



EMPLOYMENT TRIBUNALS

Claimant: Mrs. H. Rehman

Respondent: Communitas Clinics Limited

Heard at: London South Croydon

On: 17 August 2017

Before: Employment Judge Sage

Representation

Claimant: In person

Respondent: Mr Newman of 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

Requested by the Claimant.

1. By a claim form presented on 27 April 2017, the Claimant claimed unfair dismissal. The Claimant's dates of employment were 23 October 2014 until she was dismissed on grounds of gross misconduct on 12 January 2017. She was employed as a Clinic Administrator and was a home worker.
2. In a response form presented on 5 June 2017 the Respondent stated that the Claimant's claim was out of time as the effective date of termination was 12 January 2017, her claim should have been presented by 11 April 2017; the Respondent claimed it was out of time.

The issues

3. The issues for the tribunal was whether the Claimant's claim of unfair dismissal and been presented within the primary time period under section 111 of the Employment Rights Act 1996?
4. If the claim was not presented within the primary time period, was it reasonably practicable to do so?
5. If it were not reasonably practicable to present within the primary period, was it submitted within such further period as was reasonable?

6. The Claimant gave evidence to the tribunal and produced a witness statement together with 7 appendices.

Findings of fact

7. The Claimant told the tribunal that she was dismissed by a letter dated 12 January, which she received on 14 January 2017. She told the tribunal that the reason for failing to present the claim in time was due to a long-lasting illness across her whole family (the Norovirus), a shortage of private funds to pay for the tribunal fees and potential legal costs incurred in pursuing the claim. She also stated that her husband was “strongly encouraging” her to drop the matter and move on (see paragraph 7 of her statement).
8. She stated that illness had hit the family and this had “seriously incapacitated several if not all of us over a period of several weeks” (paragraph 8) and her household included four children, one of whom was being home schooled. The Claimant described time to be an extremely precious resource. The Claimant’s statement showed that her youngest child fell ill first, around 22 March which was around the time she had decided to initiate her unfair dismissal claim. The Claimant’s evidence was that other members of the family became ill and this subsisted all the way through to the week commencing Monday 17 April.
9. The Tribunal noted that the email sent to the youngest child’s school on the 22 March showed that the absence was due to “sore eyes and temperature”. The absence due to the norovirus appeared to commence on the 28 March 2017. It was conceded by the Claimant in cross examination that the majority of the documents in the bundle referred to only one child (Idrees also referred to as Drees, Dressy and Dreesalad) being unwell. The only evidence of other children becoming unwell during the primary time limitation period was Umar who was unwell on the 1 April 2017 (appendix 3).
10. The Claimant’s husband appeared to catch the virus on the 12 April 2017, the day after the time limit expired, this could not have prevented the Claimant presenting her claim in time. The Claimant became ill after her husband (paragraph 13 of her statement) therefore she was not incapacitated at any time during the limitation period.
11. Although the Claimant stated that the whole family was struck down, the evidence before the Tribunal did not corroborate this. Only one child was affected in the period from 22 March to the end of March. The Claimant was not affected by the illness at this time and there was no evidence that she was prevented during the limitation period from telephoning ACAS or from completing an on-line form.
12. The Claimant stated that she was finally able to begin research to prepare the application and contact ACAS on 20 April when the children had returned to school. She stated that she was

encouraged by ACAS to proceed with her application and to ignore the time limit deadline.

13. The Claimant conceded in answers given in cross examination that she was able to conduct her own research on her computer at home and she had internet access. She was taken in cross examination to appendix 7 of her documents which was an email dated the 9 May 2017 confirming that she had been “gathering legal advice” and she confirmed that this took the form of a brief phone call with a couple of firms of solicitors and she confirmed that she was advised that she was out of time and needed to contact ACAS first. The Claimant stated in answers to cross examination that she took legal advice “around the time the children were feeling better” and after that contacted ACAS.
14. The Claimant confirmed that during her suspension she spoke to Landau Law on the 10 November 2016 on the issue of whether she should take a representative with her to the disciplinary meeting. The Claimant’s list of key dates attached to her ET1 also showed that she telephoned another law firm on the 15 November 2016 (McMillan Williams) for advice on options available to her. It was further noted that on the 10 December 2016 she wrote to the Respondent making reference to “ACAS, English Law etc”. She told the Tribunal that she did not take advice from the law firms who had advised her during her employment after she had been dismissed.
15. It was put to the Claimant that she was fit to pick up the telephone and she replied that “being a housewife I had no idea what to do about the disciplinary hearing” and after the dismissal she stated that “I was very angry and my husband strongly advised me to leave it because it was something we could not afford”.
16. The Claimant confirmed that she had searched the internet “a handful of times” and had conducted mainly Google searches around the 14-15 January 2017 when she confirmed that she found out about the three-month deadline within days of the date of termination.
17. The Claimant confirmed that she paid the fee on the 27 April 2017 using a credit card which she had at the time of dismissal which they only used for emergencies.
18. The Claimant confirmed that from the 12 January until the 22 March 2017 no member of the family was unwell. The Claimant was asked why she did nothing during this period and she stated that she was unable to even though she conceded she knew about the deadline; she stated that she was “agonising about the cost and stress and whether we would need legal advice, it is not a simple decision”.
19. The Claimant was asked why she left it until the last minutes to present a claim and she replied “I agonised, there was a lot going on. I was home schooling my daughter and looking after a

household of five people". She confirmed in answer to the Tribunal's question that the impediment was in her mind, she needed to consider the cost of a barrister she stated that "when you earn so little, is it worth pursuing the matter?"

20. The Claimant stated that circumstances around the family suffering extended bouts of illness showed it was not reasonably practicable to initiate her claim within the primary three months' time limit and that she initiated her claim in a reasonable period after the deadline expired and she stated in a statement of paragraph 16 "we are clearly talking about a handful of days here, not weeks or months".

The Law

111 Complaints to [employment tribunal] Employment Rights Act 1996

(1) A complaint may be presented to an [employment tribunal] against an employer by any person that he was unfairly dismissed by the employer.

(2) [Subject to the following provisions of this section], 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 considers 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.

Closing Submissions of the Respondent

21. The starting point is that the time limit is strict, it is set down by statute in section 111 (2) of the Employment Rights Act 1996 and unless the claim is presented within the time limit the employment tribunal has no jurisdiction to consider the matter. I have set out the time line and the key point was that on 12 April was three months less a day. It would appear that the Claimant was nine days late contacting ACAS on 21 April 2017 and the ACAS certificate was dated 25 April. The ET1 was presented that day. Even if we were to stop the clock, it is still two days thereafter and in reality; it is 11 days out of time.

22. I agree that the tribunal does have discretion where it is not reasonably practicable, and it is a question of fact, does the illness make it not reasonably practicable? The burden of proof is on the Claimant. There should be no expectation that the tribunal exercises the discretion, it requires proof.

23. In this case there are two key pieces of evidence. Firstly, the Claimant knew of the time limits and she admitted she googled two or three days after dismissal on the 14th or 15th of January, and in her search, she came across the website for ACAS and understood the time limits. She therefore had full knowledge of the time limits for a long time. The second point is that the Claimant relies on illness within the family. However, what became clear in her oral evidence and from the text messages that there was no illness until

22 March, some 10 weeks into the primary time limit. There is no explanation why the claim was not brought within the period other than she hadn't decided whether she wished to bring a claim. I accept a number of factors can be taken into account, but it is not an impediment to bringing claim.

24. The statute is worded where an impediment prevents a claim from being presented however; indecision or slow decision-making is not an impediment. On 22 March only one child was unwell and whilst the Claimant may be looking after a child, it did not require going to a GP hospital or to pick up medication. However, there was only one child unwell at the time and the Claimant was fit and well and not suffering from any debilitating illness, as was her husband. The Claimant was not in employment at the time. The point I am trying to make is that although illness in was in the house, the Claimant's evidence at paragraph 11 of her witness statement is over egging the situation when she said that the illness snowballed. In my submission, all the Claimant needed to do was to pick up the telephone and send an email in order to stop the clock running. You have heard nothing to suggest that it was not feasible for her to do that.
25. In conclusion, this is a case where it was reasonably practicable to present the claim in time and the reason that she failed to do so is because of her indecision.
26. The further period was 11 days; the claim was put in 11 days late. The Claimant at various stages of her evidence refers to a "technical late application" this is not insubstantial when considering all the Claimant had to do was put in a phone call to ACAS, especially as she was aware of the time limits. A further 11 days is therefore unacceptable.

The Claimant's submission.

27. It is not a simple case of ringing ACAS. I had to wait 10 to 15 minutes; it was not practicable to do this. I had to sit in a car outside the house. If I dress is unwell and my husband is working, I did all the housework and provided care for my children and home schooled my daughter. I wasn't sitting idle. I wasn't clear about costs and I can't just set aside £250 as that would not be the end of the costs. When I made a decision around 22 March you then have to phone ACAS. They give you ET1 form and then it takes a long time to fill it out, this was not a matter of a few minutes, after the form is submitted there is a range of stuff that has to be done. The decision was made around 22 March and he fell ill around that time.
28. ACAS said it was 10 to 12 days out of date. Had they not said that I wouldn't have pursued it. They said it was a matter of days; however illness in the family is extenuating circumstances. It is not just a case of looking after one sick child. If was Idrees not wanting to get in the car and I was struggling to take him out to get into sit

up and drop the children off and homeschooling a child. There was an assumption I was looking at the one sick child.

Decision

29. The time limits in Section 111 (2) are strict and they go to our jurisdiction. The onus of proving that it was not reasonably practicable to present the claim within the primary time period is on the Claimant. The test is whether it was reasonably feasible for the Claimant to present her claim in time. The Claimant accepted in cross examination that firstly, that she was aware of the three month time limit on or around the 14th of 15th January after conducting a search on Google. She was therefore not ignorant as to her right to pursue a claim for unfair dismissal or of the time limits. It was also found as a fact that in her key dates attached to the ET1 she referred to her two telephone calls with law firms and her subsequent correspondence with the Respondent where she referred to ACAS and English Law thus corroborating that she had taken legal advice and was aware of the role of ACAS in their function in offering early conciliation (or if she had not been she had subsequently Googled).
30. There was no evidence that the Claimant was ignorant as to the facts of the case as evidenced by her letters to the Respondent referred to above. The Claimant also accepted in evidence that she had access to the Internet and had a number of laptops at her disposal. She had referred in her own correspondence to her legal rights.
31. The Claimant in evidence and in her closing submission stated that she did not submit a claim during the primary time period because she was agonising about the cost and stress of the pursuing a claim in tribunal. Although the Claimant had to consider all the factors and weigh up the costs and financial risks in pursuing a claim and the stress involved, this is true of all those who present claims, it does not make it not reasonably practicable to pursue the matter. This was not an impediment that made it not reasonably practicable to present claim in time. It was simply her indecision. There was no impediment to her presenting her claim in the period from the date of dismissal on the 12 January 2017 until the 22 March a period of some 10 weeks.
32. The Claimant told the tribunal by 22 March, she had decided to proceed with her claim but on that day her son fell ill, followed by other children within the family. Although sympathetic to this situation, the illness of one child in the period of the 22 March until the end of March 2017 did not make it not reasonably practicable to present a claim in time. The evidence before the Tribunal did not corroborate that during this time, other children had become unwell as has been found as a fact above. The Claimant was not herself unwell and had access to a telephone and the internet at all times there was therefore no impediment to her proceeding with the claim.

33. Having decided to pursue the claim on the 22 March 2017 the Claimant appeared to take no action until after the time limit expired. The Claimant's first contact with ACAS to enter early conciliation was on the 21 April 2017 and the certificate was issued on the 25 April 2017. The claim was presented on the 27 April 2017 and the fee was paid on the same day. The limitation period expired on the 11 April 2017 if the effective date of termination was the 12 January 2017 (but if the dismissal had not been communicated to the Claimant until the 14 January 2017, the time limit would expire on the 13 April 2017). Whichever effective date of termination is correct, the claim form was presented significantly outside of the three month time limit provided for under Section 111 of the Employment Rights Act.
34. When considering whether it was reasonably practicable one has to look at the entire time period. The Claimant took no action for 10 weeks even though she was aware of the time limits and of her right to pursue a claim. When she made up her mind to pursue the matter on or around 22 March there was a further delay (of approximately four weeks) until ACAS was contacted and the ET1 presented. Once the decision was made to go ahead with the proceedings there was a further delay. Although there was evidence of one child being unwell at the time, this was not an impediment to the Claimant contacting ACAS by telephone and presenting the form on line.
35. I conclude therefore that it was reasonably practicable to present the claim in time. There is therefore no need to consider the second stage of the test as to whether the claim was presented within such further time as was reasonable.
36. The Claimant's claim is therefore dismissed.

Employment Judge Sage

Date: 25 October 2017