



# EMPLOYMENT TRIBUNALS

BETWEEN

*Claimant*

*Respondent*

Miss L Olson

AND

North of England  
Refugee Service

## PUBLIC PRELIMINARY HEARING

Heard at: North Shields

On: 1 March 2017

Before: Employment Judge Johnson

### *Appearances*

For the Claimant: In person

For the Respondent: Mr S Underwood (Chair of the Board of Trustees)

## JUDGMENT

It was not reasonably practicable for the claimant to present her complaint to the Employment Tribunal before the end of the period of three months beginning with the effective date of termination of her employment. The Tribunal considers it reasonable to extend time for the presentation of the claimant's complaint to 17 October 2016.

## ORDERS

Made pursuant to the Employment Tribunal Rules 2013

### 1 Statement of remedy

By no later than **17 March 2017** the claimant shall set out in writing what remedy the Tribunal is being asked to award. The claimant shall send a copy to the respondent. The claimant shall include any evidence and documentation supporting what is claimed and how it is calculated. The claimant shall also include information about what steps the claimant has

taken to reduce any loss (including any earnings or benefits received from new employment).

**2 List of documents**

By no later than **17 March 2017** claimant and the respondent shall send each other a list of any documents that they wish to refer to at the hearing or which are relevant to the case. They shall send each other a copy of any of these documents if requested to do so.

- 3** By no later than **31 March 2017** the respondent shall prepare sufficient copies of the documents for the hearing. The documents shall be fastened together in a file so as to open flat. The file of documents shall be indexed. The documents shall be in a logical order. All pages shall be numbered consecutively. The respondent shall provide the other parties with a copy of the file. Two copies of the file shall be provided to the Tribunal at the hearing (and not before).

**4 Witness statements**

By no later than **21 April 2017** the claimant and the respondent shall prepare full written statements of the evidence they and their witnesses intend to give at the hearing. No additional witness evidence may be allowed at the hearing without permission of the Tribunal. The written statements shall have numbered paragraphs. The claimant and the respondent shall send the written statements of their witnesses to each other. Two copies of each written statement shall be provided for use by the Tribunal at the hearing (and not before).

**5 Draft statement of issues**

By no later than **5 May 2017** where the claimant and the respondent are both professionally represented, the professional representatives shall prepare a draft statement of issues or questions that are to be decided by the Tribunal at the hearing. The draft statement of issues shall be subject to the Tribunal's agreement at the commencement of the hearing.

## REASONS

- 1** This matter came before me this morning by way of a public preliminary hearing, to consider whether the Employment Tribunal has jurisdiction to hear the claimant's complaint of unfair dismissal, which appears to have been presented out of time. The claimant attended in person and gave evidence under oath. The respondent appeared by its chairman of trustees, Mr S Underwood. Mr Underwood did not give any evidence, did not call any witnesses but did ask questions of the claimant by way of cross-examination.
- 2** The claimant presented a handwritten witness statement marked C1, a copy of which was provided to Mr Underwood, with a further copy for the Tribunal Judge. Time was taken by both Mr Underwood and the Judge to read this

statement. The claimant then confirmed under oath that the contents of the statement were accurate, true and correct to the best of her knowledge, information and belief. The claimant then answered brief questions from Mr Underwood and the Judge.

3 By a claim form presented on 17 October 2016, the claimant brought a complaint of unfair dismissal. The respondent defends that claim. Upon examination of the claim form and response form, Employment Judge Hunter identified that the claim form had been presented outside the three month time limit applicable to such claims. The effective date of termination of the claimant's employment was 26 May 2016. The three month time limit would ordinarily have expired on 25 August 2016. ACAS early conciliation applies to this claim. The case was referred to ACAS on 22 August 2016 and the conciliation period ended on 14 September 2016. The early conciliation period was 23 days. The applicable time limit was thereby extended to 14 October 2016. It therefore appears that the claim form was presented three days late.

4 At the commencement of this morning's hearing, I enquired of the claimant as to whether she agreed that this chronology was correct and that the claim form had in fact been presented three days late. The claimant agreed and so conceded.

5 I then explained to the claimant the provisions of section 111(2) of the Employment Rights Act 1996, which specifies that the Employment Tribunal has a discretion to extend the time limit for presentation of a claim, provided that it is first satisfied that it was not reasonably practicable for the complaint to have been presented before the end of that period of three months. I explained to the claimant and Mr Underwood the basic test set out by the Employment Appeal Tribunal in Asda Stores Limited v Kauser EAT/0165/07 that;

"The relevant test is not simply a matter of looking at what was possible, but to ask whether, on the facts of the case as found, it was reasonable to expect that which was possible, to have been done."

6 The claimant confirmed under oath that she has a Masters Degree in English Language and Literacy. The claimant is clearly an intelligent, articulate and educated lady. The claimant confirmed under oath that, with the assistance of a colleague, she approached Unite (trade union) for assistance, once she was informed that her conduct was being investigated and that disciplinary proceedings were to be taken against her. The claimant was never a member of the trade union and was told that if she joined the union, it would not be able to provide her with advice and assistance in respect of matters which had taken place prior to her joining the union. No advice was given by the trade union concerning Employment Tribunal proceedings.

7 The claimant confirmed that she had contacted the local Citizens Advice Bureau, both by telephone and by viewing its website. The claimant also contacted ACAS. The claimant was aware that there was a time limit for presenting her claim to the Employment Tribunal. The claimant accepted that

the Employment Tribunal website and publications clearly specify that there is a time limit. Both the CAB and ACAS had informed the claimant about the time limit.

- 8 The claimant's evidence to the Tribunal was that she was told that the applicable time limit was "three months less one week". That is of course inaccurate, as the time limit is three months less one day. The claimant however believed that the "three months less one week" deadline meant that her particular time limit would expire on the 19<sup>th</sup> of the month, as her dismissal had taken place on 26 May. It was for this reason that the claimant presented her complaint on 17 October, believing that the deadline was 19 October.
- 9 The Tribunal found that the claimant was aware at the relevant time that there was a three month time limit which applied to her claim. The Tribunal accepted the claimant's evidence that her understanding of the process was that her complaint had to be presented by 19 October. The claimant genuinely believed that she had complied with the time limit by presenting her complaint on 17 October.
- 10 The claimant's evidence to the Tribunal was that, as a result of the investigation and disciplinary process which led to her dismissal, she began to suffer from anxiety, stress and depression. The claimant first consulted her GP about this during the first week in May 2016. She obtained from her GP a fit note, excusing her from work, which confirmed that she was suffering from "work-related stress".
- 11 The claimant confirmed that she continues to suffer from stress, anxiety and depression. She continues to receive medication from her GP, which medication has recently been increased. The claimant described in her statement and in her answers to questions from the Tribunal Judge, the impact which this condition has had upon her. Her evidence included:-

"I have had depression and anxiety with panic attacks. I am on medication and going to Talking Therapy, on a one-to-one basis. I avoid people as I no longer want or feel comfortable around people. I hide away at home in my room where no stress will be put upon me. I feel worthless and some days barely function – time and dates are of no interest. Mentally I feel very fragile and this has been the case since May 2016 – this has/is a major stumbling block to being able to deal with complex issues. I used to be active and good multi-tasking. Now I can't overestimate my lack of personal self worth which is connected to my work. Now I have nothing to contribute. Some days I barely function. I wake up and just go back to bed as there is no purpose to my day. I know I have to do things but I just can't. I just sit and wonder what is the purpose and I just ignore the whole world. I'm ashamed that I have missed the deadline but had I been mentally functioning, it would not have happened."

- 12 The claimant did not produce any medical evidence, such as a letter from a GP, to support what she told me. However, I accepted that the claimant was

being entirely truthful and honest about both her medical condition, her mental fragility and the impact this has had upon her ability to function on a daily basis. I am satisfied that the claimant's stress, anxiety and depression have had a material impact upon her ability to function in the way that she had been able to do prior to the series of events which led to her dismissal.

- 13 Whilst not challenging the claimant's evidence, Mr Underwood submitted that the claimant had been more than capable of fully participating in the investigation, disciplinary process and appeal hearing. Mr Underwood challenged whether the claimant was, in those circumstances, suffering to such an extent that she had not been able to meet the deadline for presenting her complaints.
- 14 I took into account what had been said by Mr Underwood and put those matters to the claimant. The claimant explained that her condition had deteriorated once she was informed that her appeal had been dismissed and she realised that she was without employment. The claimant could no longer afford to pay the rent on her private residential accommodation. She was served with a notice to quit by her landlord. The claimant had to apply for benefits and eventually had to vacate her premises in January 2017. Again, I was satisfied that these matters had placed additional stress and anxiety upon the claimant and that they would in turn have impacted upon her ability to concentrate on the presentation of her claim form within the time limits.
- 15 In all the circumstances of this case, I am satisfied that it was not reasonable to expect that which was possible, namely the presentation of the claim within three months, to have been done. The claim was in any event only three days out of time. Mr Underwood graciously accepted that all of the respondent's evidence and witnesses remain available and that there can be a fair trial of the issues between these parties, should the claim be allowed to proceed.
- 16 I am satisfied that it was not reasonably practicable for the claimant's complaint to have been presented within the three month time limit. I am satisfied that the time limit should be extended by three days to 17 October 2016. I so order.
- 17 I then set out case management orders, the purpose of which is to ensure that the case is fully prepared for final hearing. I listed the matter for final hearing with an estimate of two days, on **18 and 19 May 2017**. The parties are to attend by **9:30am**. The hearing will commence on each day at **9:45am**. The respondent shall be responsible for bringing to the Employment Tribunal on the morning of the first day, three complete copies of the hearing bundle and three complete copies of the statements of all of the witnesses.

### **CONSEQUENCES OF NON-COMPLIANCE**

1. Failure to comply with an order for disclosure may result on summary conviction in a fine of up to £1,000 being imposed upon a person in default under s.7(4) of the Employment Tribunals Act 1996.

2. The Tribunal may also make a further order (an “unless order”) providing that unless it is complied with, the claim or, as the case may be, the response shall be struck out on the date of non-compliance without further consideration of the proceedings or the need to give notice or hold a preliminary hearing or a hearing.
3. An order may be varied or revoked upon application by a person affected by the order or by a judge on his/her own initiative.

**Employment Judge Johnson**

**Date 7 March 2017**

**Sent to the parties on:**

**7 March 2017**

**For the Tribunal:**

**Miss K Featherstone**