



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr N Stubbs

v

Jark (Tottenham) Ltd

Heard at: Watford

On: 25 October 2021

Before: Employment Judge R Lewis

Appearances

For the Claimant: In person

For the Respondent: Mr S Morley, Consultant

JUDGMENT

1. The claim is struck out.

REASONS

1. These reasons are given by the Tribunal of its own initiative as it is in the interests of justice to do so.
2. The claim was received by the Tribunal on 11 February 2021. The claimant has acted in person throughout. Day A was 16 August 2020. Day B was 17 August 2020. The dates of employment in the claim form were stated to be 6 February 2019 to 3 May 2019.
3. No box was ticked in box 8.1. In the lower half of box 8.1, headed "Another type of claim" the claimant had written "Breach of contract".
4. At box 8.2 there was a complaint about working for Asda. The claimant referred to "the lack of guaranteed contracted hours".
5. At box 15 the claimant gave reasons for late submission. He wrote first that he had only found out about ACAS in July 2020 and secondly that between August 2020 and 4 February 2021 he had been homeless or unable to have guaranteed accommodation.

6. The claim was served on 12 February 2021. By its response the respondent stated that it is an employment agency. It identified that the claim was out of time, as the claimant's assignment at Asda had ended in May 2019.
7. The file was then considered by a judge in accordance with Rule 26. I was the judge in question. I directed a Preliminary Hearing to determine the question of whether the Tribunal could hear the claim, as it was, on the face of it, presented out of time. Notice of this hearing was sent on 19 June.
8. There was subsequent correspondence which led to the hearing being converted to take place in person.
9. On 19 October the claimant wrote to ask to amend the claim to add a complaint of automatic unfair dismissal.
10. The claimant has also written to complain about the service afforded to him by the Tribunal. I did not deal with the complaints at the hearing, as I do not have authority to do so. Complaints about the judiciary are referred to the Regional Employment Judge, and complaints about the administration are dealt with by a member of the administration staff.
11. At the start of this hearing I had a bundle of 33 pages. They included the claimant's contract of 30 January 2019 (4-14). It appeared to be a zero hours agency contract. There was also a statement from the claimant.
12. I proceeded informally. I asked the claimant for clarification and I understood the following.
13. The claimant spoke about his work background. He was born in 1984. He said that he had worked for many years in the catering industry and more recently in driving. He said that he has been dismissed on many occasions; he said on average four times a year throughout his working life. I did not ask for detail. He said that he has never worked for two years for any one employer.
14. He said that until July 2020 no employer had ever advised him of his rights outside the internal appeal system of a workplace. It was not until he was dismissed by Sainsburys in July 2020 that an employer first explained the right to go to ACAS and the consequences. He showed me his dismissal letter from Sainsburys, which contained that information.
15. The claimant referred to himself as an "abusee" and to employers as abusers. I understood that he was making the following point. Employers are under no obligation to advise employees of their rights to bring a claim in an employment tribunal, or of the need to contact ACAS. Due to his repeated experience of multiple dismissals, he had understood that dismissal, and the failure to give this advice, were normal conduct, and he had not challenged it. He explained that acceptance of abusive behaviour

as the norm is usual among victims of abuse. He expressed strong views about the legal and societal unfairness which this shows.

16. Although the claimant referred repeatedly to his mental health, he had no medical evidence, and did not identify a medical diagnosis. He said that he avoids doctors and hospitals, and volunteered the information that he has been referred for mental health assessment, but declined to co-operate with it, because he did not trust the outcome. There was therefore no evidence before me from any medical source.
17. The claimant said that when the respondent recruited him, he was assured orally that there was plenty of work, and that he did not understand there were time limits on the respondent's relationship with Asda. He understood that he would be working full time for Asda for a long period. He understood those assurances (which would be matters of evidence) to override the written language of the temporary worker's agreement which was in the bundle. As a matter of law, I do not necessarily agree with that argument.
18. While reviewing his notes, the claimant said that he thought his final day at work for Asda through the respondent was 19 April 2019, and that 3 May 2019 was in fact his last day of payment.
19. I asked the claimant if he had been paid in full for all the hours which he had actually worked; his answer was that he thought there was a discrepancy between the respondent's figures and his own bank statement, and that he had not been paid in full, although he was not sure of the details. He added that he had not received holiday pay. There is no reference to holiday pay on the claim form.
20. The respondent's case was, in short, that it retained the claimant on a temporary worker's contract which was for zero hours; that it assigned him to Asda for such work as was available; and that the last day of assignment was in April 2019. It said that it had paid him in full.
21. The claimant said that he registered with a new agency on 8 May 2019 and then began a series of other short term assignments.
22. I did not ask the claimant to clarify the claim for automatic unfair dismissal, as it seemed to me that that should await my judgment on whether the existing claim was to be allowed to proceed.
23. The claimant's explanation for delay in presenting this claim seemed to me to fall into three periods. In the first period, from 19 April 2019 until about 25 July 2020 he said that his priorities were to find work, and to earn enough money to live in London, and pay his rent and other outgoings. The last four months of that period coincided with the first national lockdown. He said that he was throughout that period completely ignorant of the existence of ACAS, employment tribunals, or of any rights which he might have.

24. The second period began when the claimant was dismissed by Sainsburys. He received a letter dated on or about 25 July 2020 in which Sainsburys explained his rights of internal appeal, and said that he had to contact ACAS before bringing a Tribunal claim.
25. I did not read the letter in full, but I add that the claimant is correct to understand that there is no obligation in law for an employer to give that information to a dismissed employee; I understand that the obligation is to advise the dismissed employee about the company's own internal appeal procedure.
26. The second period in my judgment began on or about 25 July 2020, and lasted until Day A, (16 August). By that day the claimant had carried out some research, and as a result he understood that he was to contact ACAS, and did so.
27. The third period of delay was from Day B (17 August 2020) until he presented this claim on 11 February 2021. The claimant was out of work, and the labour market was coming out of the first lockdown. He said in emotive language that this was a period when he was dealing with eviction, and faced a real risk of homelessness until February 2021, when he was able to find accommodation with a landlord who would accept payment by housing benefit. At that point, the claimant was able to present this claim.
28. I asked the claimant a number of questions to test his past experience. The ET1 states that he was born in 1984. He said that he has never before brought a claim in an employment tribunal; has never been a member of a trade union; did not discuss any issue relating to dismissal or Tribunals with colleagues at any workplace, or when he claimed benefits; and had no general understanding from the media about employment tribunals or their work.
29. Although he did have access to the internet (he had two devices with him in the room) he said that the information on Google was confined entirely to stating that dismissal rights only arise after two years' service, without extension. He said that as a result of his researches he has since then issued a number of claims. If I understood him correctly, some of them go back in time earlier than this case.
30. If I take 3 May 2019 as the end of the claimant's employment, the ordinary limitation date (ie the time limit for bringing this claim) was on 2 August 2019. As the claimant did not contact ACAS within the limitation period, the claim was presented between 79 and 80 weeks out of time (2 August 2019 to 11 February 2021). It is presented as a claim for breach of contract only. It is therefore brought under the Extension of Jurisdiction Order 1994. Article 7 provides:

“Employment Tribunals shall not entertain a complaint in respect of an employee's contract claim unless it is presented within the period of three months beginning with the effective date of termination of the contract giving rise to the claim. .. [or] © Where the Tribunal is satisfied that it was not reasonably practicable for the complaint to be presented within

whichever of those periods is applicable, within such further period as the Tribunal considers reasonable.”

31. The first question is was it reasonably practicable for the claim to have been presented within time? As Mr Morley astutely pointed out, the strains and practicalities of eviction and the risk of homelessness did not, on the claimant’s account, arise until 15 months after the end of employment, and therefore could not affect the practicability of the claimant’s response to these events in that first 15 months. I agree.
32. The claimant’s reason for not presenting a claim between May 2019 and July 2020 was ignorance of his rights. The claimant’s working life at the time of these events had lasted some 17 years or so. He may have exaggerated when he said that he had never held a job for two years, and that he was dismissed three or four times a year. I accept however that he has worked in many workplaces, and has experienced significant job turnover, including many dismissals.
33. His explanation for delay was, in his words, “complete obliviousness” of rights at work and of their remedies. The claimant’s actions in bringing a number of claims since 25 July 2020 are consistent with his having been genuinely ignorant of his rights before then. However, the question for me is one of reasonableness.
34. I cannot accept that the claimant’s explanation and ignorance were reasonable in a person with many years of employment; many different workplaces; countless work colleagues over the years; many experiences of dismissal; employment in at least one industry with a heavy trade union history and background (transport); and access to media, social media and the internet. Employment tribunals formed part of the social fabric at work for decades before the claimant started working; the claimant did not, before 2020, need to know any law; all he needed to know was that tribunals exist, and that there may be places or people where an individual can ask about them. There have been, and still are, many sources of help and advice in the voluntary sector. The current and historic workload of the Tribunal does not bear out the proposition that workers have been shielded from information about their rights. The issue is not whether, as the claimant has asserted, employers have routinely abused their employees by withholding information from them; my decision is based entirely upon the claimant as an individual.
35. The second limb of the test in Article 7 requires me to consider the period of delay from 3 August 2019 to February 2021. I do not find that that was a further reasonable period of delay. One reason is that for almost a year it overlaps with the first period; but the other is that while I heard what the claimant said about the period between August 2020 and February 2021, there was no evidence to support any of it, or to explain it in a manner which could shed light on the claimant’s failure to present an ET1. Presentation of an ET1 requires no more than a few minutes’ work online, free of cost, and is achieved on a daily basis by many members of the public, some of them operating in a second or third language, or without IT, or with very little

education. I do not agree that the claimant has made out either part of the test for an extension.

36. After giving judgment, I explained to the claimant that when these reasons were sent, the Tribunal would give information about how to take matters further. I explained to the claimant that there are two different processes, reconsideration and appeal, and the claimant's reply showed that he was plainly aware of both, and of the different time limits for both.
37. In accordance with my usual practice, I then began to explain to the claimant that there might be delay in sending these reasons. The claimant became angry, and loudly speaking over me, said that delay was "unacceptable," that he would complain, and left the room. He did not therefore stay to hear me agree that the level of delay in the Tribunal system is currently unacceptable, or to explain that the reason is inadequacy of resource to meet public demand, a structural matter for which no individual judge or member of support staff bears personal responsibility.

Employment Judge R Lewis

Date: 3/11/2021

Sent to the parties on: 12/11/2021

N Gotecha

For the Tribunal Office