



Case Number: 2300977.2016

MK

## EMPLOYMENT TRIBUNALS

BETWEEN

**Claimant**

Miss A Rydz

and

**Respondent**

Ramco Dental Ltd

Held at Ashford on 3 March 2017

**Representation**

**Claimant:**

In Person

**Respondent:**

Mr M Williams, Counsel

**Employment Judge** Kurrein

## JUDGMENT

The claimant's claim alleging unfair dismissal is not well founded and is dismissed.

## REASONS

- 1 On 22 March 2016, having completed early conciliation, the claimant presented a claim to the tribunal alleging unfair dismissal.
- 2 On 22 July 2016 the respondent presented a response, denying that claim and asserting it was out of time.
- 3 This matter came before me at an open preliminary hearing to consider preliminary issues as to whether the claimant's claim had been presented out of time and whether or not her claims had any reasonable prospect of success.
- 4 I have heard the evidence of the claimant on her own behalf, considered the papers to which I have been referred and heard the submissions on the behalf of the parties. I make the following findings of fact.
- 5 The claimant was born on 9 March 1979 and started her employment as a dental nurse with the Respondent's predecessor on November 2009. I accepted the written evidence given on behalf of predecessor, and a number of other former and the present employer, that the claimant was an extremely competent dental nurse and that there were no issues whatsoever regarding her ability or conduct as far as they were concerned.
- 6 On 1 April 2015 the claimant's employment was transferred to the respondent pursuant to TUPE.
- 7 The claimant had a day off on 14 September 2015. She received a telephone call from Ms E Lawrie of the respondent in which she was told that she was

- being dismissed. She asked whether she was expected to return to work and was informed that she would be permitted to continue to work until the end of the week as a matter of goodwill. Later the same day Ms Lawrie telephoned the claimant to inform her that the respondent had found someone to cover her duties and that she was not to attend the respondent's premises again.
- 8 On 21 April 2015 the claimant emailed the respondent to request written reasons for her dismissal. The respondent emailed in return to indicate that one of the dentists at the respondent's practice had not been happy with the timekeeping of the claimant, and that the claimant had failed to carry out some of her duties.
- 9 The claimant did not accept that her conduct had fallen below a reasonable standard, and had an agreement with her employer, extending over many years, that she was entitled to start work slightly later because of train timetabling issues. She worked extra time during her lunch and at the end of the day to compensate for this.
- 10 Thereafter, the claimant sought advice from ACAS and wrote again indicating the procedure that she believed the respondent should have followed prior to dismissing her.
- 11 In the following further correspondence the claimant made it clear to the respondent that she wished to appeal against the decision the respondent had taken. As a consequence Miss Patel, the Respondent's principal Director, invited her to attend a meeting on 8 October 2015.
- 12 That meeting was attended by Ms Patel, who was accompanied by Ms Lawrie. The claimant was accompanied by a former colleague.
- 13 The claimant made detailed notes of what took place in the course of that meeting. Ms Patel expressed a wish to consider everything that the claimant had raised and to review it all before making a decision.
- 14 On 29 October 2015 Ms Patel sent an email to the claimant, the substance of which was in the following terms,
- "I am now writing to confirm the decision taken by myself, who conducted the appeal hearing, namely that the decision to dismiss be revoked.
- Please consider the following as a final written warning which will be kept on file for 12 months:
- not being on time for the start of work-contracted start time, at 8:30 AM.
- not emailing and phoning people/companies for your husband's company during working hours.
- You have now exercised your right of appeal."
- 15 Neither party took any steps at that point for the claimant to return to her position.
- 16 The claimant, who was unsure of her position, had sought professional advice to no avail as she had no money. She had no income and her partner, who was a dental technician much of whose work was for the respondent, had

- ceased receiving work from it. They had incurred debts and were in arrears with their rent.
- 17 The Claimant spoke to her neighbour about her predicament. He was a practising solicitor and agreed to assist the claimant without payment. He started early conciliation on 8 November 2015 and emailed the Respondent on 19 November 2015, what was, in effect, a letter before action.
- 18 There was no evidence before me that that email resulted in any further exchange of correspondence between the claimant's solicitor and the respondent.
- 19 The next stage in the proceedings was the end of early conciliation on 8 December 2015.
- 20 In light of the provisions of S.111 Employment Rights Act 1996 the latest date by which the claimant should have presented any claim she wished to make in respect of her dismissal on 14 September 2015, taking account of the extension of time granted by early conciliation, was 13 January 2016. It was not presented until 22 March 2016 and is clearly out of time.
- 21 I accepted the claimant's evidence that she placed all her trust in her solicitor to ensure that appropriate steps were taken to safeguard her rights. There has been no explanation for that delay. Unfortunately, the claimant was wholly unaware of that delay or, indeed, that her solicitor's practice had been intervened in by the Solicitors Regulation Authority, until very shortly before the matter was originally listed on 17 October 2016.
- 22 Regardless of that, the consequences of her solicitor's default must be attributed to the Claimant.
- 23 I have no doubt that if the claimant was effectively dismissed on 14 September 2015, and was not reinstated as a consequence of the appeal hearing on 8 October 2015, her claim is both out of time and there are no grounds on which to extend time. It will be no comfort to the claimant that she may have an action in professional negligence against that solicitor. She wishes to pursue a claim against the person she considers responsible for the position in which she finds herself, which is the respondent.
- 24 There is a long line of authority on the position that arises when a dismissal is subsequently revoked at an internal appeal. They date back to at least J. Sainsbury Ltd v Savage [1980] IRLR 109 and are to the effect that in such a circumstance the dismissal "disappears". It is now settled that the contract is reinstated automatically, and irrespective of any action by the employer.
- 25 The fact that the claimant objected to the substitution of a final written warning does not affect this consequence: Folkestone Nursing Home Ltd v Patel UKEAT/0348/15, Roberts v West Coast Trains Ltd [2004] EWCA Civ 900, [2004] IRLR 788.
- 26 In all the above circumstances I have concluded that the Claimant's claim has no reasonable prospect of success because at the time she presented her claim she had not been dismissed.

**Case Number: 2300977.2016**

- 27 The issue of whether or not the Claimant is entitled to be paid for the period between her purported dismissal and the date the contract was reinstated (or some later date) is moot. At the present time she remains employed by the Respondent.

**Employment Judge Kurrein**

6 March 2017