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EMPLOYMENT TRIBUNALS

Claimants: (1) Ms C Newman
(2) Dr A Moore

Respondent: University College London

Heard at: London Central **On:** 23 August 2017

Before: Employment Judge Wade

Representation

Claimant: In Person
Respondent: Ms A Reindorf, Counsel

JUDGMENT having been sent to the parties on 24 August 2017 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Introduction

1. I am sorry to have to strike out these claims, but the time limit in claims under the Employment Rights Act 1996 related to wages and holiday pay is a very strict one. The test is of reasonable practicability or reasonable feasibility and the law says that I must not allow such cases to proceed, unless I have established that there was a real impediment that made it not feasible to bring the claim in time.

2. These claims arose, according to the Claimants' own chronologies, at the latest on 31 July 2016. The Claimants say they were not paid the correct

wages up to that date and the First Claimant claims that she was not paid accrued holiday pay as at the date she left the Respondent's employment, which was on 31 July.

3. It is therefore very clear that the time limit for the claim runs from 31st July. Dr Moore says that because he remained in employment and went through an internal procedure which did not terminate until 5 January 2017; the time limit in his case is different. However, I am satisfied that although he went through a procedure, the claim was about pay which he says was due up to, but not after, 31 July and therefore his time limit is the same as Ms Newman's.

4. Therefore, on the face of it, the claims are out of time. The Claimants agree that this is so if time started to run on 31 July 2016.

5. The reason why the claims are out of time starts with the fact that the early conciliation period ended on 8 December 2016. The effect of the early conciliation rules is set out in the Employment Rights Act 1996, Section 207B. First, a "stop the clock" provision applies, which means that the time limit would be extended by the length of time that the early conciliation period lasts. In this case the stop the clock provision would allow an extension of the original time limit of about 6 weeks and 2 days until approximately 16 December. The parties entered into early conciliation on 24 October and it terminated on 8 December, some 6 weeks and 2 days later.

6. The second effect of the ACAS early conciliation process is that the Claimants have a month after the end of the early conciliation process to file their claim. This was the provision which best helped the Claimants in that the claim did not have to be filed until 8 January because the early conciliation certificate was dated 8 December. However, the claim, filed on 13 January2017, is still out of time by five days.

7. The long and short of the situation is that the Claimants unfortunately made a mistake about when to put the claim in. The question for me, recognising

that obviously people do make mistakes, is whether there was an impediment to them putting the claim in within the correct time period. The law has been written to provide for a brief time limit and a strict rule that claims may only be submitted outside the time limit if it is reasonably practicable. The politicians who wrote the relevant law did so, I think, because the Tribunal process is meant to be accessible and speedy and claims are often simple and straightforward issues which must be adjudicated before memories fade and in order for all concerned to resolve the issue and get on with their lives.

8. I have thought about the various reasons which the Claimants put forward as to why they did suffer an impediment and why it was not reasonably feasible to get the claim in on time.

The First Argument

9. Ms Newman says that she was organising a move for her family to the USA in the period up to the 13th January and unfortunately Dr Moore had serious ill health in his family. This they say prevented them making progress on the claim. However, you only have to look at the Claim Form to see how little effort was needed to submit it. When Ms Newman filed the ET1 it contained minimal information and it was accepted by the Tribunal, obviously subject to the question of time limit. Therefore, not being able to spend much time on preparing the claim and not being able to get much information from Dr Moore was not an impediment to submitting the claim.

The Second Argument

10. Ms Newman says that she did not know how to complete the Claim Form. There is a vast amount of information available on the internet and the Claim Form is available online to be prepared and then, if necessary, just simply not submitted by way of a practice run. Both these Claimants work for a University and they are both educated people who should not find an impediment, as opposed to a complication in submitting a short and straightforward form.

The Third Argument

11. The Claimants say that they were waiting for the internal process to be completed and that this did not end until 5 January. Unfortunately, however, it is clear that both Claimants knew as at 17 October 2016 when an internal enquiry concluded and found against them, that they might have to litigate and this was why they went to ACAS and started the early conciliation process on 24 October. They therefore knew that it was advisable to start engaging in the litigation process considerably before 5 January. Further, and given that they were able to conceptualise the idea of starting legal action within the primary time limit for bringing a claim, it cannot be said that the internal process was an impediment to their progressing. In any event, the procedure terminated on 5 January, three days before the deadline of 8 January, and given the minimal amount of content required it was perfectly feasible to get the claim in before 8 January.

The Fourth Argument

12. The fourth point is the one which most definitely causes the most difficulty. Ms Newman says that she was distracted and put off getting the claim in on time because of poor advice from ACAS. On 12 September, Ms Newman emailed the Conciliation Officer asking what the deadline was for registering her Employment Tribunal claim. She was registering the claim on behalf of herself and Dr Moore. The Response on 13 December was "you have a minimum of one month from the date of the early conciliation certificate". This seems like wrong advice at first but in fact, as I have explained, the ACAS provisions gave the Claimants both 6 weeks and 2 days and one month more, so it could not be said that in general the Claimants only had one month to file the claim. The precise date depended on which provision of section 207B was most helpful in their particular case.

13. Therefore, knowing the minimum period, there was a question hanging in the air as to what the maximum period was. It was the responsibility of the

Claimants, as educated people, to find this out. They had time to do so because this imperfect and incomplete piece of information from ACAS was given to them on 13 December, well within the time limit. They did not follow up the question of what the maximum was with ACAS, although they had to understand, and were capable of understanding, that they were in a foreign environment where attention needed to be paid to the important question of filing the claim. The internet is full of warnings to Claimants that they must get the claim in within the time limit. I accept that of course the Claimants are not legally trained, but that does not mean they did not have the responsibility to get it right.

14. I have, with some surprise, noticed that there is on the Tribunal file quite a bit of correspondence from Ms Newman asking for information, the Tribunal responding as best it could. This does not happen very often, and certainly educated people do not write in expecting answers because they understand that they have responsibility to find out about processes themselves and that the Tribunal cannot give advice. They do not have to look very far when searching the internet. This is evidence that Ms Newman did not take the responsibility that she was obliged to.

15. It is of course the case that ACAS Conciliation Officers are not lawyers and it cannot be said that the Claimant received wrong or incorrect legal advice because ACAS would not be in a position to provide this (this is not to say that the ACAS Officer was necessarily sensible to engage in the email exchange).

16. The final powerful factor for me is that as at 12 January, already outside the time limit, the email correspondence between Ms Newman and ACAS shows that, having checked the early conciliation certificate again, she had realised that she had missed the deadline and made a mistake. She had not got the date of ACAS Certificate in her mind and she realised it might be too late to make a claim. She emailed ACAS at that point saying that she had mistaken the date and asking if she could still put in a claim.

17. This is sufficient to show me that the receipt of the incomplete ACAS advice on 13 December was not an impediment to the Claimants bringing the claim in time as the information provided was not sufficient and they must have done some of their own research. The ACAS advice was perhaps an unhelpful diversion but it was still reasonably feasible for the Claimants to get the claim in within the time limit. Unfortunately, Ms Newman, on behalf of both Claimants, realised slightly too late that she had missed the date because she had not got it in mind.

18. Traditionally it is the case that individuals who feel that they have lost out on making a claim against their employer because of poor legal advice, can take legal action against those who negligently advised them. This would not be recommended because, although it is entirely up to the Claimants, ACAS was not providing legal advice and, whilst the advice given was incomplete, it does not seem to have been wrong as opposed to potentially unhelpful.

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Employment Judge Wade

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Date 7 September 2017