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THE EMPLOYMENT TRIBUNAL

SITTING AT: **LONDON SOUTH**

BEFORE: **EMPLOYMENT JUDGE MORTON**
(sitting alone)

BETWEEN:

Mr Ntmuba **Claimant**

AND

Alliance Healthcare **Respondent**

ON: **20 November 2017**

Appearances:

For the Claimant: **In person**

For the Respondent: **Ms K Marsden, Solicitor**

JUDGMENT

The Judgment of the Tribunal is that:

1. The Tribunal does not have jurisdiction to deal with the claimant's claim of unfair dismissal as he does not have the period of two years' qualifying service required under s108(1) Employment Rights Act 1996 ("ERA").
2. The Claimant did not bring his claims in respect of unpaid holiday pay and breach of contract within the statutory time limit when it would have been reasonably practicable for him to do so.
3. The Claimant's claims cannot therefore proceed and are hereby dismissed.

REASONS

1. The Claimant had brought claims of unfair dismissal, breach of contract in respect of unpaid notice pay and unpaid holiday pay. Although the Claimant did not explicitly claim holiday pay he did tick the 'other payments' box on his claim form. There were two issues at the hearing – whether the Claimant had the necessary qualifying service to bring an unfair dismissal claim and whether he had brought any of his claims within the statutory time limits, taking into account the extension of time arising from ACAS Early Conciliation.

2. The Claimant, whose first language is French, asked for an interpreter when he arrived at the Tribunal, but had made no application for an interpreter beforehand. I therefore needed to consider whether it was fair to the Claimant to continue the hearing without an interpreter and I asked him various questions about his claim in order to form a view about his comprehension of English. In my judgment he had a good command of English, was able to read it and could understand and answer my questions. I did not think that it would be unfair to him, or a breach of his Article 6 rights, to continue with the hearing and that that would be the course of action most in accordance with the overriding objective.

3. Dealing first with the unfair dismissal claim, I am satisfied having asked the Claimant questions and read his statement that his claim is of ordinary unfair dismissal and does not arise from a set of facts in which no qualifying period applies under s 108(3) ERA. The Claimant accepts that he was employed for a period of some 12 months, from 30 November 2015 to 23 November 2016 and that is less than the required qualifying period for claim of unfair dismissal under s94 (1) ERA. The Tribunal therefore has no jurisdiction to hear that claim and it must be dismissed.

4. There is no qualifying period applicable to the claims in respect of notice pay and holiday pay. I therefore went on to consider whether those claims had been presented within the statutory time limits applicable under the Employment Tribunals (Extension of Jurisdiction) Order 1994 and the Working Time Regulations 1998, as extended by the regime for early conciliation and if not whether there were any grounds for extending that limit.

5. In both claims there is a three month time limit, unless it was not reasonably practicable to present the claim in time, in which case the question is whether it was presented within such further period as was reasonable (s 111(2) ERA). The Claimant presented his claim on 19 July 2017. The effective date of termination of his employment was 23 November 2016 and the three month primary time limit therefore expired on 22 February 2017. ACAS was not contacted until 15 May 2017 – almost three months outside the primary time lime and the early conciliation certificate was issued on 7 June 2017. The claim was therefore presented substantially more than one month after the certificate was issued.

6. The rules on time limits are expected to be adhered to unless the Claimant

shows that the statutory ground for an extension of time applies, which in this case means showing that it was not reasonably practicable to present the claim in time. I asked the Claimant why he did not present his claim sooner than he did. He said that he took advice from the Citizens' Advice Bureau in February 2017, but whilst he was told about the two year rule for an unfair dismissal claim, he was not told about time limits. His recollection of why things happened when they did was vague. He told me that his father had unfortunately died around that time and that he had made a two month visit to the Congo to see his family. He told me at the hearing that he had come back in May, although according to his witness statement had had taken advice from his representative Mr St Catherine in March 2017. Mr St Catherine had then helped him appeal against his dismissal.

7. The Claimant could not explain why early conciliation was not commenced earlier than 15 May 2107. I did not specifically ask him why, even after the early conciliation certificate was issued, it too him or his representative just over five weeks to submit the claim, but nor did he offer any explanation for the delay.

8. The test of whether something is not reasonably practicable is whether it is reasonably feasible (Palmer v Southend Borough Council [1984] ICR 372). Or, as another case put it, was it reasonable to expect that which was possible to have been done.

9. It seemed to me that the Claimant may not have been wholly well served by the advice he received in February 2017. He was told that he could not bring an unfair dismissal claim, but was seemingly not asked about his other rights. I am prepared to find that the advice the Claimant received was not comprehensive and that given that he sought advice, it was reasonable for him to be ignorant of these other rights, particularly when English is not his first language and he is not a person who undertook a management role with a high level of access to knowledge and resources. I find that he was in fact ignorant of those rights at that point as a consequence of the less than comprehensive advice he received from the CAB. That being so, the case of Dedman v British Building and Engineering Appliances Ltd [1974] ICR 53, means that as the Claimant had instructed skilled advisers, (the CAB is regarded as a skilled adviser for these purposes) it cannot be said that it was not reasonably practicable for him to have submitted his claims for holiday pay or notice pay within the statutory time limit.

10. Even if I am wrong about that, the Claimant went on to take further advice, in March from Mr St Catherine. Mr St Catherine is not a qualified lawyer, but he clearly has some legal knowledge. Once matters were in his hands, there was a further delay for which there is no explanation. If the Claimant instructed him in March, it took two further months for him to raise his complaints with ACAS. Then once the early conciliation certificate was issued, five weeks passed before the Claimant issued his claim. The Claimant has not explained these delays and the onus is on him to explain why the time limit should be extended.

11. I therefore conclude that even if it had not been reasonably practicable for the Claimant to present his claims within three months of the effective date of termination, because of the inadequacy of the legal advice he received at the outset, there was then a further series of unexplained delays which mean that his claims were not presented within such further period as was reasonable.

12. I therefore conclude that time should not be extended in relation to the Claimant's claims for holiday pay and notice pay and the tribunal therefore has no jurisdiction to hear the claims, which must be dismissed.

Employment Judge Morton
Date: 5 December 2017