



EMPLOYMENT TRIBUNALS

Claimant:

Miss S Hollowbread

v

Respondent:

Barney Bees Day Nursery Limited

PRELIMINARY HEARING

Heard at:

Reading

On: 5 June 2018

Before:

Employment Judge Milner-Moore

Appearances

For the Claimant: In person

For the Respondent: Mr B Watson (legal representative)

JUDGMENT

1. The Tribunal has jurisdiction to hear the complaints:
 - a. The claim was filed within the relevant statutory time limits;
 - b. In the alternative, compliance with the statutory time limit was not reasonably practicable and the claim was filed within such further period as was reasonable

REASONS

1. This case was listed for a preliminary hearing to determine whether the Tribunal had jurisdiction to consider the claim in view of the three-month time limits for presenting claims for unfair dismissal, breach of contract, for unpaid holiday pay and for unlawful deduction from wages.

FACTS

2. The claimant was employed by the Respondent between 26 June 2015 and 21 August 2017, having resigned with one month's notice in circumstances which she considered amounted to a constructive dismissal. She contacted ACAS to engage in pre-claim conciliation. The ACAS conciliation certificate shows that that conciliation began on 30 August 2017 and that the conciliation period finished on 26 September 2017. The certificate records that it was issued by

email on that date. The claimant's ET1 was received by the Tribunal on 18 December 2017.

3. It therefore appeared that, applying the statutory formulae in section 207B Employment Rights Act 1996 under which time limits are extended to allow for early conciliation, the claimant's case had been filed one day outside the relevant time limit. The ordinary limitation period for the claims being brought would have expired on 20 November 2017 (within three months of the effective date of termination). However, that time limit was extended by the number of days between 31 August 2017 (the day after conciliation began) and 26 September 2017 (the day conciliation ended and the certificate was issued by email). This was a period of 27 days. Time was therefore extended to 17 December 2017 but the ET1 was filed on 18 December 2017, one day out of time. The Tribunal would not therefore have jurisdiction to hear the complaint unless satisfied both that it was not reasonably practicable for the claimant to have complied with the time limits and that the claim was filed within such further period as was reasonable.
4. The claimant attended the hearing and gave evidence on oath. The respondent's representative had an opportunity to put questions to her. In light of the claimant's evidence I made the following findings:
 - 4.1 The claimant was 18 years old when she brought her Tribunal proceedings. She was employed as a nursery apprentice. She had little experience of the workplace and this was the first occasion on which she has ever had to go to court or bring any kind of legal proceedings.
 - 4.2 She had done some research by speaking to ACAS but had struggled to understand what was required in terms of the process and the applicable time limits. She had been under the impression that she had three months plus either 4 or 6 weeks in which to bring any complaint.
 - 4.3 Because she had found it difficult talking to ACAS she had got a friend of her mother's (Wendy) to speak to ACAS on her behalf to explain her dispute with the respondent. However, ACAS had the claimant's contact details and the claimant's email address and she had not asked them to direct all communications via Wendy.
 - 4.4 She had not received the ACAS certificate on 26 September 2017. It had been sent to Wendy but Wendy had not forwarded it to her.
 - 4.5 She had contacted ACAS on the 4th of October 2017, asking to be sent a copy of the conciliation certificate and the certificate had been forwarded to her email address on 5th October 2017.

LAW

5. Section 111(2) of the Employment Rights Act establishes the primary time limit for claims for unfair dismissal.

"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 effect 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 the period of three months¹.

6. Where a claimant relies on ignorance or misunderstanding as to time limits, that in itself will not suffice to establish that compliance with time limits was “not reasonably practicable”. It is necessary to consider whether such ignorance is reasonable in all the circumstances and, in doing so, it is likely to be relevant to consider the circumstances of the claimant including age, experience of the workplace, etc., and the extent to which the claimant received professional advice.
7. The primary time limit may be extended by the operation of section 207B(2) and (3) of the Employment Rights Act 1996, which provide as follows:

“(2) In this section:

- (a) Day A is the day on which the complainant or applicant concerned complies with the requirement in subsection (1) of Section 18A of the Employment Tribunals Act 1996 (requirement to contact ACAS before instituting proceedings) in relation to the matter in respect of which the proceedings are brought, and*
- (b) Day B is the day on which the complainant or applicant concerned receives or, if earlier, is treated as receiving (by virtue of regulations made under subsection 11 of that section) the certificate issued under subsection 4 of that section*

(3) In working out when a time limit set by a relevant provision expires the period beginning with the day after Day A and ending with Day B is not to be counted”

8. The Employment Tribunals Early Conciliations Exemptions and Rules of Procedure Regulations 2014 (“the 2014 regulations”) are regulations made under section 8(11) of the Employment Tribunals Act 1996. They provide at regulation 9 that:

“(1) Where ACAS issues an early conciliation certificate, it must send a copy to the prospective claimant and, if ACAS has had contact with the prospective respondent during the period for early conciliation, to the prospective respondent.

(2) If the prospective claimant has provided an email address to ACAS, ACAS must send the early conciliation certificate by email and in any other case must send the early conciliation certificate by post.

(3) An early conciliation certificate will be deemed received- if sent by email on the day it is sent.”

¹ The time limit applicable to the other complaints being brought is also three months and are detailed in s23 ERA (unlawful deductions), the Employment Tribunals (Extension of Jurisdiction) order 1994 (Breach of Contract) and Reg 30(2)(a) of the Working Time Regulations 1998 (unpaid annual leave).

CONCLUSIONS

9. In light of the facts that I have found and applying the statutory provisions set out above, I have concluded that the ET1 was filed within the statutory time limit.
 - 9.1 I accept the claimant's evidence that the certificate was not sent to her on the date specified in the certificate. It was sent to Wendy on that date and that the claimant herself did not receive the certificate until 5th October 2017.
 - 9.2 Under section 207B(2) of the Employment Tribunals Act 1996, Day B is the date on which the claimant receives the conciliation certificate unless the claimant is to be treated as having received it earlier as a result of 2014 regulations.
 - 9.3 Regulation 9(1) and (2) of the 2014 regulations oblige the ACAS officer to send the conciliation certificate to *the claimant* and to send it to *the claimant's email address* where one has been provided.
 - 9.4 Whilst regulation 9(3) of the 2014 regulations provides that an early conciliation certificate will be deemed received on the date of its being emailed, that provision must be predicated on an assumption that (1) and (2) have been complied with (i.e. that the email has been sent to the claimant's email address). If not, the deemed receipt provision will not apply.
 - 9.5 Accordingly, Day B (for the purposes of section 207B(2) Employment Rights Act 1996) was the 5th October 2017, which is the date on which the conciliation certificate was sent to the claimant by ACAS. The stop the clock period was therefore 36 days (rather than 27 days) and the time limit for bringing proceedings was therefore 26 December 2017 rather than 17 December 2017.

10. Even if I am incorrect about this, and the relevant statutory time limit expired on 17th December 2017, I consider that, in all the circumstances it would be appropriate to extend time.
 - 10.1 I consider that it was not reasonably practicable for the claimant to have complied with that time limit. I accept the claimant's evidence that she was ignorant of the precise working of the extension provisions relating to ACAS conciliation and that she was under a misapprehension as to the length of the relevant time limit as a result.
 - 10.2 I consider that her ignorance was reasonable in all the circumstances. I have borne in mind, in particular, the fact that the Claimant had made efforts to obtain information from ACAS but found that advice difficult to understand. That was understandable given that the statutory provisions in question are not entirely straightforward and given that the claimant was only 18 at the relevant time and had no previous experience of dealing with court or tribunal processes.
 - 10.3 It was accepted by the respondent that, the claim having been filed only one day late, it was filed within such further period as was reasonable.

11. For the reasons set out above the Employment Tribunal has jurisdiction to hear the complaints.

Employment Judge Milner-Moore

Date: 12 / 6 / 2018

Sent to the parties on: