



EMPLOYMENT TRIBUNALS

Claimant: Miss S Hardy

Respondents: 1. Whitakers Arms Ltd
2. Grant Smallridge Whitakers Arms Ltd

HELD AT: Manchester **ON:** 21 December 2017

BEFORE: Employment Judge Franey (sitting alone)

REPRESENTATION:

Claimant: In person
Respondent: Mr R Morton (Solicitor)

WRITTEN REASONS

These are the written reasons for the Judgment delivered orally with reasons at the conclusion of the hearing on 21 December 2017 and sent to the parties in writing on the same day.

Introduction

1. These proceedings began with a claim form presented on 18 October 2017 in which the claimant brought complaints in relation to notice pay and holiday pay arising out of the termination of her employment as General Manager of a pub/restaurant on 13 June 2017.
2. By a response form of 14 November 2017 the claim was resisted on its merits. It was common ground that employment ended on 13 June 2017 but in dispute was whether the claimant had resigned by walking out on 13 June 2017 or whether the proprietor Mr Smallridge had dismissed her.
3. The claim had been presented more than three months after the termination of employment even ignoring the period spent in early conciliation (see below). By letter of 25 October 2017 the Tribunal notified the parties that the question of time limits would be considered at the final hearing on 21 December 2017.

4. The claim form also made mention of redundancy. Had a complaint seeking a redundancy payment been pursued it would have been necessary to have heard evidence about the events of 13 June 2017 because that complaint has a time limit of six months and would have been in time. However, the claimant confirmed that she was only pursuing holiday pay and notice pay, for which the claim form appeared to be out of time. It was therefore agreed that I would deal with the time limit issue before hearing any evidence about the substantive complaints.

Correct Respondent

5. The claim was brought against two respondents: Whitakers Arms Ltd (“the respondent”) which was the limited company which employed the claimant at the time employment ended and Grant Smallridge who was a director of that company.

6. The former was the correct respondent as the complaints pursued by the claimant can only be brought against the legal entity which employed her. That remains the case even though the claimant had prior to 4 December 2016 been employed by a predecessor company owned by Mr Smallridge; as her employment continued seamlessly it appears to have transferred to the respondent pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 2006. That being the case, by regulation 4 the respondent inherited all existing liabilities in connection with her contract of employment. It followed that the relevant early conciliation certificate was that in relation to the respondent, not Mr Smallridge personally.

Relevant Legal Principles – Time Limits

The Primary Rule – Three Months

7. The time limit applicable to the complaints in these proceedings was three months, but that ran from two different dates depending on the type of complaint.

8. For the complaint in relation to notice pay the time ran from the effective date of termination of employment under Article 7 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994. Time started to run on 13 June 2017 and (but for early conciliation) expired on 12 September 2017.

9. For the complaints in relation to holiday pay, however, the time limit ran from the date of the payment of wages from which the unlawful deduction was said to have been made (if treated as a complaint of unlawful deductions from pay – see section 23(2) Employment Rights Act 1996 – “the ERA”) or from the date on which payment should have been made (if treated as a complaint under the Working Time Regulations 1998 – “the WTR” – see Regulation 30(2)(a) of the WTR). The three months therefore began to run for those claims on 23 June 2017 when the respondent made its final payment to the claimant. But for early conciliation the time limit expired on 22 September 2017.

Early Conciliation

10. Time spent during the early conciliation process is not counted in calculating time limits: see section 207B of the ERA and Regulation 30B of the WTR. The early

conciliation process against the respondent began on 26 July 2017 and ended on 14 August 2017, meaning that a further nineteen days fell to be added to the expiry of the three months. That meant that for the notice pay claim the time limit expired on 1 October 2017 and for the holiday pay claims or unlawful deductions claims the time limit expired on 10 October 2017.

Extensions to the Time Limit

11. Under the relevant statutory provisions (Section 23(4) ERA and Reg 30(2)(b) WTR) there is the possibility of allowing a late claim to proceed. The material wording is in identical terms and permits the Tribunal to adjudicate on a late claim as long as it is presented:

“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.”

12. Accordingly it fell to the Tribunal to decide two matters. Firstly, was it not reasonably practicable for the claimant to have presented her claim by the expiry of the three month period ignoring early conciliation? Secondly, if so, was the claim presented within a further reasonable period?

13. Something is “reasonably practicable” if it is “reasonably feasible” (see **Palmer v Southend-on-Sea Borough Council [1984] ICR 372**, Court of Appeal). Ignorance of one’s rights can make it not reasonably practicable to present a claim within time as long as that ignorance is itself reasonable. An employee aware of the right to bring a claim can reasonably be expected to make enquiries about time limits: **Trevelyan (Birmingham) Ltd v Norton [1991] ICR 488** Employment Appeal Tribunal (“EAT”).

Relevant Facts

14. I had oral evidence on affirmation from the claimant, some of which was contained in her witness statement for the substantive issues. That evidence was not challenged by Mr Morton and I accepted the claimant’s factual evidence in its entirety. Some of the relevant documents appeared in a bundle prepared for the hearing.

15. The relevant facts can be summarised as follows.

16. The claimant was aware that her employment had ended on 13 June 2017 and from her management role with the respondent, which included dealings with ACAS, she was aware of the right to go to an Employment Tribunal. However, the claimant was not aware of the time limit for presenting a claim.

17. Following the termination of her employment the claimant wrote to the respondent about her employment rights on 16 and 22 June and was able to research Tribunal proceedings online to find out how to go about bringing a claim. She ascertained that she had to undergo early conciliation first. However, she did not carry out any research into time limits or ask ACAS for advice about time limits.

18. She started early conciliation against the respondent on 26 July 2017. It ended with the issue of a certificate by ACAS on 14 August 2017.

19. Around that time the claimant was still in active contact with ACAS by email and telephone, and at that point when the early conciliation certificate was issued she still had approximately six weeks to bring her complaint about notice pay and ten days longer for the complaints about holiday pay.

20. However, for the first ten days or so of that period she was on holiday, returning in late August.

21. I accepted the claimant's evidence that the termination of her employment caused her considerable distress. She is the sole carer for her son and understandably had financial worries. She was not able to find other work until her son returned to school in early September and then had to find three different jobs in order to make ends meet.

22. She was also engaged in preparation for a final hearing in some family law proceedings involving her former partner. These had been running for some time and were of crucial importance for the wellbeing of her son. I accepted the claimant's evidence that these proceedings were very time consuming and needed to be given priority in the run-up to the final hearing on 27 September 2017.

23. After that hearing the claimant was still a few days within the time limit for the notice pay claim expiring on 1 October and a few more days within the time limit for the holiday pay complaints expiring on 10 October 2017. However, her claim was not presented until 18 October 2017, seventeen days late in respect of notice pay and eight days late for holiday pay.

Conclusions

24. I accepted the claimant's evidence that she was not aware of the applicable time limits, but I concluded that there was nothing to stop her having ascertained the time limits so as to bring a claim within time. Even with the difficulties she faced in her employment having ended suddenly without warning, in her responsibilities for her son and in her involvement in the family law proceedings, in my judgment it was reasonably feasible for the claimant to have researched the time limits online or to have asked ask ACAS. It would have only taken a few minutes to take that step. This was not a case where there was medical evidence of incapacity preventing her from dealing with her affairs in that period, or evidence of the claimant being unaware of a material fact, or of relying on incorrect advice.

25. More specifically, there were three periods when she could reasonably have taken that step. The first was between termination in mid June and the end of July when she initiated early conciliation. The second was between her return from holiday in late August and early September before preparation for the family law hearing was upon her. The third was in the few days following that court hearing. In that last period (and possibly for some of the second period) the claimant was working in three different jobs, yet she was able to present the claim online on 18 October 2017. There was no clear impediment preventing her taking that step three weeks earlier.

26. In my judgment the primary factor which meant she did not present it within time was that she did not know about the time limit, but that lack of knowledge in itself was not reasonable: see **Trevelyan (Birmingham) Ltd v Norton** above. The claimant could reasonably have taken steps to ascertain the time limit and having done so she would have been able to have presented her claim form within the relevant time limits.

27. Consequently I concluded that it was reasonably practicable for the claim to have been presented within the three month time period as extended by early conciliation. The Tribunal does not have any jurisdiction over it and it is dismissed.

Postscript

28. Having deliberated on the matter briefly in chambers I asked the Tribunal clerk to get the parties back into the hearing room so I could deliver judgment. He informed me that the claimant had asked him if her parents could give evidence on the time limit issue. That was not appropriate as I had already made my decision by then.

Employment Judge Franey

22 December 2017

REASONS SENT TO THE PARTIES ON
2 January 2018

FOR THE TRIBUNAL OFFICE

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