EMPLOYMENT TRIBUNALS

Claimant: Miss T Ollerhead

Respondent: Inspired Energy PLC

Heard at: Manchester **On:** 6 November 2018

Before: Regional Employment Judge Parkin

REPRESENTATION:

Claimant: In person
Respondent: Mr J Gilbert, Solicitor

JUDGMENT AT A RECONSIDERATION HEARING

The judgment of the Tribunal is that the application for reconsideration is refused.

REASONS

1. This was a reconsideration hearing held on the application of the claimant to reconsider the judgment sent to the parties on 8 August 2018 striking out the claim for failure to actively pursue it. The claimant thereafter applied for reconsideration by letter originally dated 20 August 2018, supported by further correspondence dated 17 September 2018, 25 October 2018 and 27 October 2018. At the reconsideration hearing, she provided an extensive bundle of documentation including a document effectively her witness statement. She also gave oral evidence on affirmation which was unchallenged by the respondent.

2. The full history of the proceedings needs to be set out. The claim was presented on 6 June 2018 following early conciliation carried out between notification on 10 April 2018 and date of issue of certificate on 25 April 2018. However, the claim form provided no employment details of start and end date of employment or job title, only ticking the box “unfair dismissal” and giving the briefest of details that the claim was about whistle-blowing. By implication, though not expressly, it showed that the claimant was saying the real reason for her dismissal was that she had been a whistle-blower. The lack of detail was all the more surprising since the claim form

named the claimant's representative as Roy Prance of the organisation BFAWU, the Bakery, Food and Allied Workers Union.

3. The claim was acknowledged and sent to the respondent with a notice of claim on 19 June 2018, with the claimant expressly required to provide details of the start and end dates of her employment and of the protected disclosures she relied upon, namely to whom the disclosures had been made and how they were qualifying disclosures, those details to be provided by 3 July 2018. No reply was received and a reminder was sent by the Tribunal for a reply by return on 5 July 2018. There was then a very detailed ET3 response presented on 10 July 2018, the respondent's solicitor having taken full instructions from the respondent client.

4. No reply still having been received, the claimant was warned by letter dated 13 June 2018 that her claim would be struck out for not being actively pursued but that she could object to the proposal, giving reasons in writing or request a hearing at which she could make them, by 27 July 2018. Again that warning was given to her named representative and again there was a complete lack of reply. Accordingly, the strike-out judgment was sent by the Tribunal on 8 August 2018, having been signed on 3 August 2018.

5. At the hearing the claimant's uncontradicted evidence was that she was not a trade union member but had been introduced to Mr Prance by a colleague when she was suspended, and had given him permission to present the ET1 claim form on her behalf although she had not seen its content. She was not aware how briefly he had set out her claim until recently. She had not been aware that Mr Prance had failed to provide details of her claim to the Tribunal since she had given these to him. She had made contact with the Tribunal only to be told orally that her claim had been struck out and she had promptly applied for reconsideration, having discharged Mr Prance whom she had not had any contact from despite emails and texts from her.

6. The claimant's application for reconsideration was resisted by the respondent and during discussion at the hearing it became apparent that there were time issues as to the Tribunal's jurisdiction to hear the claim if reinstated, as well as the respondent's substantive grounds of resistance on the merits if the claim was to proceed. Whilst not in oral evidence, the Tribunal therefore clarified with the claimant when she had received notification of her dismissal from the respondent; this was by email when she was out of the country on holiday probably on 21 February 2018 or at the latest by the next day. When she returned she received confirmation by written letter and was then able to make contact with the respondent.

The law

7. The Tribunal followed its Rules of Procedure 2013, particularly Rules 70-73, and applied the law relating to unfair dismissal claims at Part X of the Employment Rights Act 1996, especially sections 103A relating to automatic unfair dismissal for having made a protected disclosure, which disapplies the two-year continuous service rule at section 108, section 111(2) in respect of time limits, and section 207B in respect of extension of time limits for early conciliation cases.

Conclusion

8. The Tribunal was wholly sympathetic to the claimant who had been massively let down by a representative who purported to have expertise in employment law and Tribunal procedures. From the outset, the claim form was poorly and inadequately presented and there was then a complete failure to provide further details of the claim, notwithstanding that the claimant had given Mr Prance the details to work with. Were it simply a question of deciding whether to permit the claim to be reinstated on reconsideration so that the merits could be determined at a final hearing, the Judge would have allowed the application and reinstated it. However, there is one insuperable jurisdiction obstacle to allowing that to happen.

9. There is a strict time limit for bringing an Employment Tribunal claim alleging unfair dismissal by the employer of three months from the effective date of termination, which can be extended in certain circumstances under the early conciliation provisions. The effective date of termination was 21 or at the latest 22 May 2018, and the normal time limit would thus expire on 20 or at the latest 21 May 2018. The provisions of section 207B then have to be factored in.

10. The claimant cannot avail herself of the additional one month under section 207B(4) because the period of one month after Day B (25 April 2018) still expires in May 2018. Therefore only the extension at 207B(3) applies whereby "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". This means that an additional 15 days is added to the time limit, which moves the time limit based on the three months from effective date of termination on by 15 days from 20 May or at the latest 21 May, either to 4 or at the latest 5 June 2018. In those circumstances the claim, when presented on 6 June 2018, was already out of time even applying the early conciliation extension on the most generous basis.

11. Given the background involvement of Mr Prance, there can be no suggestion that it was not reasonably practicable for the claim to be presented in time. He had apparently advised the claimant even before termination of employment and had undertaken early conciliation with ACAS on the claimant's behalf. Thus, there could be no question of any short extension of the time limit under section 111.

12. In all the circumstances and taking into account the whole picture including the jurisdiction issues on time, the Judge refused the claimant's application for reconsideration since it was clear that the claim would need to be dismissed for lack of jurisdiction in any event.

Regional Employment Judge Parkin
7 November 2018

JUDGMENT AND REASONS SENT TO THE PARTIES ON

9 November 2018
FOR THE TRIBUNAL OFFICE

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