



EMPLOYMENT TRIBUNALS

Claimant

Mr Christopher Wilder

v

Respondent

Ian Grant

PRELIMINARY HEARING

Heard at: Watford

On: 24 May 2018

Before: Employment Judge Jack

Appearances:

For the Claimant: In Person

For the Respondents: Mr T Perry, Counsel

JUDGMENT

1. The name of the respondent is corrected to The Tyre Store Limited trading as Just Tyres.
2. The claimant failed to engage in early conciliation in circumstances where he was required to do.
3. The claim has no reasonable prospect of success because the contract of employment was frustrated as a result of the claimant's imprisonment.
4. The claim is struck out.
5. The respondent's application for costs is refused.

REASONS

1. By an ET1 issued on the 4 December 2017, the claimant complained of unfair dismissal.

The facts

2. The claimant was born on the 12 January 1981. He started working for The Tyre Store Limited trading as Just Tyres on the 21 February 2002.
3. On the 5 May 2017 he was sentenced to two years imprisonment at Amersham Crown Court for conspiracy to defraud. That was an immediate sentence of imprisonment so naturally he could not continue to work. The employer learnt of that almost immediately. There was correspondence between Mr Wilder's solicitors Wilson & Bird on the 15 May 2017 in which Wilson & Bird asked The Tyre Store Limited whether Mr Wilder's job would be available for him if he was granted bail pending an appeal. The Tyre Store wrote to say that they were not able to provide a job if he was released.
4. The ET1 alleges that the contract of employment ended on the 21 May 2017. On the 31 May 2017 there was a P45 issued but that appears never to have been received by the claimant.
5. The claimant remained in prison. He appealed against sentence. The appeal was initially refused by the single judge but he renewed his application to the full court and the full court reduced his sentence by six months so that he was sentenced to a total of eighteen months imprisonment but still an immediate sentence of imprisonment.
6. He was released from prison about the 27 November 2017. He enquired of The Tyre Store Limited whether there would be a job for him and they said that there was not, then on the 4 December 2017 as I have said, he issued the ET1.

The issues

7. The matter has been listed for a preliminary hearing to determine three issues -
 - 7.1 That the claimant failed to engage in early conciliation in circumstances when he was required to do so;
 - 7.2 That the claim has been brought out of time;
 - 7.3 That the claim has no reasonable prospect of success. The contract of employment having been rendered incapable of performance as a result of the claimant's imprisonment.
8. The notes of the preliminary hearing warned that the tribunal might consider a deposit order.
9. So far as the first issue is concerned the ET1 which was issued by the claimant asserted that the respondent (Mr Grant) had approached ACAS with a view to early conciliation so that he did not himself need to approach ACAS. That was the reason why he did not have a Early Conciliation Certificate from ACAS.
10. It is now common ground that that was not the case, neither Mr Grant nor The Tyre Store Limited had approached ACAS. In those circumstances the law is clear, the application to the tribunal has been brought in circumstances where the

tribunal has no jurisdiction and therefore the claim for unfair dismissal stands to fall in any event.

11. As to two, that the claim has been brought out of time, there is no doubt that the claim has been brought more than three months after the end of the contract of employment. There is however a potential ground for extension under s.111(2b) of the Employment Rights Act 1996 which allows a claim for unfair dismissal to be presented within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practical for the complaint to be presented before the end of that period of three months.
12. In the current case the claimant said that there were riots at the prison where he was staying and he had little contact with his solicitors as a result of the disturbances. I do not need to determine this issue and I do not. It would need further evidence if I was going to determine the second point.
13. As to the third point the position is this that once he was sentenced to a sentence of two years imprisonment and even with the prospect of an appeal against sentence being made, the reality is that he was not going to be able to perform the contract of employment anymore. That in my judgment is a straightforward case where the contract has been frustrated because the claimant cannot carry out the work which was needed. Accordingly, on that ground too the claim stands to be struck out.
14. At the commencement of the hearing I discussed who the proper respondent would be and it is common ground that it should be The Tyre Store Limited trading as Just Tyres.

Costs

15. Following the giving of the judgment in this matter Mr Perry applies for costs which he puts as his brief fee of £500 plus VAT, a total of £600.
16. In considering a costs order I need to take into account the paying party's ability to pay, that is Rule 84 of the Tribunals Rules of Procedure Regulations. It is apparent that the claimant has very little money. He lives on Income Support he says which is completely understandable that it is difficult to find work with a serious criminal conviction of the nature to which he was sentenced and that he owes in any event over £10,000 in Child Support payments.
17. The basis of the application is that Mr Wilder has behaved unreasonably in claiming in the ET1 that the employer had approached ACAS therefore relieving him of the responsibility of obtaining an Early Conciliation Certificate. That was a false statement and in my judgment would constitute unreasonable behaviour on his part, nonetheless in the light of his very stretched financial circumstances in the exercising of my discretion I refuse to make a costs order.

Employment Judge Jack 31.5.18

Sent to the parties on:

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For the Tribunal:

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