



EMPLOYMENT TRIBUNALS

Claimant: Mr S Saint
Respondent: Royal National Lifeboat Institution

RECORD OF A PRELIMINARY HEARING

Heard at: Reading (by video hearing)
On: 15 May 2024
Before: Employment Judge Gumbiti-Zimuto

Appearances

For the claimant: In person, (assisted by Ms Lister)
For the respondent: Ms S Davidson, counsel

JUDGMENT

The tribunal does have jurisdiction to consider both the claim of unfair dismissal and the claim of disability discrimination.

REASONS

1. Having undergone spinal surgery in about 2021 it became clear that the claimant could not return to his role as a Coxswain at Aldeburgh Lifeboat Station. The claimant was taken through a process which included dealing with a grievance made by the claimant. All of that culminated in a meeting on 27 February 2023 when the claimant was given notice of his dismissal on grounds of ill health capability.
2. The claimant was told that this would be effective from when he received the letter and that the letter would be within that week. The claimant was also told that he would have the option of pay in lieu of notice which can be paid upfront and would free up time to look for another job.
3. Following in that meeting, and before the dismissal letter arrived, the claimant wrote to the respondent. In that letter the claimant opted for pay in lieu of notice. The letter/email, sent to Rebecca Mallaburn on 1 March 2023 reads:

“I hope this finds you well. As you will know I attended the hearing on Monday, and I have been given my three months’ notice. I believe that starts when I receive the letter which I am told will likely be this week. I would therefore like to take payment in lieu of notice if that is ok. Please could you advise how the process works with timescales etc and if I need to do anything from my end. Many thanks.

4. The claimant received the dismissal letter on 3 March. The dismissal letter was received by the claimant attached to an email from Stephen Pope of the same date. The email from Mr Pope contained the following passage:

“Further to our meeting on Monday 27 February 2023 we committed to responding in writing by the end of the week. I have attached the letter which confirms the decision regarding capability dismissal and responds to your associated grievance. I have also included a document with notes of the meeting. I have subsequently heard that you have requested the ill-health retirement and that you are making enquiries to Rebecca Mallaburn for pay in lieu of notice. If this is the case then it would mean that today becomes your last day of service and that the reason for leaving is ill-health retirement.

5. It is important to note that this email specifically states that the claimant’s last day of employment was “today”, that was 3 March.
6. The dismissal letter accompanying that email informed the claimant that his employment had been terminated. There is a passage which reads:

“I therefore regrettably must inform you that this letter confirms the decision to end your contract of employment as a Coxswain on grounds of ill-health capability.”

It then continues:

“You are entitled to three months’ notice which will be from the date of receipt of this letter on 3 March 2023 and so your last day of work will be 2 June.”

7. The 2 June is the three-month date from 3 March. This is the only occasion which there is made reference to 2 June date as the last date of the claimant’s employment.
8. The dismissal letter states that the claimant’s last date of employment is 2 June but that needs to be considered in the light of the email which it was attached to which had made it clear that the claimant’s last date of employment was “today”. There is a contradiction between the two documents that should not have caused any particular confusion but may well have done so.
9. The claimant appealed the decision to dismiss him and prior to the appeal however he communicated with the respondent in respect of pay in lieu of notice.
10. On 7 March Rebecca Mallaburn again wrote to the claimant and on this occasion she confirmed that the claimant’s “last day at RNLI” was 3 March and that the claimant “will receive PILON” and that “the payment will be dated from 3rd March 2023 – 2nd June 2023”.
11. The position appears to be clear that the claimant’s employment was ending on 3 March. That this was something that was seems to have clear to the claimant as a note made at the appeal hearing when the claimant is asked the question, “who has direct contact with you now?” The claimant’s answer is “I’m not an employee I finished in March”.
12. The claimant received further correspondence from the respondent relating to his pension entitlements. Including a letter dated 12 April; that letter

indicated that the claimant's last day of employment was 3 March 2023 and gave him details about his pension and other benefits.

13. The claimant received his appeal outcome letter on 17 April.
14. On 25 June he entered into early conciliation and that came to an end of 6 August.
15. On 2 September the claimant presented his complaint of unfair dismissal and disability discrimination to the tribunal.
16. The date of the claimant's dismissal was clearly 3 March 2023; that is the effective date of dismissal for the purposes of calculating the time limits for the presentation of complaints about the dismissal.
17. In respect of the unfair dismissal claim, the claimant's time limit for presenting a claim had expired on 2 June 2023. That is the three-month date from his dismissal. The claimant had not approached Acas by that date so there is no extension that is granted to the claimant by reason of early conciliation.¹ He approaches Acas on 25 June.
18. Section 111(2) Employment Rights Act 1996: provides that, an employment tribunal shall not consider a complaint of unfair dismissal 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.
19. Section 123 Equality Act 2010 provides that proceedings of disability discrimination as in the circumstances of the claimant's case may not be brought after the end of the period of 3 months starting with the date of the act to which the complaint relates, or such other period as the employment tribunal thinks just and equitable.
20. The respondent has helpfully provided written submissions setting its arguments in respect of the extension of time in this case in respect of the Employment Rights Act 1996 claims and Equality Act 2010 claims.
21. In those circumstances, was it reasonably practicable for the claimant to bring a complaint within the three-month time limit?
22. The claimant, I am satisfied, clearly knew that the employment tribunal was available to him to potentially adjudicate on claims that he might have arising from his unhappiness at the way that he had been treated by the respondents, including relating to his dismissal. I am also satisfied that the claimant was aware of time limits. He stated in his evidence that they, I assume that he is referring to himself and those who were assisting him, ensured that they did everything by the deadline. I note that the claimant had advice from employment solicitors and that around 25 June he had spoken to Acas. The claimant, in my view, would have been aware about

¹ No extension of time is given to the claimant pursuant to the operation of the provisions in section 18A Employment Tribunals Act 1996, section 207B Employment Rights Act 1996 and section 140B Equality Act 2010.

time limits for bringing a claim by the time we get to June 2023. I note in his evidence that the claimant made explicit reference to the one-month extension arising from bringing his case to Acas. The context in which that comment was made referenced the 2 September date when the claim was presented. The claimant stated that he did not consider that time had begun to run at 3 March but was after 17 April, and that in fact said that he considered that until 2 June he was somehow “technically employed”.

23. The respondent says that this is not a reasonable state of belief and is not something that is likely to be correct and referenced the fact that the claimant made a comment at the appeal hearing when he said, “I finished in March”.
24. However, the conclusion that I have come to is that I am satisfied that the claimant did get himself in to a muddle. He has confused himself into an error about timing. I am satisfied that he genuinely believed that the correct reference point was 2 June and not 3 March and I come to this conclusion because everything that the claimant had done since about the summer of 2022 indicated that he was unhappy with the way that the respondent had treated him and he was seriously considering going to the law to protect his right; that is evidenced by the fact that he spent considerable sums of his own money in order to seek advice.
25. In June 2023 the claimant went to Acas. The purpose of going to Acas is to either specifically to enter into some form of early conciliation or as a necessary preliminary to bring in proceedings. All of this, in my view, is in keeping with the view that I have of the claimant as a person who had formed the view that he wanted to go to law to protect his rights. I am satisfied that the claimant did genuinely think that the relevant date was 2 June rather than 3 March and that had the claimant thought that the correct date was 3 March he would have acted sooner than he did and not acted as he did on 25 June approaching Acas.
26. All of this, in my view, supports the conclusion that the claimant’s genuine belief was that the 2 June was the relevant date. The claimant, had he got the dates correct, acted reasonably. He thought he was acting in good time; he is doing what she should in order to pursue his case. Regrettably, all of that is defeated by the fact that he was in fact wrong about the relevant date.
27. Having taken all those matters into account, I come to the conclusion that it was not reasonably practicable for the claimant to bring a claim in time because he had got himself into a position where he thought the relevant date was 2 June and not 3 March. That mistake made it impossible for the claimant to act in time.
28. I then have to go on to consider whether or not the claimant brought the claim within the further reasonable period, and I am satisfied that he did. The claimant approaches Acas on 25 June and then he brings the claim on 2 September at a point in time when he still thinks that the correct date is the June date.
29. So, for all those reasons, I am satisfied that it was not reasonably practicable for the claimant to bring the claim and that claim was brought within a further reasonable period of time.

30. For the same reasons I am satisfied that it is just and equitable to extend time to present the claim for disability discrimination. I am satisfied that while there has been some delay, and that the delay may cause prejudice to both parties, that delay which arises has resulted in some of the respondent's employees who may have been involved in this process leaving the respondent's employment but, taking account of what I know to be the practicalities of bringing a claim of discrimination and/or unfair dismissal before the employment tribunal, and comparing what would have happened had the claim been presented in late May as opposed to early September, I am satisfied that it is likely that the same prejudice would have existed whether or not the claim had been presented in time or not. The prejudice is as much against the claimant as it is against the respondent and, on balance, it is my view that, having regard to all the circumstances, it is just and equitable to extend time for the presentation of the complaint of disability discrimination.

Final hearing date

31. The claim was listed for hearing on 22-25 July 2024. However the parties are not ready for hearing. I have therefore made an order that these hearing dates are vacated and that the case is relisted on dates to be notified to the parties.

Employment Judge Gumbiti-Zimuto

Date: 29 May 2024

Judgment sent to the parties on

5 June 2024.....

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For the Tribunal office

Recording and Transcription

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here: <https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>