



## EMPLOYMENT TRIBUNALS

**Between:**

**Claimant:** Miss S Sands

**Respondent:** Mole Valley District Council

**Heard at London South Employment Tribunal on 7 November 2017**

### REASONS

- 1 At the conclusion of the hearing the judgment and reasons for it were given by the Tribunal orally. As the Claimant is a litigant in person I consider it appropriate to provide written reasons as a record of the evidence and my conclusions.
- 2 On 30 May 2017 the Claimant presented a claim to the Tribunal. She stated that she had been employed by the Respondent from 11 January to 10 February 2017. It was agreed that she was in fact employed by an employment agency and had been placed with the Respondent on an assignment in the Planning Department.
- 3 The Claimant's claim was under the provisions of the Equality Act 2010 based upon the protected characteristic of disability. A response was duly presented. In very brief summary the basis of the claim is that the Claimant suffers from lower back pain particularly, and pain in her joints generally, and that she was required by the Respondent to carry out work which exacerbated her condition.
- 4 It is alleged that there was an incident as a result of which the Claimant left the assignment and did not return. The Claimant says that her last day of work was 10 February and the Respondent says that it was 9 February 2017. The difference of one day does not matter. There is a time limit of three months from the date of an alleged incident for the commencement of the process of making a claim. That time limit expired on 9 May 2017 on the Claimant's case. If contact is made with ACAS under the early conciliation procedure within that time limit then the limit is extended. Contact was made with ACAS on 15 May 2017, by which date the time had already expired. The ACAS early conciliation certificate was issued on 25 May, and the claim was presented on 30 May 2017.
- 5 This was a preliminary hearing to decide whether the Tribunal had the jurisdiction to consider the claim being made. The Tribunal has the jurisdiction to extend time where it is just and equitable so to do. That gives the Tribunal a wide discretion but it must of course be exercised

judicially. As it is the Claimant who is seeking an extension of time the onus is on her to show why the Tribunal should extend the time limit. There is no presumption that it will be extended, simply because it may appear that a claimant has a strong case.

- 6 The Claimant gave evidence as to what occurred. Quite understandably she was not able to be precise, and I have only been able to form a general picture. In the middle of February 2017 the Claimant contacted what she said was the Equality and Advisory Service by telephone. I assume that that was in fact the Equality Advisory Support Service ('EASS') helpline. The Claimant was advised to contact the Respondent about the matter. At about the same time the Claimant also contacted ACAS. I saw a letter from an officer in the Respondent to the employment agency of 16 February 2017. It is apparent that by that date the Claimant had raised the matter with the agency.
- 7 The Claimant was also told by the EASS that it could not advise on the law, and recommended that she seek assistance from the Citizens Advice Bureau. The Claimant was not able to obtain an appointment within a reasonable time. The Claimant found out about a free legal advice service in Crawley which I understand is offered as an evening service by solicitors on a *pro bono* basis. It is not easy to obtain an appointment.
- 8 The Claimant carried out some searches on the internet and wrote to the Chief Planning Officer on 18 April 2017. It is apparent from the terms of that letter that the Claimant was aware of her rights under the Equality Act 2010, as well as the alleged facts giving rise to her claim. I did not see the letter but I was told that on 5 May 2017 a letter was received by the Claimant from the Respondent saying that there was a delay in preparing a reply of substance to the letter of 18 April 2017 as some witnesses were on leave. The Claimant then contacted ACAS again to enquire how to escalate the complaint. Her clear evidence, which I have no reason to doubt, is that she was told that there was a time limit, but that it ran from the date upon which she first complained to the Respondent. By then the time limit had expired, or was about to do so. The Claimant also sought advice about her status as an agency worker.
- 9 The Claimant said that she contacted ACAS again in mid-May after having received a letter from the Respondent to the effect that the matter was being passed to the Legal Department. On this occasion the Claimant was asked for the date when she left the Respondent and was advised to commence the early conciliation procedure. That she did on 15 May 2017 as noted above.
- 10 Mr Hopwood made submissions for the Respondent. He referred to the well known authority of *British Coal Corporation v. Keeble* [1997] IRLR 336 EAT and also to *Habinteg Housing Association Limited v. Holleron* UAEAT/0274/14. The point made by Mr Hopwood was that the first factor mentioned in *Keeble* was the reason for and the extent of the delay, and

that *Habinteg* was authority for the proposition that the reason(s) for the delay had to be established by evidence, and in the absence of such evidence time could not be extended.<sup>1</sup> He said that if the Claimant's evidence was correct as to the advice given by ACAS then that advice was clearly wrong, and that he would expect ACAS to have given the correct advice. He added that the Claimant had clearly been able to search the internet for information and should have found out about the time limit.

- 11 The Claimant replied. She emphasised that obtaining access to legal advice which was either free or affordable to individuals on a low income was difficult. She referred again to the advice she had received from ACAS as to the commencement of the time limit. She said that the first time that she had learned that there may be a limitation issue was when the response form ET3 was received with the Respondent's Grounds of Resistance.
- 12 I record my conclusions. I start from the undisputable fact that the first contact with ACAS under the early conciliation procedure was made outside of the three month time limit, whether time started running on 9 of 10 February 2017. I too was very surprised to hear the Claimant's evidence that she had been advised by ACAS that time started to run from the presentation of the grievance.
- 13 *Keeble* is not binding on the Tribunal as a legal authority but it does contain useful guidelines. The first and the fourth are the most relevant, being the length of and reasons for the delay, and the promptness with which the Claimant acted after knowing of the facts giving rise to the claim. The Claimant was out of time by only five or six days, and the reason was that the Claimant had not been able to obtain legal advice and was ignorant of the time limit. The Claimant was aware of the facts giving rise to the claim from before she left the assignment with the Respondent, and her allegations arise from working on that assignment. There was no suggestion that the cogency of the evidence would be adversely affected by the minimal delay which had occurred.
- 14 The further issue to be considered is whether the Claimant's ignorance of the time limit was itself reasonable. In my judgment it was not reasonable. She was aware of her rights and that brings with it an obligation to make enquiries as to whether there are any applicable time limits. The Claimant was adept at using the internet. The government website with guidance about the making of claims to the Tribunal has very close to the start reference to the three month time limit set out in a bold font with an exclamation mark. The Claimant could also have contacted the Tribunal telephone helpline and more specialist advice could have been obtained from that source. If the Claimant had taken either of those steps then she would have learned of the time limit well

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<sup>1</sup> Mr Hopwood also quite properly referred me to *Rathakrishnan v. Pizza Express (Restaurants) Ltd* UKEAT/0073/15 where the correctness of that judgment was doubted, but I referred him to *Edomobi . Lav Retraite RC Girls School* UKEAT/0180/16 in which Laing J said if she had to choose then she would choose the approach in *Habinteg*.

before she received the incorrect advice from ACAS as to the commencement of the time limit.

- 15 I have also considered the prejudice to the parties. I am unable to form any view as to the merits of the claim, or otherwise, from reading the details in each of the claim form and the response. Mr Hopwood did not seek to suggest that there would be any specific prejudice to the Respondent if time were extended, save of course from having to defend a claim presented out of time. The converse of that is that a refusal to extend time causes prejudice to the Claimant.
- 16 There is a time limit. It is there for a purpose. It is up to the Claimant to show why it is just and equitable for it to be extended. In my judgment she has failed to do so for the reasons set out above.

**Employment Judge Baron**

**14 November 2017**