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EMPLOYMENT TRIBUNALS

Claimant: **Miss E Hegedus**

Respondent: **Arrow Electronics UK Ltd**

Heard at: **East London Hearing Centre**

On: **9 August 2018**

Before: **Employment Judge Foxwell**

Representation

Claimant: In person

Respondent: Mr T Perry (Counsel)

JUDGMENT having been sent to the parties on 3 September 2018 and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013.

REASONS

1 The Claimant, Miss Erika Hegedus, was employed by the Respondent, Arrow Electronics UK Ltd, as an accountant from 11 July 2017 until 18 September 2017. Having gone through early conciliation on 20 February 2018, she presented complaints to the Tribunal of unfair dismissal, race discrimination, discrimination on grounds of age and sex discrimination on 2 March 2018. The Tribunal struck out the complaint of unfair dismissal on 21 May 2018 on the basis that the Claimant lacked sufficient qualifying service to bring such a claim.

2 The remaining complaints were considered by Employment Judge Brown at a preliminary hearing on 11 June 2018 in which she clarified, firstly, that there were no complaints of disability discrimination or for unlawful deduction from wages and secondly, the factual issues relied on in the claims of age, race and sex discrimination. The protected characteristic relied on by the Claimant for her race discrimination claim is nationality; she is of Hungarian origin but recently became a British Citizen. She has lived in the United Kingdom for the last seven years and is a fluent English speaker. She told me that she had been speaking English for over 30 years and has worked in that language for some large companies. The Claimant's factual allegations related

principally to the conduct of her colleagues at the Respondent and the subject matter of workplace conversations. One issue related to a promotion which was given to one of her former colleagues. The reader is referred to Judge Brown's summary of the preliminary hearing before her.

3 Having identified the factual allegations, Judge Brown went on to consider the time limits affecting the discrimination claims. She expressed the preliminary view that the claims were out of time on the face of it and directed that this preliminary hearing take place to consider whether the Tribunal has jurisdiction to hear them. The Tribunal would have jurisdiction if either the claims had in fact been presented in time or, if late, if the Tribunal extended time for them because it is just and equitable to do so.

4 Those are the issues that I have had to consider today. In doing so I heard evidence from the Claimant based on a witness statement dated 30 July 2018 that she submitted to the Tribunal on 2 August 2018. This was supplemented by documents which she produced today.

5 Mr Perry for the Respondent had the opportunity to cross-examine the Claimant on her evidence and I also asked one or two questions.

6 Finally, both parties had an opportunity to sum up their cases to me on the time issue.

7 The relevant statutory provisions are contained in section 123 of the Equality Act 2010 and in simple terms the time limit for presenting a complaint of discrimination is three months from the date of the act complained of. Where there are a series of acts such that they could be described as conduct extending over a period, the time limit ends three months after the last of the acts in that series.

8 It is not disputed in this case that the relevant time limit for all of the Claimant's complaints had expired prior to the presentation of her claim to the Tribunal. Based on an effective date of termination of 18 September 2017, the relevant time limit expired, at the latest, on 17 December 2017, that is three months after dismissal. I pause to note that the Claimant had referred to a dismissal date of 25 September 2017 in her claim form but confirmed in evidence to me that she was dismissed on 18 September 2017 and told that she would be paid in lieu of notice. I am satisfied, therefore, that the claims have been presented outside the primary time limit.

9 The Tribunal has a statutory power to extend time where it finds that it is just and equitable to do so. The burden of establishing this lies on a claimant and the Tribunal must consider this issue and exercise its discretion based on evidence. It is also clear from Court of Appeal authority that there is no presumption that time limits will be extended (see *Robertson v Bexley Community Centre* [2003] IRLR 434). Indeed, the Court of Appeal have suggested that such an extension will be the exception rather than the norm although in a further case they clarified that the Tribunal's discretion is unfettered (see *Chief Constable of Lincolnshire Police v Caston* [2010] IRLR 327).

10 Against that background therefore, I turn to the Claimant's account of how she came to present her claim when she did.

11 The Claimant told me that in the immediate aftermath of her dismissal she returned to Hungary for a week or so coming back to the UK on about 26 or 27 September 2017.

12 On 2 October 2017 she lodged an appeal against dismissal. The appeal letter is document 15 in the clip of documents the Claimant has provided today. While not identical to the terms of her grounds of claim, there are broad similarities between the appeal and the grounds of claim presented to the Tribunal.

13 The internal appeal was dismissed by the Respondent on 15 October 2017. At about this time the Claimant contacted an HR professor, under whom she had studied in Spain previously, for advice and assistance. He told her that it was not within his area of expertise but that she should try and take a constructive and non-aggressive approach to resolving this issue. He also suggested that she contact a professor of law with an interest in employment matters whose name he gave her. The Claimant did not decide to take this approach however. Rather, she concentrated on researching harassment and discrimination on the internet; in particular by contacting and following up an expert in these matters based in the United States. She told me in her evidence that at this point she was unaware that she could bring a claim in the Employment Tribunal.

14 In November 2017, the Claimant experienced some difficulties in a citizenship application she had been pursuing. At the beginning of that month she received a communication from the Home Office suggesting that they had not received necessary documents from her and I am certain that this was a worry. However, that matter was resolved and her application for citizenship was confirmed and granted by 22 November 2017.

15 Also at that time, the Claimant experienced some health problems. The condition is a physical one but like many such conditions, it also had some psychological consequences. On a practical level she told me that she had to go to Hungary for treatment for this condition in December 2017 and I accept that this is true.

16 In the New Year, the Claimant made some enquiries of a solicitor regarding her employment situation. She told me in her evidence, which I found to be frank and truthful, that by January 2018 she was aware that claims could be brought in the Employment Tribunal; of the relevant time limit; and that this time limit had in all probability expired. She did not initiate Tribunal proceedings in January 2018 however rather she decided to make a subject access request under the Data Protection Act in order to obtain copies of the documents held by the Respondent concerning her. The Claimant told me that she was aware of the data protection procedures from her experience as a Chartered Auditor. I shall come back to her education and qualifications in due course.

17 The Claimant did not receive the requested documents within the 40 days provided for under the data protection process and she told me that she had to chase the Respondent in this regard. Prior to this, however, on 20 February 2018, she contacted ACAS for the purposes of early conciliation. This is a necessary prerequisite to bringing Tribunal proceedings. Early conciliation lasted just a day. I am sure it was

done simply for the purposes of obtaining the necessary certificate (no criticism is intended).

18 The Claimant lodged her claim on 2 March 2018. I have had no real explanation for the delay between 20 February and 2 March 2018.

19 A question that arose in the hearing was why did the Claimant initiate the early conciliation process in the middle of February 2018? The Claimant told me in evidence that in January 2018 she was not of a mind to pursue a legal solution to this claim. This clearly changed in February and I infer from her evidence that the factors which prompted her into bringing legal proceedings were, firstly, the delay in obtaining information under her subject access request and, secondly, the Respondent's refusal to agree to her request for a meeting made in the middle of February 2018. The Claimant told me that she was keen to understand why she was dismissed and that was why she was seeking a meeting. I find that these factors were what caused her to pursue Tribunal proceedings when she did. The Claimant also told me that she had further health difficulties in the New Year, particularly in February 2018, but obviously that did not prevent her from making her subject access request nor did it stop her asking the Respondent for the meeting which I have just referred to.

20 The Claimant is a well-educated and intelligent woman. She told me that she has two degrees from the University of Budapest in economics, that she is a Chartered Auditor, that she has an Executive MBA qualification which she gained in Spain and that she has been studying the Chartered Management Accountants' course since 2015. She also speaks several languages. Her English is excellent.

21 Against that background, I turn then to the question that I must consider here which is where the balance of justice and equity lies?

22 As is often the case, the Respondent has not adduced any evidence of particular prejudice arising from the timing of the claim form. While I am not bound in any sense by the checklist contained in section 33 of the Limitation Act 1980, it nevertheless is a helpful exercise to run through the factors identified there. If I start with the length and reasons for delay in this case, it appears from the Claimant's account that she was unaware of Employment Tribunals in the early months after her dismissal but she certainly was aware of them by January 2018 when she made a conscious choice not to pursue a "legal route". It was the middle of February before she took any positive step along that line.

23 While I accept the truth of the Claimant's account, I am not satisfied that it was reasonable for her to remain ignorant of her legal remedies in the period after dismissal and before the New Year. In reaching that conclusion, I bear in mind that she contacted her former professor who said that he could not help her directly with the employment ramifications of her dismissal but pointed her towards one of his colleagues who might have been able to help her. The Claimant, for reasons I do not really understand, chose not to go down that path. Secondly, she spent a lot of time researching harassment and discrimination on the internet but in all that time did not look at the position under UK law, rather she pursued the position as it might be in the United States. I find that decision difficult to understand given that the Claimant was employed in and lives in the United Kingdom. I bear in mind of course that the Claimant

is originally from Hungary but Hungary is a member of the European Union and will have similar legal principles underlying discrimination claims because they are all based on European law. So, for those reasons I do not find that it was reasonable for the Claimant to have lacked the knowledge that she plainly did lack in the period from her dismissal through to the New Year.

24 When it came to the point when the Claimant was aware of her right to bring a claim and the fact that it was late, she made a positive decision to hold off from bringing a claim promptly on her evidence. She decided that she was not going to pursue the legal route at that stage but some other remedy. I do not accept her submission that it was sufficient simply for her to pursue a subject access request on the basis that she needed more information in order to prove her claims; her claims related to things of which she was already aware concerning the conduct of former colleagues which she described as upsetting.

25 Accordingly, when I look at the length and reasons for this delay they do not point me towards it being either just or equitable to extend time for the presentation of these claims. I have, however, gone on to look at the other factors under the section 33 checklist. Mr Perry conceded that the cogency of the evidence has not been affected or seriously affected by the Claimant's delay. That will commonly be the case in the Employment Tribunal because of the short time limits which apply. I bear in mind, however, that the intention of Parliament was that there should be short time limits for employment disputes.

26 The Claimant raised an issue about cooperation. The way she describes it is that the Respondent has deliberately taken a piecemeal approach to the provision of evidence. She pointed to its failure to provide a P45 in good time, difficulties in obtaining her final pay and then the delays in the subject access request. She suggested to me that this was a deliberate plan by the Respondent in the knowledge that the time limit was passing or had passed.

27 It is difficult to make any finding about why the Respondent did certain things when it did. I have not heard any evidence from the relevant people at the Respondent but it seems to me that none of those steps were essential or even relevant to the bringing of these proceedings. They certainly did not stand in the way of the bringing of these proceedings so that is not a factor in my judgment which renders it either just or equitable to extend time.

28 As far as the promptness of the Claimant's application is concerned, in my judgment it was not prompt. She was aware of the situation in January 2018, she did not initiate early conciliation until the 20 February; even having done that, she did not bring her claim until some 10 days later on 2 March 2018. None of that activity is indicative of promptness.

29 As far as whether she acted reasonably in taking advice, I have mentioned she did go to her professor which is not an unreasonable thing to do and he pointed her in the direction of someone else who might have been able to help her but she did not follow this up. When she tried to obtain legal advice in January and February of this year, solicitors were unsurprisingly reluctant to act for her in a case where the time limit had so obviously passed.

30 So, when I step back from all of these factors it seems to me that neither justice nor equity demands an extension of time in this case. Indeed, on the contrary, justice and equity weigh in the favour of the Respondent here. The time limit, as I have mentioned, is deliberately short and is there to be respected unless there are good reasons for departing from it. In this case I am afraid I cannot find that there are good reasons for departing from it and accordingly I conclude that the claims have been presented late, that the Tribunal has no jurisdiction to decide them and accordingly they must be dismissed.

Employment Judge Foxwell

30 October 2018