was reasonably practicable for it to have been brought within the time limits and if not, whether it was brought within a reasonable period thereafter and
 - 3.3 whether it was just and equitable to extend time for the discrimination complaint.

4. The Claimant very sensibly, if I may say so, having conducted further research for today's hearing, now accepts that his claim was notified to Acas one day outside the three month period available to him in which to bring a claim. As a consequence, it is now agreed that the claim was brought outside the relevant time periods. Subject to clarifying the period by which the claim is out of time, that leaves two issues to decide.

EVIDENCE

5. I was provided with an agreed bundle of some 48 pages. There was no witness statement from the Claimant. When listing the preliminary issues for hearing, Employment Judge Broughton ordered the Claimant to explain whether he accepted his claim was late and, if so, why and why he said it should be accepted. At that time, the Claimant did not accept his claims were late and so he did not offer any further explanation or information. In the circumstances and with the Respondent's agreement, I heard oral evidence from the Claimant on these matters and he was questioned by the Respondent's representative.

RELEVANT LAW

6. The time period in which a claim of unfair dismissal must be presented is contained in **Section 111 (2) of the Employment Rights Act 1996** ('**ERA 1996**'). It provides that a claim must be presented:
 - (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.*

7. As the Claimant is now aware, because section(a) of this subsection requires presentation within a period 'beginning with' the effective date of termination,

that date is included in the calculation of the time allowed. Thus, in an unfair dismissal claim, the time limit is calculated as three months minus one day from the effective date of termination.

8. In relation to the reasonably practicable test and the reasonableness of the further period thereafter, as contained in section (b) above, a claimant cannot hope to satisfy the burden upon him in this regard unless he provides an answer to two questions (**Abertawe Bro Morgannwg University Local Health Board v Morgan UKEAT/0351/13 [52]**):

"The first question in deciding whether to extend time is why it is that the primary time limit has not been met; and insofar as it is distinct, the second is [the] reason why after the expiry of the primary time limit the claim was not brought sooner than it was."

9. Mrs Holmes for the Respondent also relies on the well-known statement in **Wall's Meat Company Limited v Khan 1979 ICR 52, CA**:

"The performance of an act, in this case the presentation of a complaint, is not reasonably practicable if there is some impediment which reasonably prevents, or interferes with, or inhibits, such performance. The impediment may be physical, for instance the illness of the complainant or a postal strike; or the impediment may be mental, namely, the state of mind of the complainant in the form of ignorance of, or mistaken belief with regard to, essential matters. Such states of mind can, however, only be regarded as impediments making it not reasonably practicable to present a complaint within the period of three months, if the ignorance on the one hand, or the mistaken belief on the other, is itself reasonable. Either state of mind will, further, not be reasonable if it arises from the fault of the complainant in not making such inquiries as he should reasonably in all the circumstances have made'.

10. The task for me in relation to the unfair dismissal complaint is, therefore, to identify what impeded Mr Chandel from bringing his claim within the statutory time limit and, if necessary, after that, up until the 26 April and to consider whether he has satisfied me that impediment meant it was not reasonably practicable for him to present his claim in time and that he had presented it within a reasonable period thereafter. The burden of proving these matters lies upon Mr Chandel.

11. On a discrimination complaint, the burden is also on the Claimant to persuade me that it is just and equitable to extend time. In her helpful written submissions, Mrs Holmes reminded me of the well-known quote in the case of **Robertson v Bexley Community Centre t/a Leisure Link 2003 IRLR 434**

"a Tribunal cannot hear a complaint unless the applicant convinces it that it is just and equitable to extend time, so the exercise of the discretion is the exception, rather than the rule."

12. In considering whether the claimant has persuaded me there is a good reason / it is just and equitable to extend time, I have a broad discretion as to the factors I can take into account and the weight I attach to them in the particular

circumstances of the case before me. I should consider anything that seems relevant, including, in particular, the length of and reasons for the Claimant's delay in presenting his claim. Often, it is relevant to consider the impact of that delay on the cogency of evidence, the promptness with which the claimant acted once he knew of the facts giving rise to the claim and/or the steps taken by the claimant to obtain professional advice once he knew of the possibility of taking action. These factors are, however, not necessarily applicable in every case nor is this an exhaustive list of the factors that may be relevant in the individual circumstances of a particular case (**Adedeji v Uni Hospitals Bhm NHS Trust [2021] EWCA Civ 23 [37]**).

13. By virtue of **s.207B of the ERA 1996** and **s.140B of the Equality Act 2010** the three month period can be extended where there has been early conciliation. As set out in Mrs Holmes submissions (p 40[3]), the availability of that extension is, however, subject to the Claimant making the necessary reference to Acas within the three month period (**Pearce v Bank of America Merrill Lynch UKEAT/0067/19 [23]**).

RELEVANT FACTS

14. Mr Chandel was informed that there was a redundancy situation affecting his role on the 17 June 2020. He was put on notice that he, personally, was at risk of redundancy on the 26 June 2020. There was a first consultation meeting between him and the Respondent about the potential redundancy situation on 30 June 2020. Mr Chandel was subsequently absent from work by reason of vertigo and work-related stress. The consultation process was therefore suspended.
15. Over 4 months later, on 18 November 2020, the consultation process resumed. The third and final meeting between Mr Chandel and the Respondent took place on the 25 November 2020. Mr Chandel was dismissed on the grounds of redundancy with effect from that date. He appealed this decision. The appeal outcome was sent to him by letter dated 18 January 2021.
16. Mr Chandel gave evidence that, between November 2020 and approximately 20 January 2021 (when he received his appeal outcome), he was not fully aware he could bring a tribunal claim. He said he did not pursue any further enquiry about this because he was convinced his employer would recognise that he was the better candidate and that he would not be selected for redundancy or, latterly, that his appeal would succeed.
17. Thereafter, he stated that, although he considered looking up his legal rights, he was 'at war with himself' as to whether bringing a claim was a good idea and he was struggling for time with the pressure of his new work and his family life. I accept his evidence in that regard.
18. He said he first googled the possibility of bringing a claim in the week leading up to the 25 February i.e. somewhere around 18 February 2021. Having done

so, he understood he could bring a Tribunal claim, he understood there was a time limit and he understood he was obliged to contact Acas within three months. He calculated that those three months would expire on the 25 February 2021 and he contacted Acas on 25th February, the date when he thought the time limit was due to expire. He understood that he would thereby benefit from an extension of time in which to bring his claim in the event that early conciliation was unsuccessful.

19. According to Mr Chandel, there was no discussion between him and Acas in respect of time limits. He accepted in cross examination, however, that the Acas website set out the following in respect of time limits:

“A claim to an employment tribunal must usually be made within three months less one day. This is known as the limitation date.

For example, if an employee wants to claim for unfair dismissal, they have three months less one day from the date their employment ended to make the claim.

Acas must receive your early conciliation notification before the end of the limitation date, including during the coronavirus pandemic.

20. Early conciliation ended on 26 March 2021 and the Claimant brought his claim exactly one month later on 26 April 2021. He was unable to explain clearly why he waited until 26 April save that he used what he understood was the full period of his extension and he was still uncertain whether he should bring a legal claim.

CONCLUSIONS

Was the claim in time and the length of any delay?

21. It is now agreed that both complaints were presented outside the relevant statutory time periods. The Claimant did not contact Acas within three months less one day of the date on which his employment ended. He does not therefore benefit from an extension of time and his claim should have been presented by the 24 February 2021. The consequence is that, although he was one day late in contacting ACAS, his claim is in fact just over two months or eight and a half weeks out of time when it was presented on 26 April 2021.
22. I observe that these time limits are not just technical hurdles. They are set down by Parliament to create a manageable system of justice for both sides whereby claims can be fairly determined and they do so by limiting the time which a Claimant has to take the step of bringing a claim. This delay, in the region of two months, when set against an overall time limit of three months, is properly categorised as relatively substantial.

Reasons for delay

23. In respect of the unfair dismissal claim I have asked myself, what was the impediment which prevented the Claimant bringing his claim on time? I find that the operative impediment generally and, in the crucial week that limitation

expired (and up to 26 April 2021), was that he misunderstood how the time limit applied or was to be calculated. As per **Walls Meat (above)**, I have asked myself whether that state of mind, that error, that lack of knowledge was reasonable. Whilst I have sympathy with the Claimant and I acknowledge he is not a lawyer, it is not a matter of sympathy, I have to decide whether it was reasonably feasible for him to have calculated the time limit correctly. I attach weight to the following:

- information as to how to calculate the time limit is readily available online and, in particular, it is available on the Acas website as set out above
- the Claimant is an educated man with access to the internet and so had the ability to research those important time limits
- he was aware of the real risk of redundancy from the end of June 2020 and had a substantial period between then and his dismissal on 25 November 2020, to undertake appropriate research to assist him in deciding what to do in the event he was dismissed; similarly, he had a substantial period after he was dismissed on 25 November 2020 and, in particular, after the outcome of his appeal on 20 January 2021 and before 18 February 2021 to undertake the necessary research
- the Claimant was aware of the existence of and importance of time limits from approximately 18 February 2021
- there was no impediment to him contacting Acas between 18 and 25 February 2021. Even with his mistaken understanding, he could have made the necessary referral to Acas on or before 24 February; there was no good reason for him to wait until what he thought was the very last day available i.e. 25 February.

Conclusion in respect of the unfair dismissal claim

24. In the circumstances, I find it was reasonably practicable for the Claimant to have undertaken the necessary research, calculated the time limit correctly, contacted Acas in time and, therefore, to have brought his claim in time.

The race discrimination claim

Length of and reasons for the delay beyond the limitation period to presentation and overall delay / lapse of time

25. In respect of his discrimination complaint, the considerations are broader. I start with the length of and reasons for delay beyond the limitation period until the claim was presented. In respect of the Claimant's miscalculation of the time limit, and in the Claimant's favour, I attach weight to the fact he made a genuine error. I also note his submission that it is better that claims should be decided on the basis of their rights and wrongs, not on the basis of preliminary points although I do not attach significant weight to it where this preliminary issue is a product of a time limit set down by Parliament.

26. On the other hand, I find that the claimant's error in calculating relevant dates was not a reasonable one. I have also noted that the beginning of the events under consideration dates back to June 2020. I take the view it was important that proceedings arising out of events that date back over a period were brought promptly. I find that the Claimant could and reasonably should have

undertaken his research earlier (even if he was uncertain whether he should bring a claim) and with a little bit of time and care could reasonably have calculated the correct time limit.

27. Finally, I find that there was no good reason for Mr Chandel to wait until the end of the one month period after his early conciliation certificate (i.e. from 26 March 2021 to 26 April 2021), save that it was simply a period to which he thought he was entitled. He could have brought his claim at an earlier point within that one month period.

Impact of delay after expiry of the primary limitation period and lapse of time generally

28. It is right to say that the redundancy process and decision are likely to be largely documented. This is likely to reduce the impact on the evidence of any delay or expiry of time generally, nonetheless, there will be some deterioration in the quality of the evidence as to what precisely was in the decision maker's mind when he took decisions as far back as June 2020. This is a case that will not now be heard until 2023, in part, because it has had to progress through this Preliminary Hearing to resolve the time point.

Overall conclusion in respect of the race discrimination claim

29. I have weighed all the matters set out above. I attach particular weight to the length of and reasons for various delays by the Claimant. I find that, as to the calculation of the relevant limitation period, he made an error that could and reasonably should have been avoided. I find that he exacerbated the situation by not undertaking any research until the very end of the limitation period and generally taking the maximum period of time he thought he had on other occasions, such as, before contacting ACAS (between 18 and 25 February 2021) and after the issue of the certificate (26 March – 26 April 2021). He had no good reason for taking the amount of time which he did at each stage other than he was waiting to the very end of each period he thought he had.
30. For those reasons I have, on balance, determined that it is not just and equitable to extend time in the circumstances of this case.

Employment Judge Connolly

9 May 2022