



Tribunals Service
Information Tribunal

Information Tribunal

Appeal Number: EA/2007/0008

Freedom of Information Act 2000 (FOIA)

Heard at the Employment Tribunal, Leeds

Decision Promulgated

Date 5 March 2007

26th March 2007

BEFORE

INFORMATION TRIBUNAL DEPUTY CHAIRMAN

Humphrey Forrest

Between

Mr John Crossley

Appellant

And

Information Commissioner

Respondent

Representation:

For the Appellant:

In person

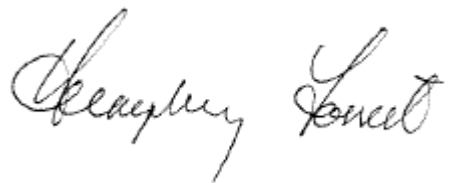
For the Respondent:

Ms Holly Stout, barrister

Decision

This appeal must be dismissed as it was presented outside the period allowed for submitting appeals, and there are no special circumstances which make it just and right to allow late presentation.

Signed

A handwritten signature in cursive script, appearing to read "Humphrey Forrest".

Humphrey Forrest
Deputy Chairman

Reasons for Decision

Legal framework

1. A pre hearing review was ordered to determine whether the notice of appeal in this case was submitted in time.
2. The Information Tribunal (Enforcement Appeals) Rules 2005 provide :

Rule 4

(1) An appeal must be brought by a written notice of appeal served on the Tribunal.

(2) The notice of appeal shall –

(a) identify the disputed decision and the date on which the notice relating to the disputed decision was served on or given to the appellant; and

(b) state –

(i) the name and address of the appellant

(ii) the grounds of the appeal

.....

(v) where applicable the special circumstances which the appellant considers justify the Tribunal's accepting jurisdiction under rule 5(2) below; and

(c) be signed by or on behalf of the appellant.

Rule 5

(1) Subject to paragraph (2) below, a notice of appeal must be served on the Tribunal within 28 days of the date on which the notice relating to the disputed decision was served on or given to the appellant.

(2) The Tribunal may accept a notice of appeal served after the expiry of the period permitted by paragraph (1) above if it is of the opinion that, by reason of special circumstances, it is just and right to do so.

(3) A notice of appeal shall if sent by post in accordance with rule 31(2) below, be treated as having been served on the date on which it is received for dispatch by the Post Office.

The factual background:

3. The tribunal heard evidence from the appellant and submissions from both parties before reaching its decision.
4. On 22 November 2006 the Information Commissioner signed a Decision Notice dealing with a request for information by the appellant from the Governing Body of Garforth Community College. The same day the Notice was posted by registered post to Mr Crossley. It was received by him the following day, 23 November 2006.
5. The last paragraph of the Decision Notice states :

Right of Appeal

74. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained 1(2)from: [and gives the tribunals' address, phone and fax numbers, and email address. It continues:]

Any notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

6. 28 calendar days from the 23 November expires on 21 December 2006.
7. At some time before that date, he is not sure when, Mr Crossley contacted the Information Commissioner's office to ask about an appeal. Subsequently, on 20 December, a message was left with Tribunal Customer Services asking that someone contact Mr Crossley. Miss Atalla, a clerk at the Tribunal, rang him the same day. Mr Crossley said he wished to appeal; Ms Atalla informed him of the time limit, and the urgency of the situation. Mr Crossley told Miss Atalla that he had multiple disabilities and she therefore completed a blank appeal form for him, at his dictation, completing the information required for Rule 4(a) and (b), save for (b)(ii), the grounds of the appeal: Mr Crossley said he wanted time to consider these further. She sent him the completed form; he signed it and returned it to the Tribunal, who received it on 22 December 2006, one day out of time. Mr Crossley did not send it by registered post, in accordance with rule 31(2) so it did not fall within Rule 5(3).
8. Another tribunal clerk, Mr Towers, rang Mr Crossley on 28 December, and again on 29 December, to enquire what grounds of appeal Mr Crossley wished to include. After discussion, Mr Towers drafted these for him and sent him these to approve and sign. Mr Crossley returned the signed grounds of appeal, with two pages of handwritten additions, to the tribunal, who received them on 4 January 2007.
9. In section 5 of the Notice of Appeal, Mr Crossley set out the special circumstances he wished the tribunal to consider in relation to the out of time point :

I do not have a computer or fax machine, and because of my multiple disabilities including vibration white finger, carpal tunnel syndrome and arthritis it is very difficult/impractical/unreasonable/too painful to write the forms out myself and even if these barriers were overcome the Tribunal would not be able to read it because it would be illegible. If I didn't suffer from the multiple disabilities mentioned I would have had the opportunity today and yesterday to write a form or letter with yesterday's date or today's date giving the details for you to consider. I also have memory and concentration problems as a result of a road traffic accident in 1983 when one of the problems was lack of oxygen to my brain for several minutes.

10. In his evidence to the tribunal, Mr Crossley mentioned another disability which affected him, depression. He said he had suffered from this for several

years, and that while he could not positively say that it was affecting him in the 4 weeks from 22 November to 20 December, he thought that it probably had affected him, for some days or longer at a time, for more than 50% of that period. He was not receiving any treatment for the depression. He had in the past seen his doctor, who had urged him to take medication, which Mr Crossley had declined. Mr Crossley was unwilling to give any further information about the memory and concentration problems he said he had as a result of the traffic accident.

11. Mr Crossley accepted that he had received the Decision Notice, and, while he had not read it through, he had looked at the end, and realised that while parts of the Decision were in his favour, other findings were not, and that he wished to appeal it. He could not recall when he had reached that decision. He was aware from early in the period that it was an important issue for him and that there was a deadline for appealing, though he had not taken note of the particular date. He had not been prompted to call the Information Commissioner's office for advice on how to appeal by the four week deadline: it was more that he had known he had to do something, and that was when he found the time to do it. In the past he had visited the CAB for advice and assistance and found them helpful. He did not do so on this occasion because it can be a lengthy business waiting to see a CAB advisor. Mr Crossley is not in work; he has retired early and is in receipt of disability benefit. He accepted there had been times during the period in question when he had been able to read and consider the Decision Notice, but he had also had other important things to do in that period and so had not done anything about an appeal until the 20 December.

Submissions

12. Miss Stout argued that the Notice of Appeal had not been received until 4 January, because it was only then that Rule 4 was fully complied with, when the grounds of appeal were supplied. She argued that the appeal was clearly out of time and that Mr Crossley had not pointed to any special circumstances to allow an out of time appeal. She accepted that if I found there were special circumstances, the Commissioner could not point to any additional prejudice if a late appeal were to be allowed.
13. Mr Crossley urged me to consider his multiple disabilities as special circumstances, arguing that he was a disabled person under the Disability Discrimination Act by virtue of his handwriting difficulties, and other disabilities. Because of these he had been denied the opportunity, available to someone who was not affected by disability, to get his appeal in on time. It was only a small delay and had not affected the Information Commissioner.

Consideration and Conclusion

14. I find the notice of appeal was served on the tribunal on 22 December 2006, one day after the expiry of the permitted period. Are there special circumstances allowing it to be accepted after that date?

15. I accept that illness or disability can certainly amount to a special circumstance, such that if delay is thereby caused, it may be just and right to accept a late appeal. However, I am not satisfied on the evidence before me that they caused the delay in this case. I accept Mr Crossley's evidence that he would have difficulty handwriting or word processing a notice of appeal because of his vibration white finger, carpal tunnel syndrome and arthritis. However, none of these caused any practical problem in the instant case. As soon as Mr Crossley contacted the tribunal and explained his problem, the Tribunal staff typed the necessary information out for him at his dictation. All that remained was for him to approve it, and then sign it, under rule 4(c). That could have been done at any time during the 28 day period.
16. The question is whether there are special circumstances to explain why Mr Crossley left it to the end of the 28 day period to contact the Tribunal? I accept that clinical depression can amount to such a special circumstance: one of its characteristic effects is that people cannot deal with matters promptly, or take decisions, or comply with deadlines. However, I am not persuaded that Mr Crossley was affected by clinical depression during the period in question. The symptoms he describes, affecting him for a few days at a time, would not have prevented him from lodging an appeal within the period available. Even these symptoms, he cannot confirm with certainty. I note that he was able, at the end of the period, to communicate effectively with the tribunal and to return the Notice of Appeal promptly. He did the same again in early January, this time adding two sides of handwritten observations, which are pertinent and address specific points of the Decision Notice.
17. He accepts there were times within the period when he did consider the Decision Notice, and when he might have sought advice, for example from the CAB. He says he had more important things to do in the time he had available. That is of course a matter for him, but he accepts he was aware that there was a deadline. I find that the difficulties of memory, concentration and depression, as described by Mr Crossley and on the limited evidence before me, do not amount to special circumstances so that it would be just and right to allow this appeal to proceed out of time. It is clear that parliament intended appellants to have a relatively short period in which to submit appeals; Mr Crossley unfortunately failed to comply with the deadline; that he failed to comply by only one day is not in itself a special circumstance.
18. Had I been persuaded that there were special circumstances here, I would have found it just and right to allow the appeal: the delay is extremely short and there is no suggestion of prejudice to any other party caused by it.
19. Ms Stout also argued that the appeal cannot be properly served on the tribunal until grounds are set out, as required by Rule 4(b) (ii); and that the appeal was not therefore served until 4 January 2007, some weeks out of time. Not only are grounds a mandatory requirement of the appeal notice under the Rule, they are in practice an essential requirement: until they are provided the respondent to the appeal does not know the case it has to answer. The wording of Rule 4 is clear. Mr Crossley was offered assistance from the tribunal on more than one occasion, including 20 December, to complete this section of his appeal.

He declined it until 29 December, and did not then return the completed notice of appeal until 4 January. A delay of two weeks, in the context of an allowed period of four weeks, is significant. If my decision on the first point is thought harsh, it is likely that Mr Crossley would have been found out of time on this point in any event. As it is, I need not formally decide the point.

20. This appeal must be dismissed as it was presented out of time.

Signed

Humphrey Forrest
Deputy Chairman

Date: 26th March 2007