



EMPLOYMENT TRIBUNALS

Claimant: Mr R Crisp
Respondent: Highways England Company Limited
Heard at: Leeds by CVP video link
On: 2 October 2020
Before: Employment Judge Shepherd

Appearances

For the Claimant: In person
For the Respondent: Mr Beaver

JUDGMENT ON PRELIMINARY HEARING

The Judgment of the Tribunal is that:

1. The Tribunal does not have jurisdiction to hear the claims of unfair dismissal and disability discrimination and they are dismissed.

REASONS

1. The claimant represented himself and the respondent was represented by Mr Beaver.
2. I heard evidence from Robert Crisp, the claimant.
3. I had sight of an agreed bundle of documents which was numbered up to page 48. I considered those documents to which I was referred by parties.
4. The issues to be determined at this Preliminary Hearing were:
 - 4.1. Whether it was not reasonably practicable to have presented the claim for unfair dismissal in time, that is by 30 January 2020, and, if not, whether it is reasonable to extend the time for presentation until 30 May 2020.
 - 4.2. When did time begin to run in respect of any discrimination claim, and is it just and equitable to extend time to present the claim from the date three months after that until 20 May 2020.

5. I have considered the evidence provided, both oral and documentary and the submissions made by and behalf of both parties.

6. The claimant was employed by the respondent from 4 May 2004. In his claim to the Tribunal he set out various events which he referred to as emotional bullying and constructive dismissal from 2011 to September 2019. He says that these events amount to a breach of the implied term of mutual trust and confidence and he also alleges that they amounted to disability discrimination.

7. The precise nature of the disability discrimination claims are not clear but the claimant maintains that they were acts of discrimination and that his disability is, among other things, long-term depression.

8. The claimant was aware of the possibility of bringing a claim of constructive dismissal. He raised the suggestion of constructive dismissal in a sickness review meeting on 8 November 2017. At that stage he had the benefit of trade union advice or support and he had obtained advice from a solicitor.

9. The claimant said that the last straw was in September 2019. He submitted a retirement notification form on 16 September 2019 and the effective date of termination was when he retired on 31 October 2019.

10. The claimant gave evidence that the final act of alleged discrimination was in July 2019.

11. Section 111 of the Employment Rights Act 1996 states:

“(2) ...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.

12. Section 123 of the Equality Act 2010 provides:

(1) Proceedings on a complaint within section 120 may not be brought after the end of –

- (a) the period of 3 months starting with the date of the act to which the complaint relates, or
- (b) such other period as the employment tribunal thinks just and equitable.

13. The time limits in respect of unfair dismissal are not simply legal niceties that can be waived at the Tribunal's discretion. They are clearly expressed in mandatory terms that an Employment Tribunal shall not consider a complaint unless it is presented within the prescribed time limit. The 'not reasonably practicable' formula requires the Tribunal to make a finding of fact and the onus of proving that presentation in time was not reasonably practicable rests on the claimant. In the case of Trevelyan's (Birmingham) Limited v Norton EAT 175/90 it was said that when a claimant knows of his or her right to complain

of unfair dismissal, he or she is under an obligation to seek information and advice about how to enforce that right.

14. The claimant was aware of his right to bring a claim of unfair dismissal and should have been put on notice to find out about the relevant time limits. He was actually informed of the time limits by the Citizen's Advice Bureau and/or ACAS in mid-January 2020. He did not approach ACAS with regard to starting the early conciliation process until 17 February 2020.

15. In respect of the complaint of unfair dismissal the time limit had expired, at the latest, by 30 January 2020. The claimant had raised a grievance with the respondent on 27 January 2020 and he dealt with issues in respect of his pay with the respondents at this time. There was no medical evidence of the claimant's incapacity and I find that it was reasonably practicable for the claimant to present a claim of unfair dismissal within three months.

16. The ACAS early conciliation certificate was issued on 20 February 2020 and the claim was not presented for a further three months on 20 May 2020. Had it not been reasonably practicable for the claim to be presented within three months then the claim was not presented within a reasonable time thereafter.

17. With regard to the disability discrimination claims, it was indicated by the claimant that the last discriminatory act alleged was in July 2019. The limitation period in respect of the claim of disability discrimination would therefore be, at the latest, 31 October 2019. The claim was not presented until 20 May 2020. The claimant had the benefit of advice from the CAB. He had been informed of the relevant time limit in mid-January 2020 but still did not present his claim until 20 May 2020. He was capable of raising a grievance and dealing with other issues with the respondent albeit with the assistance of his brother.

18. There was no medical evidence in respect of any medical incapacity and I do not accept that the claimant has established that he was under such a medical incapacity which meant that it was just and equitable to extend the time for presenting a complaint to the Tribunal from 31 October 2019 to 20 May 2020.

19. The Tribunal does not have jurisdiction to hear the claims of unfair dismissal and disability discrimination and they are dismissed.

Employment Judge Shepherd

Date: 2 October 2020

Judgment sent to the parties on

Date: 7 October 2020