



EMPLOYMENT TRIBUNALS

Claimant: Mr R J Robalino

Respondent: The NLP Academy Limited

OPEN PRELIMINARY HEARING

Heard at: London South (by video)

On: 20 January 2022

Before: Employment Judge C H O'Rourke

Representation

Claimant: In person

Respondent: Mr P Lonergan – consultant

JUDGMENT

The Claimant's claims of unfair dismissal, unlawful deductions from wages, failure to provide pay in lieu of notice, for a redundancy payment and 'other payments' are dismissed, for want of jurisdiction.

REASONS

1. The Claimant accepted that his claims had been brought several months out of time.
2. I explained the legal test in respect of such matters, as set out in s.111 of the Employment Rights Act 1996 (and similar legislation in respect of the other claims), which states:

Complaints to employment tribunal.

(1) A complaint may be presented to an employment tribunal against an employer by any person that he was unfairly dismissed by the employer.

(2) Subject to the following provisions of this section, 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.

3. I also referred myself to the guidance in the cases of **Wall's Meat Co Ltd v Khan [1979] ICR 52, EWCA**, as to the Tribunal's discretion in such matters and also that as stated in **Porter v Bandridge Ltd [1978] ICR 943, EWCA**, the burden of proof is upon the Claimant.
4. The first question for me is as to whether or not it was 'reasonably practicable', or, as has been indicted in recent case law 'reasonably feasible', for the Claimant to have brought his claim within the three-month time limit. In this case, based on an agreed effective date of termination (EDT) of 10 January 2020, by 9 April 2020. However, Early Conciliation was not commenced until 9 June 2020 and the claim was not presented until 12 July 2020, so approximately three months out of time.
5. I heard evidence from the Claimant. He had not provided a witness statement, despite being invited to exchange such a statement by the Respondent's representative, so I therefore treated the contents of his claim form as his statement.
6. He is a Spanish national and returned there from UK at the point of the EDT and where he still lives. Before leaving UK, he had lived here for approximately two years.
7. He said in that form [7] that '*I was going to submit a tribunal case, but COVID-19 lockdowns in Spain and England interfered. Also, my girlfriend is now 20 weeks pregnant and we have been very concerned about her and the baby's welfare in this difficult time.*' and that for those reasons, he asked the Tribunal to '*please consider this late case*'.
8. However, in cross-examination, he said for the first time that another factor in the delay was that he had been in negotiation with the Respondent as to settlement of the dispute between them and he therefore decided not to bring the claim at that stage. He said that however, by late-February, as the negotiations were proving fruitless, he had then decided to bring a claim. While he said that he had exchanged emails with the Respondent on this issue, none of that evidence was before me.
9. Nor was there any medical evidence in relation to his girlfriend's health at the relevant time.
10. He agreed that once he applied his mind to the task, the ET1 form would have taken no more than a couple of hours to complete. The grounds of his claim fitted easily into Box 8.2 of the form.

Finding

11. I find that it was reasonably practicable for the Claimant to have brought his claim within time and I do so for the following reasons:

- a. The first COVID lockdown only commenced in late March 2020, so cannot explain delay prior to that. In any event, no explanation was provided by the Claimant as to why lockdown would have prevented on-line research and the submission of an on-line claim form (there was evidence in the bundle that the Claimant is IT-literate, conducting courses and social life on-line [69]).
- b. The Claimant's nationality and residence in Spain were not factors that prevented him making on-line enquiries in this matter. While English is not his first language, he gave evidence today in perfectly adequate English (his profession is teaching English) and as stated, he had lived and worked in UK for two years.
- c. He provided no medical evidence to support his assertions as to his girlfriend's health delaying his bringing of the claim and based on his evidence, her pregnancy would have only commenced in late-February, so was not a factor throughout.
- d. I gave little weight to his evidence as to ongoing settlement discussions with the Respondent, as he had only said this for the first time today and provided no corroborative evidence of such discussions. In any event, on his own evidence, he had decided in late February that he was going to bring a claim, but provided no adequate evidence as to why he then failed to do so by 9 April and did not manage to do so for a further four months. He could, at that point, still easily have met the three-month deadline, but has not provided persuasive evidence to explain why he did not.

Conclusion

12. For these reasons, therefore, the Claimant's claims are dismissed, for want of jurisdiction. All previous orders made by the Tribunal (to include the 'Unless' order of 24 June 2021) no longer have effect and are set aside.

Employment Judge O'Rourke
Date: 20 January 2022