



## EMPLOYMENT TRIBUNALS

**Claimant:** Mrs C Wood

**Respondent** Conwy County Borough Council

**Heard at:** Mold **On:** 13 March 2017

**Before:** Employment Judge S J Williams (sitting alone)

**Representation:**

Claimant: Cllr Griffiths

Respondent: Ms Gould of counsel

## JUDGMENT

The judgment of the tribunal is that:-

The tribunal is precluded from considering this claim because it was presented out of time.

## REASONS

1. This is a claim of constructive unfair dismissal. The respondent contends that the claim was presented out of time and that the tribunal should not consider it further.

2. The tribunal heard the evidence of the claimant given on affirmation, heard the unsworn statement of Cllr Griffiths and read the witness statement of Cllr Darwin on the claimant's behalf. For the respondent the tribunal heard the submissions of Ms Gould. In his statement Cllr Griffiths added factual material on which Ms Gould did not wish to cross-examine; nor did she wish to cross-examine Cllr Darwin.

### **The facts**

3. By leaving a letter on the head teacher's desk on 22 September 2015 the claimant resigned her position as a teaching assistant at Ysgol Maes Owen in Rhyl. The effective date of termination of her employment was 1 November 2015. The claimant presented her claim to the tribunal on 29 October 2016.

4. The claimant was initially assisted both by her trade union and by Mr Griffiths, who has also assisted and represented her today. In late 2015 Cllr Griffiths pressed the claimant about whether her trade union had registered her proposed claim with ACAS. He did not receive any definite answer. The claimant pursued a grievance the outcome of which she received in mid-December 2015. She was not satisfied with the result and appealed.

5. Together with Cllr Griffiths the claimant consulted a solicitor, probably in early February 2016. The solicitor advised that she was already too late to make a claim of unfair dismissal and, as a result, Cllr Griffiths said that that the idea of claiming unfair dismissal was 'parked'.

6. In early 2016 the claimant's trade union withdrew and in about March 2016 her appeal was aborted – the claimant says by the respondent. The claimant complained to the respondent who, in April 2016, initiated an investigation into her complaint and others.

7. In company with Cllr Griffiths the claimant again consulted a solicitor in October 2016. This solicitor advised that despite the delay it might be possible to make a claim of

unfair dismissal. The claimant contacted ACAS and ultimately presented her claim on 29 October 2016. Cllr Griffiths said that if they had had that advice earlier then the claimant would have acted earlier.

8. The claimant was certified unfit to work by reason of stress for two weeks towards the end of her employment in October 2015. However, she was able to take new employment in early November at a hotel where she does a variety of customer-facing duties. She continues in that employment and has had no further periods of sickness. Her time has also been taken up with pursuing her grievance and complaint against the respondent. During this period her son was seriously ill and needed surgery in December 2015. That understandably preoccupied the claimant very significantly. The claimant also said that her trade union advised her that she had to exhaust the internal procedures before going to the employment tribunal.

### **The law**

9. The Employment Rights Act 1996 provides:

#### **111 Complaints to employment tribunal**

(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 considered 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.

### **Conclusions**

10. Clearly in this case the claimant did not present her complaint before the end of the period of three months beginning with effective date of termination. That period ended on 31 January 2016. I therefore have to consider this case under section 111 (2) (b).

11. The wording of section 111 is mandatory – 'shall not consider'. There is nothing of which I have heard in this case which made it 'not reasonably practicable' for the claimant to present her claim within three months of the effective date of termination of her employment on 1 November 2015. Cllr Griffiths prompted her about it in late 2015 and she was at that time being assisted by her trade union. I take into account that the claimant had other matters on her mind, especially her son's health. But at the same time the claimant was able to undertake the duties of her new job without undue difficulty. She was able to attend to her affairs in the usual way.

12. If I were wrong about that finding, I do not consider the further period of almost nine months from 31 January until 29 October 2016 to be reasonable. The claimant consulted a solicitor in, probably, February 2016 and was put on notice that there was a time limit for making such claims. That was the time to make a late claim, if one was to be made. Waiting a further nine months was not reasonable.

13. Accordingly, this claim was presented out of time and the tribunal is precluded by section 111 from considering it further.

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Employment Judge S J Williams  
Dated: 27 March 2017

JUDGMENT SENT TO THE PARTIES ON  
3 April 2017

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FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS  
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**NOTE:**

This is a written record of the Tribunal's decision. Reasons for this decision were given orally at the hearing. Written reasons are not provided unless (a) a party asks for them at the hearing itself or (b) a party makes a written request for them within 14 days of the date on which this written record is sent to the parties. This information is provided in compliance with Rule 62(3) of the Tribunal's Rules of Procedure 2013.